

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 emphasize resident-centered care and services and include requirements that strive for a homelike environment for residents.

Legislative and Regulatory Update The assisted living facility regulations became effective December 28, 2006 and have been revised several times, with the last amendment having an effective date of July 17, 2013. The official process for a comprehensive revision to the regulations is underway.

- The Virginia legislature recently passed several bills that affect assisted living:
- (1) HB 1747 / SB 1242: Advanced Medical Directives: Provides that a qualified advance directive facilitator may distribute written advance directives in a form meeting the requirements of § 54.1-2984.
 - (2) HB 1919 / SB1191: Civil Monetary Penalty Caps in Assisted Living Facilities: Increases the aggregate amount of civil penalties that the Commissioner of the Department of Social Services may assess against an assisted living facility for noncompliance with the terms of its license from \$10,000 per 24-month period to \$10,000 per 12-month period.
 - (3) HB 2153: Durable DNR Reciprocity: Provides that a Durable Do Not Resuscitate order or other order regarding life sustaining treatment executed in accordance with the laws of another state in which such order as executed shall be deemed to be valid and shall be given full effect in the Commonwealth.
 - (4) HB 2301: LPNs and Tuberculin PPD and Adult Vaccines: Removes the requirement that the supervision of licensed practical nurses administering vaccinations by registered nurses be immediate and direct.
 - (5) SB 1434: Barrier Crime Statute of Limitations: Allows licensed

assisted living facilities and adult day care centers to continue to employ a person convicted of one misdemeanor barrier crime not involving abuse or neglect if five years have elapsed following the conviction.

(6) SJ 266: Joint Legislative Audit & Review Commission ALF Staffing Ratio Study: Requests that the Commission identify and analyze current staff-to-resident ratio requirements for assisted living facilities and special care units; and make recommendations.

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 is a level of service defined as moderate assistance with ADLs. Moderate assistance is provided to persons who are dependent in two or more ADLs and/or who are dependent in behavior patterns (e.g., abusive, aggressive, disruptive) as documented on a uniform assessment instrument.

Residential living care is a level of service defined as minimal assistance with activities of daily living (ADLs) and/or medication administration. Minimal assistance means dependency in only one ADL or one or more instrumental activities of daily living. Minimal assistance includes 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, with the information also available to the general public. The disclosure statement includes the following information about the facility: ownership structure; licensed capacity; description of the facility's accommodations, services, and care; description of and fees charged for accommodations, services, and care; policy regarding increases in charges; advance or deposit payments; criteria for and restrictions on admission; criteria for transfer; criteria for discharge; rules regarding resident conduct; categories and frequency of activities; staffing on each shift; notification that contractor names are available upon request; and the department Web site address.

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.

Specifically, the regulations list several specific criteria for residents who may not be admitted or retained, including, but not limited to, those with:

- (1) Ventilator dependency;
- (2) Some stage III and all stage IV dermal ulcers;
- (3) Nasogastric tubes;
- (4) Imminent physical threat or danger to self or others;
- (5) Need for continuous licensed nursing care; and
- (6) 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 90 days prior to admission and updated at least once every 12 months, or more often if needed. 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.

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. 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. Other physical plant requirements also apply.

Residents Allowed Per Room

If the building was approved for construction or change in use and occupancy classification on or after December 28, 2006, there may not be 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

Virginia has additional requirements for 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. At least two direct care staff members must be in the special care unit at all times, with an exception allowing one staff person in the unit under specified circumstances. Doors leading to the outside are required to be monitored or secured. There must be protective devices on bedroom and bathroom windows and on common area windows that are accessible to residents with dementia. 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 special care units and who may be in them.

The administrator and direct care staff must complete four hours of training in cognitive impairments due to dementia within two months of employment. The administrator and direct care staff must also complete at least six more hours of training in caring for residents with cognitive impairment due to dementia within the first year of employment. Topics that must be included in the training are specified to include: resident care techniques for persons with physical, cognitive, behavioral, and social disabilities; creating a therapeutic environment; and common behavioral problems and behavior management techniques. There are annual training requirements for direct care staff and for the administrator.

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 on the premises at all times who has a current first aid certificate, unless the facility has an on-duty registered nurse or licensed practical nurse. In addition, each direct care staff member, unless he/she is a registered nurse or licensed practical nurse, must receive certification in first aid within 60 days of employment and then maintain current certification. There must also be a staff member on the premises 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 and at least every three months for residents who meet the assisted living care criteria. There are additional requirements to meet skilled nursing and rehabilitative needs of residents.

Administrator Education/Training

Effective January 2, 2009, 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 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.

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. The training required by the Department of Social Services must be related to management or operation of the facility or related to the resident population.

Staff Education/Training

Staff are required to be trained in specified areas to protect the health, safety, and welfare of residents. When the assisted living level of care is provided, 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 eight hours annually (for residential living level of care) or at least 16 hours annually (for the assisted living level of care) of continuing education related to the population in care. Direct care staff who are licensed health care professionals or certified nurse aides can complete 12 hours annually of continuing education instead of 16.

**Entity Approving
CE Program**

The Board of Long-Term Care Administrator regulations specify that CE programs must be approved by the National Association of Long Term Care Administrator Boards or an accredited educational institution or a governmental agency 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) will cease to operate on June 30, 2018. A state work group has proposed steps to ensure continuity of services for current enrollees on the waiver and address the needs of others with Alzheimer's and dementia who would qualify for services under the waiver.

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 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>

Department of Medical Assistance Services. Long Term Care and Waiver Services: Alzheimer's Assisted Living Waiver.

http://www.dmas.virginia.gov/Content_pgs/ltc-wvr_aal.aspx

Department of Medical Assistance Services. Memorandum: Report on Alzheimer's Assisted Living Waiver Work Group. December 1, 2016.

[http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/RD5422016/\\$file/RD542.pdf](http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/RD5422016/$file/RD542.pdf)