

Virginia

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Licensure Term Assisted Living Facilities

Opening Statement The Virginia Department of Social Services licenses two levels of service: residential living care (minimal assistance) and assisted living care (at least moderate assistance). Facilities may be licensed for either residential living care only or for both residential and assisted living care. The standards were recently revised, effective February 1, 2018, and emphasize resident-centered care and services and include requirements that strive for a homelike environment for residents.

Legislative and Regulatory Update A comprehensive revision to the assisted living facility regulations recently occurred. The State Board of Social Services adopted these revisions with an effective date of February 1, 2018.

The Virginia legislature recently passed the following bills/joint resolution that relate to assisted living:

(1) SB 875 and HB 1439 (identical bills) require the State Board of Social Services (Board) to amend the Standards for Licensed Assisted Living Facilities. The current regulation, which became effective February 1, 2018, requires assisted living facilities (ALFs) that provide care for adults with serious cognitive impairments who cannot recognize danger or protect their own safety and welfare to have at least two direct care staff members who are awake, on duty, and responsible in each building when residents are present. SB 875 and HB 1439 require the Board to allow an exception for ALFs that are licensed for 10 or fewer residents if no more than three of the residents have serious cognitive impairments. The regulation regarding the exception will be published in the Virginia Register of Regulations on July 23, 2018 and the effective date of the regulation will be August 23, 2018.

(2) House Joint Resolution 118 requests the Department of Social Services to study regulation of independent living communities.

(3) HB 1130 relates to licensure of facilities operated by agencies of the Commonwealth, and is effective July 1, 2018. HB 1130 allows an assisted living facility operated by an agency of the Commonwealth to appeal a proposed denial, revocation, or summary suspension of services or functions. The bill prohibits a civil penalty from being imposed on any assisted living facility operated by an agency of the Commonwealth. The bill adds a new section to the Code of Virginia, § 63.2-1710.1, which states that the Commissioner may issue a summary order of suspension of the license to operate an assisted living facility operated by an agency of the Commonwealth. HB 1130 also adds new section § 63.2-1710.2 of the Code of Virginia, which provides that an assisted living facility operated by an agency of the Commonwealth shall have the right to appeal a notice of intent. The bill sets forth the appeal procedures.

Definition

An assisted living facility is a congregate residential setting that provides or coordinates personal and health care services, 24-hour supervision, and assistance for the maintenance or care of four or more adults who are aged, infirm, or disabled and who are cared for in a primarily residential setting. Maintenance or care means the protection, general supervision, and oversight of the physical and mental well-being of an aged, infirm, or disabled individual.

Assisted living care means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require at least moderate assistance with the activities of daily living (ADL). Included in this level of service are individuals who are dependent in behavior pattern (i.e., abusive, aggressive, disruptive) as documented on the uniform assessment instrument.

Residential living care means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require only minimal assistance with ADLs. Included in this level of service are individuals who are dependent in medication administration as documented on the uniform assessment instrument, although they may not require minimal assistance with ADLs. This definition includes the services provided by the facility to individuals who are assessed as capable of maintaining themselves in an independent living status.

Disclosure Items

Assisted living facilities must provide a disclosure statement on a department form to prospective residents and their legal representatives, with the information also available to the general public. The disclosure statement includes the following information:

name of the facility; name of the licensee; ownership structure of the facility; description of the facility's accommodations, services, and care offered; description of and fees charged for accommodations, services, and care, including what is included in the base fee and what is an additional fee; criteria for admission to the facility and restrictions on admission; criteria for transfer within the same facility; criteria for discharge; categories, frequency, and number of activities; staffing on each shift; whether or not the facility maintains liability insurance that provides at least the minimum amount of coverage established for disclosure; the minimum amount of liability insurance coverage established in 22 VAC 40-73-45; notation that additional information about the facility that is included in the resident agreement is available upon request; and the department's website address, with a note that additional information about the facility may be obtained from the website.

Facility Scope of Care

Facilities provide residents assistance with activities of daily living, other personal care services, social and recreational activities, and protective supervision. Services are provided to meet the needs of residents, consistent with individualized service plans. Services include, but are not limited to, assistance or care with activities of daily living, instrumental activities of daily living, ambulation, hygiene and grooming, and functions and tasks such as arrangements for transportation and shopping. Service plans support individuality, personal dignity, and freedom of choice.

Third Party Scope of Care

A licensed health care professional must be either directly employed or retained on a contractual basis to provide periodic health care oversight. Periodic reviews of residents' medications, when required, are performed by licensed health care professionals who are directly or contractually employed. Periodic oversight of special diets by a dietitian or nutritionist, either through direct or contractual employment, is required. If skilled nursing treatments are needed by a resident, they must be provided by a licensed nurse employed by the facility or by contractual agreement with a licensed nurse, a home health agency, or a private duty licensed nurse. For each resident requiring mental health services, appropriate services based on evaluation of the resident must be secured from a mental health provider.

Admission and Retention Policy

No resident may be admitted or retained: (1) for whom the facility cannot provide or secure appropriate care; (2) who requires a level of care or service or type of service for which the facility is not licensed or which the facility does not provide; or (3) if the facility does not have staff appropriate in numbers and with appropriate skill to provide the care and services needed by the resident.

An assisted living facility shall only admit or retain individuals as permitted by its use and occupancy classification and certificate of occupancy. The ambulatory or nonambulatory status of an individual is based upon information contained in the physical examination report and information contained in the most recent uniform assessment instrument (UAI). Based upon review of the UAI prior to admission of a resident, the facility administrator is required to provide written assurance to the resident that the facility has the appropriate license to meet the individual's care needs at the time of admission.

All residents shall be 18 years of age or older, and the regulations list several specific criteria for residents who may not be admitted or retained. These exclusions include, but are not limited to, those with:

- (1) Ventilator dependency;
- (2) Some stage III and all stage IV dermal ulcers;
- (3) Some individuals who require intravenous therapy or injections directly into the vein;
- (4) Certain airborne infectious diseases in a communicable state requiring isolation of the individual or requiring special precautions by the caretaker to prevent transmission of the disease;
- (5) Psychotropic medications without appropriate diagnosis and treatment plans;
- (6) Nasogastric tubes and, in some cases, gastric tubes;
- (7) Imminent physical threat or danger to self or others;
- (8) Need for continuous licensed nursing care; and
- (9) Physical or mental health care needs that cannot be met by a facility as determined by the facility.

Resident Assessment

The Uniform Assessment Instrument (UAI) is the department-designated form used to assess all assisted living facility residents. There are two versions of the UAI, one for residents receiving Auxiliary Grants and one for private pay residents. Social and financial information that is not relevant because of a resident's payment status is not included on the private pay version. The UAI must be completed within 90 days prior to admission and updated at least once every 12 months, or whenever there is a significant

change in the resident's condition. The forms are available on the agency Web site. An individual also must have a physical examination prior to admission. In addition, if needed, there must be a screening of psychological, behavioral, and emotional functioning. For residents who meet the criteria for assisted living care, by the time the comprehensive individualized service plan is completed, a fall risk rating must be done. The fall risk rating must be reviewed and updated at least annually, when the condition of the resident changes, and after a fall.

Medication Management

Medications may be administered by licensed individuals or by medication aides who have successfully completed a Board of Nursing approved training program, have passed a competency evaluation, and are registered with the Virginia Board of Nursing. Medication aides are permitted to act on a provisional basis when certain requirements are met. Medication aides must be supervised by facility staff who meet certain qualifications. Each facility must have a written plan for medication management. A licensed health care professional must perform an annual review of all the medications of each resident assessed for residential living care, except for those who self-administer all of their medications, and a review every six months of all the medications of each resident assessed for assisted living care.

Square Feet Requirements

Private resident bedrooms must be a minimum of 100 square feet if the building was approved for construction or a change in use and occupancy classification on or after February 1, 1996; otherwise a minimum of 80 square feet is required. Shared resident bedrooms must be a minimum of 80 square feet per resident if the building was approved for construction or change in use and occupancy classification on or after February 1, 1996; otherwise a minimum of 60 square feet per resident is required. Resident sleeping quarters must provide for no less than 450 cubic feet of air space per resident. Other physical plant requirements also apply.

Residents Allowed Per Room

As of December 28, 2006, in all buildings approved for construction or change in use and occupancy classification, there shall be no more than two residents residing in a bedroom. As of February 1, 2018, when there is a new facility licensee, there shall be no more than two residents residing in a bedroom. Otherwise, there may not be more than four residents residing in a bedroom.

Bathroom Requirements

As of December 28, 2006, in all buildings approved for construction or change in use and occupancy classification, on floors where there are resident bedrooms, there must be at least one toilet and one sink for every four persons and at least one bathtub or shower for every seven persons. When more than four persons live on a floor,

toilets, sinks, and bathtubs or showers must be in separate rooms for men and women. Unless the provisions immediately above apply, on floors where there are resident bedrooms, there must be at least one toilet and one sink for every seven persons and at least one bathtub or shower for every 10 persons. When more than seven persons live on a floor, toilets, sinks, and bathtubs or showers must be in separate rooms for men and women. There are other requirements for bathrooms on floors used by residents where there are no resident bedrooms and on floors where there are resident bedrooms as well as the main living or dining area.

Life Safety

A written plan for fire and emergency evacuation is required. This plan must be approved by the appropriate fire official. Fire and emergency evacuation drawings must be posted in all facilities. The telephone numbers for the fire department, rescue squad or ambulance, police, and Poison Control Center must be posted by each telephone shown on the fire and emergency evacuation plan or, under specified circumstances, by a central switchboard. Staff and volunteers are to be fully informed of the approved fire and emergency evacuation plan, including their duties, and the location and operation of fire extinguishers, fire alarm boxes, and any other available emergency equipment.

Fire and emergency evacuation drill frequency and participation are in accordance with the current edition of the Virginia Statewide Fire Prevention Code. Additional fire and emergency evacuation drills may be held at the discretion of the administrator or licensing inspector and must be held when there is any reason to question whether the requirements of the approved fire and emergency evacuation plan can be met. Each required fire and emergency evacuation drill must be unannounced and its effectiveness evaluated. Any problems identified in the evaluation must be corrected. A record of the required fire and emergency evacuation drills is to be kept in the facility for two years.

Assisted living facilities must comply with the sprinkler and smoke detector requirements of the appropriate building and/or fire codes. The International Fire Code is used.

Unit and Staffing Requirements for Serving Persons with Dementia

The regulations cover facilities caring for adults with serious cognitive impairments due to a primary psychiatric diagnosis of dementia who cannot recognize danger or protect their own safety and welfare.

For a special care unit, when 20 or fewer residents are present, there shall be at least two direct care staff members awake and on duty at

all times in each special care unit that is responsible for the care and supervision of the residents. For every additional 10 residents, or portion thereof, at least one more direct care staff member must be awake and on duty in the unit. There is an exception if there are no more than five residents present in the unit under certain conditions.

When there is a mixed population of residents with serious cognitive impairments due to a primary psychiatric diagnosis of dementia who cannot recognize danger or protect their own safety and welfare and others, when residents are present there shall be at least two direct care staff members awake and on duty at all times in each building who shall be responsible for the care and supervision of the residents. There will be an exception to this when a facility is licensed for 10 or fewer residents if no more than three have serious cognitive impairments.

In both the special care unit and the mixed population, during trips away from the facility, there shall be sufficient direct care staff to provide sight and sound supervision to all residents who cannot recognize danger or protect their own safety and welfare.

Doors leading to the outside shall have a system of security monitoring, such as door alarms, cameras, constant staff oversight, security bracelets that are part of an alarm system, or delayed egress mechanisms. In a mixed population, residents with serious cognitive impairments may be limited but not prohibited from exiting the facility or any part thereof. Before limiting any resident from freely leaving the facility, the resident's record shall reflect the behavioral observations or other bases for determining that the resident has a serious cognitive impairment and cannot recognize danger or protect his own safety and welfare. In a special care unit, doors leading to unprotected areas must be monitored or secured through devices that may include locking devices that conform to applicable building and fire codes. In both mixed populations and special care units, there shall be protective devices on the bedroom and the bathroom windows of residents with serious cognitive impairments and on windows in common areas accessible to these residents to prevent the windows from being opened wide enough for a resident to crawl through. Free access to an indoor walking corridor or other indoor area that may be used for walking must be provided. There are other specific requirements for mixed populations and for special care units and who may be in the units.

Staffing Requirements

The facility must have an administrator who is responsible for the general administration and management of the facility and who

oversees its day-to-day operation.

The facility is required to have staff adequate in knowledge, skills, and abilities and sufficient in number to provide services to maintain the physical, mental, and psychosocial well-being of each resident, and to implement the fire and emergency evacuation plan. There must be a staff member in each building at all times who has a current first aid certificate, unless the facility has an on-duty registered nurse, licensed practical nurse, or currently certified emergency medical technician, first responder or paramedic. In addition, each direct care staff member, unless he/she is a registered nurse, licensed practical nurse, or currently certified emergency medical technician, first responder or paramedic must receive certification in first aid within 60 days of employment and then maintain current certification. There must also be a staff member in each building at all times who has current certification in CPR. In facilities licensed for more than 100 residents, there must be at least one additional employee with current CPR certification for every 100 residents or portion thereof.

A licensed health care professional must be on site at least every six months to provide health care oversight for residents who meet the residential living care criteria, or if the facility employs a licensed health care professional who is on site on a full-time basis, at least annually.

A licensed health care professional must be on site at least every three months to provide health care oversight for residents who meet the assisted living care criteria, or if the facility employs a licensed health care professional who is on site on a full-time basis, at least every six months.

There are additional requirements to meet skilled nursing and rehabilitative needs of residents. There are also additional requirements for private duty personnel who provide direct care or companion services to residents.

Administrator Education/Training

An administrator of a facility licensed for both residential and assisted living care must be licensed by the Virginia Board of Long-Term Care Administrators. An administrator of a facility licensed for residential living care only is not required to be licensed. Licensed assisted living facility administrators are regulated and governed by the Board of Long-Term Care Administrators, which has specific educational and Administrator in Training requirements.

For facilities licensed for residential living care only, an administrator

employed prior to February 1, 2018 must be at least 21 years of age, a high school graduate or have a GED, have at least 30 credit hours of post secondary education from an accredited college or university or a Department of Social Services approved course specific to the administration of an assisted living facility, and have at least one year of administrative or supervisory experience in caring for adults in a group care facility.

Those employed after February 1, 2018 must be at least 21 years of age, a high school graduate or have a GED, have at least one year of administrative or supervisory experience in caring for adults in a residential group care facility, and either: have successfully completed at least 30 credit hours of postsecondary education from an accredited college or university with at least 15 of the 30 credit hours in business or human services or a combination thereof; have successfully completed a course of study approved by the department that is specific to the administration of an assisted living facility; have a bachelor's degree from an accredited college or university; or, be a licensed nurse.

The Board of Long-Term Care Administrators regulates licensed administrators and requires 20 hours of approved continuing education annually. The Department of Social Services requires 20 hours of continuing education annually for any unlicensed administrators of residential living care only facilities. For a facility licensed only for residential living care that does not employ a licensed administrator, the administrator shall attend at least 20 hours of training related to management or operation of a residential facility for adults or relevant to the population in care within 12 months from the starting date of employment and annually thereafter from that date. At least two of the required 20 hours of training shall focus on infection control and prevention. When adults with mental impairments reside in the facility, at least six of the required 20 hours shall focus on topics related to residents' mental impairments.

Staff Education/Training

Staff are required to be trained in specified areas to protect the health, safety, and welfare of residents. Direct care staff must be registered as a certified nurse aide or complete one of the other specified educational curricula.

Direct care staff must complete at least 14 hours annually (for residential living level of care) or at least 18 hours annually (for the assisted living level of care) of continuing education related to the population in care. The training shall be in addition to any required first aid training, CPR training, and, for medication aides continuing

education required by the Virginia Board of Nursing. At least two of the required hours of training shall focus on infection control and prevention. When adults with mental impairments reside in the facility, at least four of the required hours shall focus on topics related to residents' mental impairments. Direct care staff who are licensed health care professionals or certified nurse aides can complete 12 hours annually of continuing education instead of the 14 or 18 required earlier in this paragraph.

**Entity Approving
CE Program**

The regulations of the Board of Long-Term Care Administrators specify approval requirements for CE programs if the individual is a licensed assisted living facility administrator. If an administrator is not licensed, the Department of Social Services does not require approval for CE programs.

**Medicaid Policy and
Reimbursement**

Virginia's Medicaid Alzheimer's assisted living waiver (AAL) ended on June 30, 2018.

Citations

Virginia Department of Social Services website: Assisted Living Facilities with information and links to the regulations and other provider resources.

<http://www.dss.virginia.gov/facility/alf.cgi>

Virginia Standards for Licensed Assisted Living Facilities

http://www.dss.virginia.gov/files/division/licensing/alf/intro_page/code_regulations/regulations/final_alf_reg.pdf

Virginia Department of Social Services website: Adult Services information, including AFC, assisted living and other adult services, and links to resources.

<http://www.dss.virginia.gov/family/as/servtoadult.cgi>

Virginia Department of Social Services website: Auxiliary Grant information and links to rules and resources.

<http://www.dss.virginia.gov/family/as/auxgrant.cgi>

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