



[townhall.virginia.gov](http://townhall.virginia.gov)

## Final Regulation Agency Background Document

<b>Agency name</b>	State Board of Social Services
<b>Virginia Administrative Code (VAC) citation(s)</b>	22VAC40-72
<b>Regulation title(s)</b>	Standards for Licensed Assisted Living Facilities
<b>Action title</b>	Assisted Living Facility Liability Insurance Disclosure
<b>Date this document prepared</b>	June 16, 2016

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. If applicable, generally describe the existing regulation.*

This regulatory action establishes a minimum amount of liability insurance coverage of \$500,000 per occurrence and \$500,000 aggregate to be maintained by an ALF for purposes of disclosure. It does not require an ALF to maintain coverage, but rather to disclose to residents, prospective residents, and legal representatives, if any, whether or not the facility has the minimum as established by the State Board of Social Services (Board). The action also includes changes to the disclosure statement and the resident agreement/acknowledgment of notification to include whether or not the ALF maintains at least \$500,000 per occurrence and \$500,000 aggregate of liability insurance coverage. In addition, two required forms, one new and one revised, containing information related to liability insurance disclosure are included in this regulatory action.

### Acronyms and Definitions

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.*

---

ALF means assisted living facility.

### 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 took final action on 22VAC40-72, Standards for Licensed Assisted Living Facilities, on June 16, 2016.

### Legal basis

*Please identify the (1) the agency (includes any type of promulgating entity) and (2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.*

---

Section 63.2-217 of the Code of Virginia (Code) provides the Board the general authority for the development of regulations to carry out the purposes of Title 63.2. Section 63.2-1732 gives the Board the authority to adopt regulations to carry out provisions related to licensed ALFs and to protect the health, safety and welfare of residents. This regulatory action will implement amendments by the 2013 session of the General Assembly related to liability insurance disclosure in §§ 63.2-1805 and 63.2-1808 of the Code.

### Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe 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 purpose of this action is to implement Chapter 320 of the 2013 Acts of Assembly, which amended §§ 63.2-1805 and 63.2-1808 relating to ALF liability insurance disclosure. The regulatory action establishes the minimum amount of liability insurance coverage to be maintained by an ALF for purposes of disclosure. The action also includes changes to require an ALF to disclose to any resident, prospective resident, and his legal representative, if any, whether or not it maintains the minimum amount of liability insurance coverage. In addition, two required forms related to liability insurance disclosure are included in this regulatory action. Knowing whether or not a facility maintains at least the minimum amount of coverage will allow potential residents and residents to make more informed decisions regarding

residence in assisted living facilities and possible compensation for injuries and losses from negligent acts of a facility. The regulation is essential to protecting the health, safety and welfare of ALF residents.

### Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both.*

Changes to the regulation add a new standard and add an item to the disclosure statement and resident agreement/acknowledgment of notification that require an ALF to state whether or not it maintains at least the minimum amount of liability insurance coverage for disclosure purposes, established by the State Board of Social Services, to compensate residents or others for injuries and losses from negligent acts of the facility. The minimum amount is \$500,000 per occurrence and \$500,000 aggregate. The two required forms that are part of this regulatory action are the revised Assisted Living Facility Disclosure Statement and the new Assisted Living Facility Liability Insurance Disclosure Notification. An additional change ensures that the information regarding liability insurance coverage is kept current.

### 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 advantage of the regulatory action to the public and to the agency is that it makes the requirements of the regulation consistent with the requirements of state law and establishes a minimum amount of liability insurance coverage for purposes of disclosure. Disclosure of the information to a prospective resident of an ALF allows the person to make a more informed decision regarding residence in the facility. Disclosure of the information to ALF residents or appropriate legal representatives helps keep them aware of whether or not the facility has this insurance in case possible compensation for injury or losses becomes a matter of concern. There are no disadvantages to the public, the agency or the Commonwealth.

An issue that has been identified in the past by some people in the insurance industry and others is that the minimum amount of liability insurance for disclosure purposes in this proposal is inadequate. These people vary in the amounts recommended to compensate for injuries and losses from negligent acts of an ALF, but the least amount recommended for disclosure purposes is \$1,000,000 per occurrence and \$2,000,000 aggregate. On the other hand, there is concern among some assisted living providers, especially smaller providers, that the minimum amount for disclosure purposes of \$500,000 is too high. The \$500,000 amount is supported by several ALF provider associations.

### 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.*

No locality is particularly affected by the changes.

### Family impact

*Please assess the impact of this 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 changes will not have any impact on the institution of the family and family stability.

### Changes made since the proposed stage

*Please list all changes that made to the text of the proposed regulation and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. \*Please put an asterisk next to any substantive changes.*

Section number	Requirement at proposed stage	What has changed	Rationale for change
22VAC40-72-10	The definitions of behavioral health authority, chemical restraint, and community services board contained a reference to mental retardation. The definition of community services board contained a reference to citizens' board. There was a definition of mental retardation.	The definitions of behavioral health authority and community services board contain a reference to developmental, and the definition of chemical restraint contains a reference to intellectual disability, rather than a reference to mental retardation. The definition of community services board contains a reference to public body, rather than citizens' board. The definition of mental retardation is deleted and is replaced with a definition of intellectual disability.	The references were updated to reflect current terminology.
22VAC40-72-57	n/a	A new section is added that specifies the required liability	The new section clarifies the minimum amount of

		insurance amounts for disclosure purposes.	liability insurance coverage for disclosure purposes.
22VAC40-72-60	The item in the disclosure statement regarding liability insurance for disclosure purposes included whether the facility maintained at least a minimum amount established by state board of \$500,000 per occurrence and \$500,000 aggregate.	Reference is made to whether or not the facility maintains at least the minimum amount of liability insurance coverage for disclosure purposes established by state board, and reference is made to 22VAC40-72-57 regarding the amount. The required Assisted Living Facility Disclosure Statement form was revised to include liability insurance disclosure.	The change clarifies what needs to be included in the disclosure statement. The statement was revised accordingly.
22VAC40-72-390	A statement was included in the resident agreement regarding whether the facility maintained at least a minimum amount of liability insurance for disclosure purposes established by state board of \$500,000 per occurrence and \$500,000 aggregate.	The statement was changed to acknowledgment that the resident has been notified in writing whether or not the facility maintains the minimum amount of liability insurance established by state board for disclosure purposes, reference is made to 22VAC40-57 regarding the amount, and a requirement was added that this notification be on a form developed by the department. The form, Assisted Living Facility Liability Insurance Disclosure Notification, was developed by the department.  The items regarding resident discharge from the facility, resident council, and policy regarding weapons were reorganized in the list of items to be included in the resident agreement.	The change clarifies what needs to be included in the resident agreement and allows for a department developed form to ensure proper notification. The form was developed accordingly.  The reorganization allows for a more logical sequence.

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate. Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.*

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Nahid Shadrokh, Lovettsville Home Assisted Living	I strongly believe with this regulation they have plan to kill all small ALF business. All small ALF going out of business with this regulation.	No change made as the regulation does not require assisted living facilities to have liability Insurance.

<p>Submitted directly</p>	<p>I do not know how come small facilities like us can survive with this regulation? Big organizations and large facilities do not have any problems with this regulation because they do not hesitate to increase their price rate due to liability insurance but I am wondering if we increase our price, we even could get any residents. Our low rate and hard work goes towards quality care for residents and put food on the table for family.</p> <p>I do not agree with this regulation at all however its better they regulate with number of beds for licensed ALF. For example this regulation is for all ALF above 12 beds or residents.</p> <p>Thank you and please be voice of small facilities for this regulation.</p>	
<p>Randy Scott, St. Mary's Woods  Submitted directly</p>	<p>I support \$300,000. A requirement for coverage higher than \$300,000 could potentially be difficult for small assisted living providers to afford to purchase.</p>	<p>No change made. \$500,000 was a compromise since some thought it should be higher and some thought it should be lower. The agency considered \$500,000 to be a reasonable amount. Several ALF provider associations supported \$500,000.</p>
<p>Judy Raymond  Town Hall</p>	<p>I do not think we should release the amount of our liability coverage if there are certain limits to be maintained then that should be checked during the survey process. This is opening up potential legal issues for communities.</p>	<p>No change made. Knowing that an assisted living facility has at least the minimum amount of liability insurance for disclosure purposes and what that amount is allows potential residents to make more informed decisions regarding residence in such facilities. It also allows residents to be aware of possible compensation for injuries and losses from negligent acts of a facility.</p>

**All changes made in this regulatory action**

*Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections. Explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
22VAC40-		Defines words and terms	Adds a definition of "Board" to mean the

72-10		used in the chapter.	<p>State Board of Social Services. This was done because the term "Board" is used in other changes made in this proposed regulatory action.</p> <p>Updates the reference from the Department of Mental Health, Mental Retardation and Substance Abuse Services to the Department of Behavioral Health and Developmental Services in the definitions of "Assisted living facility" and "Qualified mental health professional."</p> <p>Updates the reference from the Department for the Aging to the Department for the Aging and Rehabilitative Services and the reference from Article 2 (§ 2.2-711 et seq.) of Chapter 7 of Title 2.2 to Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5 of the Code of Virginia in the definition of "Conservator."</p> <p>Updates references from mental retardation to developmental services or intellectual disability in the definitions of behavioral health authority, community services board, and chemical restraint. Updates reference to public body rather than citizens' board in the definition of community services board. Deletes definition of mental retardation and adds definition of intellectual disability to reflect current terminology.</p>
	22VAC40-72-57		<p>The new section provides the minimum amount of liability insurance coverage established by state board for disclosure purposes, as mandated by the Code of Virginia.</p>
22VAC40-72-60		<p>Describes requirements for a statement disclosing information about an ALF to be provided to prospective residents and legal representatives, if any.</p>	<p>Adds to the items to be disclosed on the Assisted Living Facility Disclosure Statement whether or not the ALF maintains at least the minimum amount of liability insurance coverage established by state board for disclosure purposes. This means that prospective residents and legal representatives, if any, will know if the ALF has the minimum amount of liability insurance established by state board for disclosure purposes and thus provide additional information in making a decision regarding residence in the ALF. The insurance would compensate residents and others for injuries and losses from negligent acts of the facility. Disclosing this information on liability insurance was added to the Code at § 63.2-1805 A 9 and 10.</p>

<p>22VAC40-72-390</p>		<p>Identifies requirements regarding the agreement between a resident or appropriate legal representative and an ALF.</p>	<p>Adds to the items to be included in the resident agreement/acknowledgment that a resident has been notified in writing of whether or not an ALF maintains at least the minimum amount of liability insurance coverage for disclosure purposes. The notification must be on a department developed form, Assisted Living Facility Liability Insurance Disclosure Notification. This means that residents or appropriate legal representatives will be kept informed of whether the ALF has at least the minimum amount of coverage established by state board for disclosure purposes in case compensation for injuries or losses from negligent acts of the facility becomes an issue. Also adds a requirement to update the agreement/acknowledgment of notification if there is a change. Disclosing this information on liability insurance was added to the Code at § 63.2-1805 A 9 and 10.</p> <p>The items regarding resident discharge from the facility, resident council, and policy regarding weapons were reorganized in the list of items to be included in the resident agreement for a more logical sequence.</p>
-----------------------	--	---	--

The necessity for disclosure in respect to the minimum liability coverage has also been added to resident rights and responsibilities in the Code at § 63.2-1808 A 20.