



Fast Track Proposed Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22VAC40-72
Regulation title	Standards for Licensed Assisted Living Facilities
Action title	Amend Assisted Living Facility Regulation
Date this document prepared	August 20, 2008

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

This regulatory action amends the Department of Social Services (DSS) regulation pertaining to licensure of administrators and registration of medication aides in order to coordinate the State Board of Social Services (Board) assisted living facility regulation with regulations of the Virginia Board of Long-Term Care Administrators and the Virginia Board of Nursing at the Department of Health Professions. The licensure of administrators and the registration of medication aides are a result of revisions to the Code of Virginia (Code). Other changes made by the regulatory action include adding a requirement for reporting outbreaks of disease and deleting a standard regarding dedicated hospice facilities. These changes are being made to mirror revisions made to the Code.

The regulatory action also includes changes to the requirements for safeguarding resident funds, shared administrators for smaller homes, initial tuberculosis risk assessment report, bed hold policy information, individualized service plan update and review, administration of medication, fire safety inspection reports, and fire and emergency evacuation drill records. In addition, revisions were made to several definitions of terms used in the regulations. Changes were also made to improve clarity, readability, and to make technical adjustments.

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.

The State Board of Social Services approved the fast-track action for 22 VAC 40-72, *Standards for Licensed Assisted Living Facilities*, on August 20, 2008.

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 General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

The following sections of the Code are the sources of legal authority to promulgate the regulation: § 63.2-217 (mandatory) states that the Board shall adopt regulations as may be necessary or desirable to carry out the purpose of Title 63.2; § 63.2-1732 (mandatory and discretionary) addresses the Board's overall authority to promulgate regulation for assisted living facilities and specifies content areas to be included in the standards; § 63.2-1803 (mandatory and discretionary) relates to licensure of assisted living facility administrators; § 54.1-3041 (mandatory) addresses registration of medication aides by the Board of Nursing; and § 32.1-37 (mandatory) requires licensed facilities to report outbreaks of disease.

The promulgating entity is the Board.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The amended regulation is needed to coordinate the requirements for the licensure of administrators and the registration of medication aides with regulations promulgated by the Virginia Board of Long-Term Care Administrators and the Virginia Board of Nursing, respectively. This coordination will ensure that the different sets of regulations work together to protect the health, safety, and welfare of residents and to avoid confusing or conflicting requirements.

The amended regulation incorporates recent changes to the Code. These amendments keep the regulations up to date and ensure that assisted living facilities do not inadvertently overlook changes to the Code.

This regulatory action proposes changes based on other agency regulations, as well as changes for increased clarity and readability of standards. In addition, several technical adjustments are proposed. A well written regulation promotes compliance, which leads to increased protection for residents of assisted living facilities.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The fast-track process is being used because this regulatory action is expected to be noncontroversial and there is a sense of urgency regarding the effective date of the proposed changes. The proposed regulation needs to be in effect on January 2, 2009, to coordinate with the dates by which administrators of facilities providing both residential and assisted living care must be licensed (01/02/09) and medication aides in all assisted living facilities must be registered (12/31/08).

This regulatory action is expected to be noncontroversial because the Assisted Living Facility Advisory Committee was involved in the proposed changes and is expected to agree with the revisions.

Substance

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

The proposed regulatory action revises the regulation in respect to dedicated hospice facilities; reporting outbreaks of disease; documentation of delegation of resident funds; licensure of administrators; provisions for acting administrators; administrator responsibilities; administrator training; shared administrators for smaller facilities; continuing education for medication aides; tuberculosis risk assessment; bed hold policy information; review and update of individualized service plans; medication reference materials; registration of medication aides; supervision of medication aides; administration of medications; retention of fire inspection reports; and items included in fire and emergency evacuation drill records.

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 there are no disadvantages to the public or the Commonwealth, please indicate.

The following issues were identified:

22 VAC 40-72-90. There should be more specific requirements for the reporting of outbreaks of disease in assisted living facilities. The proposed language is taken from the Code. Procedures for reporting and

plans for training staff and providers are being developed in a joint effort by DSS and the Department of Health and will be available to assisted living facilities as technical assistance.

22 VAC 40-72-210 and 22 VAC 40-72-660. Administrators who supervise registered medication aides should complete training required for medication aides, not the much less comprehensive course that is also available. DSS originally proposed that administrators be given the option of either course, but revised the proposed standards to require administrators to complete the more comprehensive registered medication aide training. This change will increase the knowledge base of the administrators who supervise medication aides and, therefore, provide increased protection to residents for whom medication is administered. The course for registered medication aides will take more time to complete than the shorter course and may be more costly, depending upon the circumstances.

22 VAC 40-72-201. Because licensed administrators are accountable to the Virginia Board of Long-Term Care Administrators, they should not be required to be on the premises of an assisted living facility for a specified number of hours per week. If the Virginia Board of Long-Term Care Administrators determines that a licensed administrator's performance is inadequate, it can suspend, place of probation, or revoke that person's license. DSS revised the proposed standards to reflect the same requirements regarding this matter that are specified for licensed nursing home administrators, i.e., licensed administrators will serve as the on-site agent of the licensee and be responsible on a full-time basis for the administration and management of the facility.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There is no locality particularly affected by the proposed regulation.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The proposed regulation is the least intrusive and least burdensome alternative available to ensure protection of vulnerable adults in assisted living facilities. Regulations from other state agencies in Virginia that impact the proposed regulation were examined and related conditions in the long-term care industry in the state were considered. The department consulted with provider associations, advocates for residents, and staff from other agencies in the development of the proposed regulation.

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	None
Projected cost of the regulation on localities	None
Description of the individuals, businesses or other entities likely to be affected by the regulation	All licensed assisted living facilities (ALF) in Virginia are affected by the regulation. Particularly affected are medication aides and most ALF administrators.
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	There are approximately 600 ALFs in Virginia and all will be affected. Most, if not all of the facilities, would fall into the category of small businesses as defined here. The number of ALF administrators who will be affected is estimated to be about 450. The number of medication aides who would be affected may be about 2000, but the accuracy of this figure is unknown.
All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.	<p>\$8 per resident for an administrator to document if a resident delegates management of personal funds to a facility (\$32 x ¼ hour)</p> <p>\$21 for an acting administrator to request in writing an extension of time to remain in acting capacity if awaiting decision regarding licensure (\$28 x ¾ hour)</p> <p>\$14 for an acting administrator to provide notification if the facility is operating without a licensed administrator (\$28 x ½ hour)</p> <p>\$217 for an administrator who supervises medication aides and is not licensed by Virginia to administer medications to complete a training program for registered medication aides (\$357 average course cost - \$140 average previous medication course = \$217)</p> <p>-\$19,607 for a shared administrator; this potential cost saving is the amount if a shared administrator went from serving two facilities to three; this</p>

	amount could vary based on the number of facilities served; the standard allows more flexibility to maximize cost savings (annually save \$44,373 of administrator salary at one facility - \$24,766 for an on-site manager salary spent when administrator off premises = \$19,607 saved)
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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. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

The proposed regulation is the least intrusive and least burdensome alternative available to accomplish the purpose of the action.

Family impact

Please assess the 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.

The proposed regulatory action should increase the comfort level of family members regarding the care received by relatives who reside in assisted living facilities. The licensing of administrators and registration of medication aides will increase protection for residents' health, safety and welfare.

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 40-72-10		The standard contains definitions of words and	Proposed changes to definitions and rationale include: (i) administrator – adds

		terms used in the regulation.	management to the description of responsibility to better describe the position; (ii) direct care staff – revises definition to include those who assist residents with personal care or daily living activities, rather than personal care and daily living activities, in order to allow for one or the other, rather than both; (iii) medication aide – updates definition to require registration with the Virginia Board of Nursing; and (iv) outbreak-eliminates the definition so as not to be in conflict with the definition of the Virginia Department of Health.
22 VAC 40-72-30		The standard specifies provisions for dedicated hospice facilities.	The proposed revision eliminates the provisions for dedicated hospice facilities, since they are no longer subject to assisted living facility licensure due to a change in the Code.
22 VAC 40-72-90		The standard specifies requirements for an infection control program.	The proposed change adds a requirement for the facility administrator to report an outbreak of disease to the local health director or the Commissioner of the Department of Health. This addition was made to reflect a revision to the Code.
22 VAC 40-72-150		The standard contains provisions for the safeguarding of residents' funds.	The proposed change adds a requirement for documentation when a resident delegates management of personal funds to a facility. This addition was made so that there would be no question as to whether or not a resident delegated management of personal funds to a facility.
22 VAC 40-72-190	22 VAC 40-72-191	The current standard contains administrator provisions and responsibilities.	The proposed change redistributes two standards, so that administrator qualifications will come before administrator provisions and responsibilities. The new order is more logical. The reorganized standard contains administrator qualifications, with a proposed change requiring that an administrator of a facility licensed for both residential and assisted living care be licensed by the Virginia Board of Long-Term Care Administrators. The change was made to comply with the Code.
22 VAC 40-72-200	22 VAC 40-72-201	The current standard contains qualifications for the administrator.	The proposed change redistributes two standards, so that administrator provisions and responsibilities will come after administrator qualifications. The new order is more logical. The reorganized standard contains administrator provisions and responsibilities, with proposed changes providing for (i) an extension of up to 60 days, upon written request, to allow an acting administrator to continue in that role while awaiting administrator licensure; (ii) notification by the acting administrator to the Virginia Board of Long-Term Care

			Administrators and the department's regional licensing office when a facility licensed for both residential and assisted living care is operating without a licensed administrator; (iii) increased responsibilities for the administrator; and (iv) a requirement that licensed administrators be responsible on a full-time basis for administration and management of a facility rather than a requirement for being present at the facility for a specified number of hours. These changes were made to allow increased flexibility for a licensed administrator and to coordinate with the requirements and procedures of the Virginia Board of Long-Term Care Administrators.
22 VAC 40-72-210		The standard specifies training that is required for the administrator.	Proposed changes in training requirements were made for administrators licensed by the Virginia Board of Long-Term Care Administrators. One change specifies that these administrators meet the continuing education requirements for licensure as an administrator. Another change provides that whether training counts toward continuing education depends upon the administrator licensure requirements. The changes were made because requirements for administrator licensure are not within the purview of regulations promulgated by DSS, but are found within regulations promulgated by the Virginia Board of Long-Term Care Administrators. In addition, a requirement regarding the completion of training on revised standards was deleted as it is neither practical nor necessary. A requirement regarding training for administrators who supervise registered medication aides was updated to reflect the new course. Also, an allowance regarding a time period for administrators employed prior to 12/28/06 to take medication training, if needed, was deleted as it is no longer relevant.
22 VAC 40-72-220		The standard contains provisions for a shared administrator for smaller facilities.	The proposed changes allow for greater flexibility in the number of residents in a small facility and greater flexibility in the time an administrator spends at a facility. The standard was rewritten to allow for provisions for facilities licensed for residential living care only and provisions for facilities licensed for both residential and assisted living care, since some of the provisions vary. A requirement regarding the completion of training on revised standards was deleted as it is neither practical nor necessary.
22 VAC 40-72-		The standard contains requirements for direct care	The proposed changes specify that (i) continuing education for medication aides

260		staff training.	that is required by the Virginia Board of Nursing does not count toward the required number of hours for direct care staff annual training, and (ii) direct care staff training in facilities licensed for both residential and assisted living care must be provided by a qualified individual. The standard specifies that medication aide training does not count toward the annual training in order to reflect a similar standard in the regulation for the registration of medication aides. The reason for specifying training by a qualified individual was that provision is included for facilities licensed for residential care only, but was inadvertently left out of the requirement for facilities licensed for both residential and assisted living care.
22 VAC 40-72-290		The standard contains specifications for staff records and health requirements	The proposed revision changes the timing for staff persons to submit the results of a risk assessment for tuberculosis from the time of hire to on or within seven days prior to the first day of work. The reason for the change is that a person could be hired weeks in advance of starting work and it provides greater protection to residents for the tuberculosis assessment to be completed close to the time the person actually starts working.
22 VAC 40-72-390		The standard contains requirements for the agreement between the resident and the facility.	The proposed change requires that the resident agreement with the facility include acknowledgement that the resident has been informed of the bed hold policy in case of temporary movement from the facility. The reason for this change is temporary movement from the facility, as well as temporary transfer to a different area within the same facility, is relevant to the bed hold policy.
22 VAC 40-72-440		The standard contains requirements for residents' individualized service plans.	The proposed change adds qualified mental health professionals to those individuals who are specified to be involved in the review and update of individualized service plans, as appropriate. The reason for the change is that qualified mental health professionals are specifically noted in the initial development of individualized service plans, as appropriate, and were inadvertently omitted from the review and update of the plans.
22 VAC 40-72-630		The standard contains requirements for a medication management plan and reference materials for medication aides.	The proposed changes (i) delete a reference to training requirements for medication aides from the medication management plan since these requirements are now part of Virginia Board of Nursing regulations for the registration of medication aides; and (ii) delete the resource guide from required reference materials since it is no longer

			applicable once the regulations for registration take effect.
22 VAC 40-72-660		The standard provides for qualifications, training and supervision of staff who administer medications.	The proposed change deletes the training and database requirements for medication aides and replaces them with the requirement of being registered with the Virginia Board of Nursing. The reason for the change is that medication aides must be registered and follow the requirements of the Virginia Board of Nursing. The regulation was updated to reflect the new training requirement for administrators and assistant administrators who supervise registered medication aides.
22 VAC 40-72-670		The standard contains provisions for administration of medications and related matters.	The proposed changes specify that only staff, who are licensed or registered, can administer drugs to residents who are dependent in medication administration. The reason for the change is to avoid any confusion regarding who can administer drugs to residents.
22 VAC 40-72-920		The standard contains requirements for facility compliance with the Virginia Statewide Fire Prevention Code and local fire ordinances, as well as maintaining annual inspection reports.	The proposed change requires that all fire official inspection reports on compliance with the Virginia Statewide Fire Prevention Code be retained for at least two years, rather than only reports of annual inspections. The reason for the change is to increase awareness of fire safety issues in facilities and improve fire safety for residents.
22 VAC 40-72-950		The standard contains requirements for fire and emergency evacuation drills.	The proposed changes add information that must be included in the record of required fire and emergency evacuation drills in order to mirror requirements of the Virginia Statewide Fire Prevention Code.
22 VAC 40-72-1010		The standard includes requirements for cognitive impairment training for administrators, direct care staff and other staff when the resident population includes residents with serious cognitive impairments.	The proposed change provides that, for licensed administrators, whether the training counts toward continuing education depends upon administrator licensure requirements. The change was made because the requirements regarding whether training counts toward continuing education for licensed administrators are specified in regulations of the Virginia Board of Long-Term Care Administrators.
22 VAC 40-72-1120		The standard includes requirements for training in cognitive impairments due to dementia for administrators, direct care staff and other staff who serve residents in special care units for persons with serious cognitive impairments due to dementia.	The proposed changes provide that, for licensed administrators, whether the training counts toward continuing education depends upon administrator licensure requirements. The changes were made because the requirements regarding whether training counts toward continuing education for licensed administrators are specified in regulations of the Virginia Board of Long-Term Care Administrators.

Proposed changes that are purely technical in nature are not included in the above chart.