



## Emergency Regulation Agency Background Document

<b>Agency name</b>	State Board of Social Services
<b>Virginia Administrative Code (VAC) citation</b>	22 VAC 40-71
<b>Regulation title</b>	Standards and Regulations for Licensed Assisted Living Facilities
<b>Action title</b>	ALF Regulation Comprehensive Revision
<b>Document preparation date</b>	August 17, 2005

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Preamble

*The APA (Code of Virginia § 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.*

- 1) Please explain why this is an “emergency situation” as described above.*
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.*

Chapter 924, 2005 Acts of Assembly provides that action must be effective within 280 days from enactment of the legislation. The substantive changes to the existing assisted living facility regulation are as follows: applicants for licensure will be required to obtain a background check; qualifications and training for the administrator and direct care staff will be enhanced; a medication management plan will be required; smaller homes may share an administrator; information on facilities will be disclosed to prospective residents; and evaluation and notification requirements for residents with mental illness will be increased.

### Legal basis

*Other than the emergency authority described above, 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) the*

*promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

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The following sections of the Code of Virginia are the sources of the legal authority to promulgate the regulation: § 63.2-217 (mandatory) says that State Board shall adopt regulations as may be necessary or desirable to carry out the purpose of Title 63.2; § 63.2-1721 (mandatory) requires applicants for assisted living facility licensure to undergo a background check; § 63.2-1732 (mandatory and discretionary) addresses the State Board’s overall authority to promulgate regulations for assisted living facilities and specifies content areas to be included in the standards; § 63.2-1802 (mandatory and discretionary); § 63.2-1803 (mandatory and discretionary) addresses staffing of assisted living facilities; and § 63.2-1805 (mandatory) relates to admission, retention, and discharge of residents.

The promulgating entity is the State Board of Social Services.

**Substance**

*Please detail any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of Virginians.*

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For changes to existing regulations, use this chart:

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
22 VAC 40-71-10		This section includes definitions of words and terms used in the regulation.	The proposed change adds definitions for the following words or terms: cardiopulmonary resuscitation, good character and reputation, high risk behavior, medication aide, mentally ill, mentally retarded, qualified, qualified mental health professional, and substance abuse. These definitions were added to clarify existing concepts and define new concepts.

22 VAC 40-71-50		This section specifies the responsibilities, qualifications, and training required for licensees.	The proposed change to the section adds a requirement that the licensee meet the criminal background check regulation. The criminal background check requirement is specified in law as a result of legislation passed by the 2005 General Assembly, and it provides increased assurances regarding the background of those the Department licenses.
	22 VAC 40-71-55		The proposed change adds a provision for consistent public disclosure that describes services, fees, criteria for admission, transfer and discharge, number and qualifications of staff, provision of activities, rules regarding resident conduct, and facility ownership structure. The requirement for public disclosure of specified information is based upon changes to the law made as a result of legislation passed by the 2005 General Assembly. Disclosure provides prospective residents and their families information that allows for comparison of facilities and enables them to make an informed choice.
22 VAC 40-71-60		The current requirement relates to administrator responsibilities.	The proposed changes provide for 1) appointment of a qualified acting administrator when an administrator terminates employment, 2) at least 24 of the 40 hours of the administrator being on week days during the day shift; 3) a written schedule for the administrator. The purpose of these changes is to ensure appropriate and adequate oversight of facilities. These requirements are based on a change in the law resulting from 2005 General Assembly legislation.
22 VAC 40-71-60		The current requirement specifies training mandated for administrators.	The proposed change adds medication training for administrators under certain circumstances. The purpose of the change is to increase protection of residents by ensuring administrators are knowledgeable about medication administration for improved management and supervision of medication aides. The change is based on a revision in the law resulting from legislation passed by the 2005 General Assembly.
	22 VAC 40-71-60		The proposed change adds a provision for a shared administrator for smaller facilities under certain circumstances, allowing an administrator to be present for fewer than 40 hours at a given facility, without a designated assistant who meets the qualifications of an administrator. The intent of this standard is to reduce costs while maintaining adequate administrative function. The proposed standard is based on

			a change in the law resulting from legislation passed by the 2005 General Assembly.
	22 VAC 40-71-65		The proposed change provides for a designated direct care staff person to be in charge when the administrator, designated assistant, or manager is not on duty at the facility. The rationale for this change is to ensure someone is responsible for overseeing the facility at all times. The proposed standard is based on a change in the law resulting from legislation passed by the 2005 General Assembly.
22 VAC 40-71-80		The current standard specifies requirements for staff orientation and training.	The proposed change is to require that the annual direct care staff training must commence within 60 days of employment.
22 VAC 40-71-120		Currently, the standard requires at least one staff member at all times with current first aid certification and one with current CPR certification.	The proposed change add requirements that 1) all direct care staff have current first aid certification, 2) there be additional staff with CPR certification in larger facilities, and 3) there be an employee with current first aid and CPR present at facility sponsored activities off the premises and when an employee transports residents. The purpose of these changes is to avoid delays in securing emergency support. The proposed changes are based on a revision to the law resulting from legislation passed by the 2005 General Assembly.
22 VAC 40-71-130		The current standard includes staffing requirements.	The proposed change eliminates the allowance for smaller facilities to permit the staff person on duty to sleep during the night. The purpose of the change is to ensure staff are awake to meet the needs of residents. The proposed change is based on a revision to the law resulting from legislation passed by the 2005 General Assembly.
22 VAC 40-71-150		The standard includes requirements for admission to an assisted living facility.	The proposed change adds an assessment of psychological, behavioral, and emotional functioning, if recommended for a resident, to the information needed for the facility to make a decision regarding admission. The intent of this change is to ensure that the facility has adequate information to determine whether it can meet the needs of the resident. The proposed change is based on a revision to the law resulting from legislation passed by the 2005 General Assembly.
	22 VAC 40-71-150		The proposed changes add requirements for 1) an evaluation of a resident by a qualified mental health professional when there are indications of mental illness, mental retardation, substance abuse, or behavioral disorders, 2) notification of a contact person

			and a mental health services provider when the evaluation indicates a need for such services, and 3) the collection of collateral information for individuals with mental health disabilities. The purpose of the changes is to ensure that residents with mental health problems are properly assessed and receive appropriate care. The proposed changes are based on a revision to the law resulting from legislation passed by the 2005 General Assembly.
22 VAC 40-71-400		The current standard specifies requirements for the administration of medications to residents and related services.	The proposed changes add requirements for 1) a medication management plan that addresses procedures related to administering medications to residents and is approved by the department, and 2) maintenance of medication reference materials. The intent of the changes is to improve administration of medications and reduce the possibility of medication errors. The proposed changes are based on revisions to the law resulting from legislation passed by the 2005 General Assembly.
22 VAC 40-71-400		The current standard specifies requirements for the administration of medications to residents and related services.	The proposed changes add requirements for new orders for medication and treatment when a resident returns from a hospital, and for the content of and the taking of physicians' orders. The intent of these changes is to ensure that residents receive medications properly. The proposed changes are based on revisions to the law resulting from legislation passed by the 2005 General Assembly.
22 VAC 40-71-400		The current standard specifies requirements for the administration of medications to residents and related services.	The proposed changes add requirements for the storage of controlled substances and other medications. The intent of the changes is to protect the safety of residents. The proposed changes are based on revisions to the law resulting from legislation passed by the 2005 General Assembly.
22 VAC 40-71-400		The current standard specifies requirements for the administration of medications to residents and related services.	The proposed changes 1) add annual in-service training for medication aides, and 2) add a requirement for a refresher course for medication aides who completed the initial or refresher training more than three years ago. The purpose of the changes is to have better trained medication aides to reduce errors in medication administration. The proposed changes are based on revisions to the law resulting from legislation passed by the 2005 General Assembly.
22 VAC 40-71-400		The current standard specifies requirements for the administration of medications to residents and related services.	The proposed changes 1) eliminate the option of pre-pouring medications, 2) add a requirement that medications be administered in accordance with the resource guide approved by the Board of

			Nursing, and 3) specify when a stat-drug box may be used. The purpose of these changes is to reduce errors in the administration of drugs and regarding the stat-drug box, to comply with Board of Pharmacy regulations. The proposed changes are based on revisions to the law resulting from legislation passed by the 2005 General Assembly.
	22 VAC 40-71-485		The proposed changes require 1) referral to mental health providers when a resident exhibits or indicates an intent to engage in high risk behavior, 2) if needed, the development of a behavioral management tracking form, 3) training for facility staff who care for residents with high risk behavior, and 4) special conditions to be met for use of a restrictive behavioral management plan. The purpose of the changes is to reduce risks to residents with mental disorders and increase safety, and to improve services to residents who exhibit high risk behavior. The proposed changes are based on revisions to the law resulting from legislation passed by the 2005 General Assembly.
22 VAC 40-71-630	22 VAC 40-71-400 and 22 VAC 40-71-630	The current standard requires quarterly health care oversight by a licensed health care professional for residents at the assisted living care level of care.	The proposed changes add a requirement for monitoring conformance to the facility's medication management plan. The purpose of the changes is to provide internal monitoring of plan conformance by the facility. The change is based upon a revision to the law resulting from legislation passed by the 2005 General Assembly.
22 VAC 40-71-630		The current requirement specifies that direct care staff who care for residents at the assisted living level of care must complete specified training within four months of employment.	The proposed change requires that direct care staff who care for residents at the assisted living level of care must complete specified training within two months of employment. Another change adds graduation from an approved personal care aide training program to the training options available. The intent of these changes is to assure staff are trained as quickly as reasonable possible for improved staff performance and to offer more flexibility in training options. The proposed changes are based on a revision to the law resulting from legislation passed by the 2005 General Assembly.
22 VAC 40-71-630		There are currently annual training requirements for direct care staff. The current annual training requirement for direct care staff serving the assisted living level of care is 12 hours.	One of the proposed changes is to require that the annual direct care staff training must commence within 60 days of employment. Another proposed change is an increase to 16 hours in the annual training required for direct care staff serving the assisted living level of care, except for licensed health care professionals and certified nurse aides who

			would be required to attend 12 hours of annual training. The intent of requiring training to commence within 60 days of employment is to prevent facilities from waiting until employees 11 <sup>th</sup> or 12 <sup>th</sup> month for them to receive annual training. The purpose of the increase in training hours is to increase the ability of staff to do their jobs well. The proposed change is based on a revision to the law resulting from legislation passed by the 2005 General Assembly.
22 VAC 40-71-650	22 VAC 40-71-400 and 22 VAC 40-71-650	The current requirement is for an annual review of medications of residents in the assisted living level of care.	The proposed changes 1) add a requirement for an annual review of medications of residents in the residential living level of care, except for those who self-administer, 2) increase the review of medications to every six months for residents in the assisted living level of care, and 3) specify that which needs to be covered in the review. The purpose of the changes is to add protections for residents and to ensure the review is done properly. The proposed changes are based on revisions to the law resulting from legislation passed by the 2005 General Assembly.
22 VAC 40-71-670		The current standard includes requirements for agreements and coordination with mental health service agencies.	The proposed change requires a facility to evaluate ability to retain mentally impaired residents when recommended mental health services cannot be obtained. The purpose of the change is to protect residents and others, and to provide information on the accountability of community services. The proposed changes are based on a revision to the law resulting from legislation passed by the 2005 General Assembly.

**Alternatives**

*Please describe all viable alternatives to the proposed regulatory action that have been considered to meet the essential purpose of the action.*

The emergency regulation was mandated by legislation passed by the 2005 General Assembly. The regulation is the least intrusive and least burdensome alternative available to ensure protection of increasingly vulnerable adults residing in assisted living facilities. Regulations from several other states were examined and conditions in the assisted living industry in Virginia were carefully considered. The department consulted with providers, advocates for residents and other agency staff through various meetings and other contacts.

## Family impact

*Please assess the impact of the emergency regulatory action on the institution of the family and family stability.*

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The emergency regulatory action will have a positive impact on families in that they will be more confident that their loved family members who are residents of assisted living facilities are receiving the care they need and deserve. Moreover, there could be a positive economic impact on families by averting residents' preventable accidents, illnesses, and deterioration of functioning. There could be a negative impact on family finances if facilities increase their fees because of additional requirements, but this is an unknown factor since most facilities are not operating at full occupancy.