



# COMMONWEALTH of VIRGINIA

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**TO:** **KARIN CLARK**  
Virginia Department of Social Services

**FROM:** **MICHELLE A. L'HOMMEDIEU** *MAL*  
Assistant Attorney General

**DATE:** **July 29, 2021**

**SUBJECT: Exempt Final Regulation – Amend Assisted Living Facility Regulation regarding Visitations, 22 VAC 40-73-540 (5739/9284)**

I am in receipt of the attached regulation to amend the assisted living facilities (“ALF”) regulation 22 VAC 40-73-540 regarding visiting residents in the ALF. You have asked the Office of the Attorney General to review and determine if the State Board of Social Services (the “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 and 63.2-1732 mandate that the State Board adopt and amend regulations that are necessary to carry out the provisions of the laws of the Commonwealth administered by the Virginia Department of Social Services, including regulations for assisted living facilities. The current regulation governing visiting residents of ALFs is set forth at 22 VAC 40-73-540. The proposed amendments to this regulation are necessary to reflect the changes to Virginia Code by the adoption of Chapter 525 of the 2021 Acts of Assembly, Special Session I (SB 1356).

Based on my review, it is my view that the State Board has the authority to promulgate the final regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act (“APA”) and Executive Order 14 (Revised)(2018), and has not exceeded that authority. To date, the State Board has not yet acted on this regulation; and the Agency Background Document available on Town Hall reflects the anticipated future date of State Board action.

Based on the foregoing, it is my view that the amendments to this regulation are exempt from the procedures of Article 2 of the APA under Virginia Code § 2.2-4006(A)(4)(a). If you

Karin Clark  
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have any questions or need additional information about this regulation, please contact me at 786-6005.

cc: Kim F. Piner, Esq.  
Attachment

**Project 6802 - Final**

**Department Of Social Services**

**Amend ALF Regulation as a Result of 2021 Legislation**

**22VAC40-73-540. Visiting in the facility.**

A. Daily visits to residents in the facility shall be permitted.

B. Visiting hours shall not be restricted, except by a resident when it is the resident's choice.

C. The facility may establish a policy or guidelines so that visiting is not disruptive to other residents and facility security is not compromised. However, daily visits and visiting hours shall not be restricted as provided in subsections A and B of this section.

D. The facility shall encourage regular family involvement with the resident and shall provide ample opportunities for family participation in activities at the facility.

E. During a declared public health emergency related to a communicable disease of public health threat, each assisted living facility shall establish a protocol to allow residents to receive visits from a rabbi, priest, minister, or clergy of any religious denomination or sect consistent with guidance from the Centers for Disease Control and Prevention, the Centers for Medicare and Medicaid Services, and subject to compliance with any executive order, order of public health, Department guidance, or any other applicable federal or state guidance having the effect of limiting visitation. The protocol may restrict the frequency and duration of visits, may require visits to be conducted virtually using interactive audio or video technology, and any such protocol may require the person visiting a resident to comply with all reasonable requirements of the assisted living facility adopted to protect the health and safety of the person, residents, and staff of the assisted living facility.