



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22 VAC 40-745
Regulation title	Assessment in Assisted Living Facilities
Action title	Amend Assessment in Assisted Living Facilities Regulations
Date this document prepared	October 20, 2010

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 proposed regulatory action amends 22 VAC 40-745, Assessment in Assisted Living Facilities. 22 VAC 40-745 establishes standards for the process of assessing individuals residing in or planning to reside in assisted living facilities (ALF). The regulations set forth requirements as to who is qualified to conduct assessments, criteria for residential and assisted living level of care, ratings of levels of care, and timeframes for conducting assessments. The assessment process ensures that individuals receive the appropriate level of care and services and ensures that public funds are appropriately utilized to support individuals who reside in ALF settings.

The purpose of the amendments to 22 VAC 40-745 is to (1) ensure that the regulation definitions and text conform to current Department of Social Services (DSS) licensing regulations, (2) clarify regulation content that may be confusing, and (3) incorporate person-centered language throughout the regulation.

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.

The legal bases for this regulation are §§ 63.2-217 and 63.2-1804. These sections provide general authority for the development of regulations for program operation and authority for the development of regulations for assessment in ALFs.

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.

The proposed regulatory action is necessary to ensure that regulation content addresses the assessment of individuals residing in or planning to reside in ALFs. Conformity across regulations and clarity in regulation content is essential to ensuring that the individual's health and safety needs are most appropriately met in an ALF setting.

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.

Proposed changes include clarifying definitions and other regulation text to comport with DSS Licensing regulations and using person-centered language throughout the regulation. Other revisions to the regulation content may also be proposed.

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.

No alternative action was considered because the Code requires individuals residing in ALFs to be assessed for their level of care and for the State Board of Social Services to address this process in regulations. This regulatory action seeks to improve the guidance to ensure that individuals who wish to reside in an assisted living facility are assessed accurately and in a timely manner and that public payment to support individuals in ALF settings is authorized appropriately.

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.

In addition, the agency is seeking information on (1) the continued need for the regulation; (2) the complexity of the regulation; (3) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (4) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

Anyone wishing to submit comments may do so via the Regulatory Townhall website, www.townhall.virginia.gov, or by mail, email, or fax to **Paige McCleary, Adult Services Program Consultant, 801 East Main Street, Richmond, VA 23219; paige.mccleary@dss.virginia.gov; or 804-726-7895 (fax)**. 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 not be held.

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.

DSS plans to use a participatory approach in the development of the proposal. Input will be sought from stakeholders, including ALF providers, DSS Licensing staff, local departments of social services, other individuals who are qualified assessors, and agencies and organizations advocating on behalf of elderly individuals and individuals with disabilities.

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.

The proposed amendments will have a positive impact on family stability by ensuring that family members who are elderly or disabled who wish to reside in an ALF have been accurately assessed and that the ALF is able to meet their needs. Incorporating person-centered language into the regulation will

promote personal dignity by recognizing that everyone is unique and removes labels that categorize (and sometimes stigmatize) individuals who use state services and benefits.

The proposed regulatory action will have no impact on the institution of the family. It will have no effect on the authority and rights of parents in the education, nurturing, and supervision of their children. The proposed regulatory action will not impact marital commitment or disposable family income.

Periodic review - Public comment

If this NOIRA is not the result of a periodic review of the regulation, please delete this entire section.

If this NOIRA is the result of a periodic review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

Commenter	Comment	Agency response
Robin Crane	Supports regulations that ensure the safety and well-being of individuals living in assisted living facilities.	DSS believes 22 VAC 40-745 addresses the safety and well-being of individuals in ALFs.
Frankie Minor	Opposes the 90-day residency requirement for individuals applying for an Auxiliary Grant. The Auxiliary Grant rate is too low.	Neither the residency requirement nor the Auxiliary Grant rate is addressed by this regulation.
Jamie Minor	Opposes the 90-day residency requirement for individuals applying for an Auxiliary Grant. The Auxiliary Grant rate is too low.	Neither the residency requirement nor the Auxiliary Grant rate is addressed by this regulation.

22 VAC 40-745, Assessments in Assisted Living Facilities, ensures the safety of individuals in ALFs by ensuring they receive the appropriate level of care and services they need and promotes appropriate use of public funding to support individuals who reside in ALF settings. Amending the regulation with ensure that it is more clearly written and understandable.

Periodic review - Discussion

If this NOIRA is not the result of a periodic review of the regulation, please delete this entire section.

If this NOIRA is the result of a periodic review or if the periodic review is to be performed in combination with the NOIRA, please include a discussion of the agency’s consideration of: (1) the continued need for the regulation; (2) the complexity of the regulation; (3) the extent to the which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (4) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, include a discussion of the agency’s

determination whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

DSS believes that this regulation is needed to ensure that standards for assessment are maintained. The regulation will be made clearer through this regulatory action. This regulation does not duplicate or conflict with any state or federal regulations. The regulatory action will amend language to align it with DSS Licensing regulations. Neither technology nor economic conditions have had an impact on the area addressed by this regulation.

The regulation ensures that only individuals who are appropriate for ALF level of care are admitted to ALFs. ALF providers, who frequently are small business owners, will be assured that individuals who reside in their facilities need the level of service ALFs can provide and do not require more care than providers are able to offer.