



**Virginia
Regulatory
Town Hall**

Notice of Intended Regulatory Action Agency Background Document

Agency Name:	Department of Social Services
VAC Chapter Number:	22 VAC 40-71
Regulation Title:	Standards and Regulations for Licensed Adult Care Residences
Action Title:	Implement 2000 Legislation
Date:	June 14, 2000

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

Purpose

Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.

This planned regulation is needed in order to replace the emergency regulation, which will expire one year from its effective date. The replacement regulation will cover the same subject matter as the emergency regulation, i.e., areas addressed in House Bills 1051 and 1251 passed by the 2000 General Assembly. The subject matter will include 1) requirements regarding an administrator who is shared between an assisted living facility and a nursing home, 2) standards for safe, secure environments for residents with serious cognitive impairments, 3) change in name from adult care residence to assisted living facility, 4) possible amendments based on consideration of cost constraints of smaller operations, and 5) other revisions based on additional legislative mandates in the two bills.

Basis

Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.

The following sections of the Code of Virginia are the sources of the legal authority to promulgate the regulation: Section 63.1-25 (mandatory) allows State Board to make regulations to carry out the purpose and intent of Title 63.1; Section 63.1-174 (mandatory and discretionary) addresses the State Board's overall authority to promulgate regulations for adult care residences and specifies content areas to be included in the standards; Section 63.1-174.001 (mandatory) relates to admission, retention and discharge of residents; and Section 63.1-182.1 (discretionary) relates to resident rights. Effective July 1, 2000, Section 63.1-174 will specify that the regulations authorize assisted living facilities (adult care residences) to provide safe, secure environments for residents with serious cognitive impairments if the facilities comply with certain regulations. These regulations must define serious cognitive impairment and safe, secure environment. Also effective July 1, 2000, Section 63.1-174 will specify that the regulations take into consideration cost constraints of smaller facilities. The Code of Virginia may be found on the web at <http://leg1.state.va.us>.

Substance

Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied.

This replacement regulation will take the place of the emergency regulation and will address the same subject areas as the emergency regulation. Both sets of regulations will address the changes in the Code of Virginia that are a result of House Bills 1051 and 1251.

The replacement regulation will change the name of adult care residences to assisted living facilities. The change in name makes the type of facility and types of services offered more easily recognizable to the general population. This helps to assure the welfare of residents since decisions about placement and continued residence can be made more easily and more quickly.

The regulation will be amended to allow a person to serve as the administrator for both an assisted living facility and a licensed nursing home under certain conditions, and with a management plan to ensure that residents receive proper care and supervision.

The definition of assisted living facility (adult care residence) will be revised to reflect the new language in the Code of Virginia., and an exception will be added for housing projects for seniors or the disabled that provide no more than basic coordination of care services and are funded by the U.S. Department of Housing and Urban Development or other specified agencies. This change in the definition protects the health and safety of residents because it more clearly describes what an assisted living facility is.

The regulation will be amended to authorize assisted living facilities to provide safe, secure environments for residents with serious cognitive impairments when there is compliance with standards governing such placement. Definitions of serious cognitive impairment and safe, secure environment will be added to the regulation, as well as programming requirements. The regulation will be revised to provide for requirements for written approval that must be obtained prior to a resident being placed in a secure environment. All of these protections are to assure that only those people who need a secure environment for their welfare live in such an environment and that once in a secure environment, there is programming that contributes to the health and safety of the residents.

A review will be done to determine if additional revisions are necessary to distinguish assisted living care from residential living care.

The regulation will be amended as appropriate based upon consideration of cost constraints of smaller operations. It may be possible to alter or reduce some of the requirements for smaller facilities because they may not be able to take advantage of the economies of scale available to larger facilities. However, the health, safety and welfare of residents should always be kept in the forefront when cost constraints are considered.

Other changes of a technical nature will be made in the regulation as a result of changes in the Code of Virginia.

A potential issue that may need to be addressed as the regulation is developed is a possible conflict between placement of a resident in a secure environment and the rights of the resident. Some adult care residence providers and certain advocacy groups may disagree as to how best resolve this issue.

Another potential issue is the possible creation of an inequity based on facility size. If the standards are reduced for smaller facilities, this might be seen as unfair competition by larger facilities. What might also be a problem is determining what standards can be reduced without creating insufficient protection of the health, safety and welfare of residents in smaller homes. There may be considerable difference of opinion on this matter.

Alternatives

Please describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet the essential purpose of the action.

The Code of Virginia and House Bills 1051 and 1251 mandate that regulations be developed in specific areas. The replacement regulations will cover the same subject matter as the emergency regulations. During the process to revise the regulation, every affected standard under consideration will be examined to determine whether there are less burdensome or intrusive ways to protect the health, safety and welfare of vulnerable adults residing in assisted living

facilities (adult care residences). In addition to public comment, the Adult Care Residence Advisory Committee will assist in this effort. Having a regulation is necessary to ensure that a minimal level of service and care is provided that is appropriate and adequate to meet the needs of aged, infirm or disabled residents.

Family Impact Statement

Please provide a preliminary analysis of the potential impact of the proposed 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.

It is difficult to assess the impact of this regulation on residents and their families because there is such a wide diversity in types of facilities and in resident and family circumstances. In some cases, having an elderly or disabled family member reside in an adult care residence may strengthen the relationship or the family; in other cases it may weaken the relationship or the family. Depending upon the economic situation of the family and the cost of meeting the elderly or disabled family member's needs in different settings, there may be an increase or a decrease in disposable family income.