



COMMONWEALTH of VIRGINIA
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TO: KARIN CLARK
Virginia Department of Social Services

FROM: MICHELLE A. L'HOMMEDIEU
Assistant Attorney General

DATE: April 16, 2013

**SUBJECT: Exempt Regulations for Submission of Financial Information for Licensure;
22VAC40-72 (3950/6547)**

I am in receipt of the attached regulations reflecting the changes in Virginia statutory law made by Chapters 182 and 545 of the *2013 Acts of the Assembly* regarding the submission of financial information for licensure. You have asked the Office of the Attorney General to review and determine if the State Board of Social Services ("State Board") has the statutory authority to promulgate the proposed regulations and if the proposed regulations comport with applicable state law.

Virginia Code § 63.2-217 mandates that the State Board promulgate regulations that are necessary to carry out the provisions of Title 63.2. *2013 Acts of the Assembly*, Chapters 182 and 545, change Virginia Code § 63.2-1702 and 63.2-1707 regarding the submission of financial information for licensure, which statutory went into force upon passage. It is my opinion that the State Board has the authority to promulgate these regulations, subject to compliance with the provisions of Article 2 of the Administrative Process Act ("APA") and has not exceeded that authority. To date, the Board has not yet acted on these regulations; and the Agency Background Document available on Town Hall reflects the as yet unknown date of Board action.

Based on the foregoing, it is my view that these regulations are exempt from the procedures of Article 2 of the APA pursuant to Virginia Code § 2.2-4006(A)(4)(a) provided the regulations are filed with the Registrar within 90 days of the law's effective date and the

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requirements of Virginia Code § 2.2-4006(B) and (C) are met. If you have any questions or need additional information about these regulations, please contact me at 786-6005.

cc: Kim F. Piner, Esquire

Attachment

DEPARTMENT OF SOCIAL SERVICES

Information for Licensure-ALF

Part II

Administration and Administrative Services

22VAC40-72-50. Licensee.

A. The licensee shall ensure compliance with all regulations for licensed assisted living facilities and terms of the license issued by the department; with relevant federal, state or local laws and other relevant regulations; and with the facility's own policies and procedures.

B. The licensee shall meet the following requirements:

~~1. The licensee shall give evidence of financial responsibility.~~

2. 1. The licensee shall be of good character and reputation.

Character and reputation investigation includes, but is not limited to, background checks as required by §§ 63.2-1702 and 63.2-1721 of the Code of Virginia.

~~3.~~ 2. The licensee shall meet the requirements specified in the Regulation for Background Checks for Assisted Living Facilities and Adult Day Care Centers (22VAC40-90).

~~4.~~ 3. The licensee shall protect the physical and mental well-being of residents.

~~5.~~ 4. The licensee shall exercise general supervision over the affairs of the licensed facility and establish policies and procedures concerning its operation in conformance with applicable law, these regulations, and the welfare of the residents.

~~6. The licensee shall develop and maintain an operating budget, including resident care, dietary, and physical plant maintenance allocations and expenditures. The budget shall be sufficient to ensure adequate funds in all aspects of operation.~~

7. 5. The licensee shall ensure that the facility keeps such records, makes such reports and maintains such plans, schedules, and other information as required by this chapter for licensed assisted living facilities. The facility shall submit, or make available, to the department's representative, records, reports, plans, schedules, and other information necessary to establish compliance with this chapter and applicable law. Such records, reports, plans, schedules, and other information shall be maintained at the facility and may be inspected at any reasonable time by the department's representative.

~~8.~~ 6. The licensee shall meet the qualifications of and requirements for the administrator if he serves as the administrator of the facility.

C. An assisted living facility sponsored by a religious organization, a corporation or a voluntary association shall be controlled by a governing board of directors that shall fulfill the duties of the licensee.

D. Upon initial application for an assisted living facility license, any person applying to operate such a facility who has not previously owned or managed or does not currently own or manage a licensed assisted living facility shall be required to undergo training by the commissioner or his designated agents. Such training shall be required of those owners and currently employed administrators of an assisted living facility at the time of initial application for a license.

1. The commissioner may also approve training programs provided by other entities and allow owners or administrators to attend such approved training programs in lieu of training by the department.

2. The commissioner may at his discretion also approve for licensure applicants who meet requisite experience criteria as established by the board.
3. The training programs shall focus on the health and safety regulations and resident rights as they pertain to assisted living facilities and shall be completed by the owner or administrator prior to the granting of an initial license.
4. The commissioner may, at his discretion, issue a license conditioned upon the owner or administrator's completion of the required training.

E. If there are plans for a facility to be voluntarily closed or sold, the licensee shall notify the regional licensing office of intent to close or sell the facility no less than 60 days prior to the closure or sale date. The following shall apply:

1. No less than 60 days prior to the planned closure or sale date, the licensee shall notify the residents, legal representatives, and designated contact persons of the intended closure or sale of the facility and the date for such, and the requirements of 22VAC40-72-420 shall apply.
2. If the facility is to be sold, at the time of notification of residents of such, the licensee shall explain to each resident, legal representative, and at least one designated contact person that unless provided otherwise by the new licensee, the resident has a choice as to whether to stay or to relocate and that if a resident chooses to stay, there must be a new agreement/acknowledgment between the resident and the new licensee that meets the specifications of 22VAC40-72-390.
3. The licensee shall provide updates regarding the closure or sale of the facility to the regional licensing office, as requested.

EXCEPTION: If plans are made at such time that 60-day notice is not possible, the licensee shall notify the regional licensing office, the residents, legal representatives, and designated contact persons as soon as the intent to close or sell the facility is known.