



## Final Regulation Agency Background Document

<b>Agency name</b>	State Board of Social Services
<b>Virginia Administrative Code (VAC) citation</b>	22 VAC 40 -745
<b>Regulation title</b>	Assessment in Assisted Living Facilities (formerly Assessment in Adult Care Residences)
<b>Action title</b>	Comply with Assisted Living Facility Licensing Regulation and DMAS Policy
<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*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

This regulation provides guidelines for assessing the needs of individuals who are applying to or are residents of assisted living facilities (formerly called "adult care residences"). The assisted living facility assessment using the Virginia Uniform Assessment Instrument is a standardized approach that uses common definitions to gather sufficient information on applicants to and residents of assisted living facilities to determine their care needs. Assessment is the prior-authorizing mechanism for public reimbursement for assisted living facility services. The purpose of the proposed action is to bring the regulation into compliance with changes in the Department of Social Services' regulations on licensure of assisted living facilities and with the Department of Medical Assistance Services' administrative policy for reimbursement of assisted living services. Regulation changes were made due to the extensive assisted living facility legislation in 2005, as well as the recodification of the Social Services chapter of the *Code of Virginia*. In addition, the term "adult care residence" will be replaced with "assisted living facility" throughout, including the regulation's title.

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

---

The State Board of the Virginia Department of Social Services approved the final regulations for 22 VAC 40-745 Assessment in Assisted Living Facilities on August 17, 2005.

### Legal basis

*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 numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

---

The legal basis for this regulation is the *Code of Virginia*, §§ 63.2-1601 and 1732, and § 63.2-217. The regulation does not exceed the scope of what the *Code* allows.

### Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

---

The amended regulation is essential to the health, safety, and welfare of adults applying to or residing in an assisted living facility because the regulation helps to ensure that adults receive services appropriate to their identified needs. The purpose of the proposed action is to bring the regulation into compliance with 2005 changes to *The Code of Virginia* and changes in the Department of Social Services Licensing program regulations, as well as compliance with the Department of Medical Assistance Services' administrative policy for reimbursement of assisted living services. In addition, the term "adult care residence" will be replaced with "assisted living facility" throughout, including the regulation's title.

### Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.*

---

The major changes are technical in nature and not substantive, including language changes to bring the regulation into compliance with current *Code* language, clarifying definitions of terms, and deleting outdated terminology.

**Issues**

*Please identify the issues associated with the proposed regulatory action, including:*  
 1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*  
 2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*  
 3) *other pertinent matters of interest to the regulated community, government officials, and the public.*  
*If there are no disadvantages to the public or the Commonwealth, please indicate.*

The advantage to making these changes is to bring the regulation into compliance with previously promulgated Code and regulatory changes. This will ensure that assessments of applicants to and residents of assisted living facilities are completed in a consistent manner across the state. The regulation also helps to ensure that adults in assisted living facilities receive appropriate services. This regulatory action poses no disadvantages to the public or the Commonwealth.

**Changes made since the proposed stage**

*Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.*

<b>Section number</b>	<b>Requirement at proposed stage</b>	<b>What has changed</b>	<b>Rationale for change</b>
22 VAC 40-745-10	The term “Assisted Living” was defined.	The term being defined was changed to “Assisted Living [Care]”	This, along the changes from the proposed stage, makes the terminology consistent with the definition in § 63.2-100.
22 VAC 40-745-10	The new definition of Assisted living facility in the proposed regulation matched the definition in statute prior to the 2005 General Assembly changes.	Additional wording was added to clarify that an assisted living facility may be public or private and is required to be licensed by the Virginia Department of Social Services.  The term “assisted living facility” replaces the term “adult care residence” throughout the regulation.	The revised “assisted living facility (ALF)” definition conforms to the “assisted living facility” definition in §§ 54.1-3100 and 63.2-100.
22 VAC 40-745-10		Addition of “assisted living facility administrator” definition.	The proposed regulations and the assisted living facility statutes refer to an assisted living facility administrator but do not provide the definition. The definition is derived from

Section number	Requirement at proposed stage	What has changed	Rationale for change
			§ 54.1-3100.
22 VAC 40-745-10	A definition of Community Based Waiver Services was part of the regulation.	The definition was deleted	In response to a Virginia Office for Protection and Advocacy (VOPA) comment, the definition of community-based waiver services was stricken because its only reference in the regulation was to a section previously deleted.
22 VAC 40-745-10	<del>"Maximum physical assistance" means that an individual has a rating of total dependence in four or more of the seven activities of daily living as documented on the uniform assessment instrument. An individual who can participate in any way with the performance of the activity is not considered to be totally dependent.</del>	Replacement of the definition of maximum physical assistance but still deleting the last sentence of that definition.	This conforms the definition to § 63.2-1805.C.11.
22 VAC 40-745-10	The definition of Qualified Assessor was revised to delete language requiring an entity which contracted with DMAS and to define who was qualified in public and private pay situations.	Change in language to clarify that physicians do not require training in completion of uniform assessment instrument.	The proposed language incorrectly implied that a physician required training in assessment
22 VAC 40-745-10	There was no definition of "reassessment"	Addition of "reassessment" definition.	2005 changes to assisted living facility statutes refer to the need to reassess a resident when there is significant change. The final regulation now includes a definition of reassessment that is consistent with § 63.2-1805.
22 VAC 40-745-10	"Residential Living"	The term being defined was changed to "Residential Living [Care]"	This change made the definition consistent with the definition in § 63.2-100.
22 VAC 40-745-20 A	Proposed language required that all residents and applicants be assessed prior to admission and whenever there is a significant change in the resident's condition that appears to be permanent.	Requires that the assessment be "face-to-face" and removed "that appears to be permanent".	The terms "significant change" is adequate without the additional language. The requirement for face-to-face assessment was added as a result of comments received from VOPA.
22 VAC 40-745-20 B	This section requires assisted living facility staff who will complete UAIs for	New language was added to require the assisted living facility to maintain	This addition was made in response to comments from licensing staff during the

Section number	Requirement at proposed stage	What has changed	Rationale for change
	private pay staff to have completed training on completion of the instrument.	documentation of that training.	public comment period.
22 VAC 40-745-40.A.	<u>The assisted living facility must make these notifications within 10 days of the change in the resident's status</u>	The timeframe for requiring assisted living facilities to make notifications was increased with respect to the discharge of the resident, and new language was added to provide timeframes for notifications with respect to emergency discharges and the death of a resident.	The changes clarify misunderstandings about the deadline for notifications to be made by assisted living facilities. The notification timeframe provides consistency with Licensing program standards.
22 VAC 40-745-40. B.	The proposed regulation did not address actions the facility needed to take as a result of a summary order of suspension.	A new section identifies the parties responsible and timeframe for relocation of assisted living facility residents who are discharged from suspended assisted living facilities. The section also clarifies that a reassessment of the relocated resident is not required.	Relocation of residents who resided in a suspended adult living facility became one of several issues addressed in the 2005 revisions to the Licensing Adult Living Facility regulations and <i>Code</i> sections. Local adult services/adult protective services workers will be responsible for coordinating the relocation of residents. The first two sentences of the proposed text clarifies this responsibility while the last sentence clarifies that a new UAI assessment is not necessary.
22 VAC 40-745-90 A. 5	The proposed regulation did not address notification of CSBs or others of indications of mental illness, mental retardation, substance abuse or behavioral disorders.	A new section was added which identifies the responsibility of the assisted living facility to notify CSBs or behavioral health authorities of any indications of possible mental illness, mental retardation, substance abuse, and behavioral disorders.	The 2005 revisions to § 63.2-1805.B. requires that facility administrators (or designees) forward to community services boards or behavioral health authorities UAI assessments that indicate behaviors indicative of mental illness, mental retardation, substance abuse, or behavioral disorders. The Code also requires them to ensure that the assessment is done.

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.*

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Sherry Confer, Virginia Office for Protection and Advocacy	22 VAC 40-745-10: VOPA recommends requiring that this assessment be conducted face-to-face with the applicant to/resident of the ALF.	Face-to-face interviews are preferable. Changes were made to 22 VAC 40-745-20 A to require that the UAI assessments be conducted face-to-face.
	VOPA recommends inserting "with the individual" after "... of a plan of care,"	Wording would be awkward. The section stands as: "Case management may include a variety of common components such as initial screening of need, comprehensive assessment of needs, development, and implementation of a plan of care, service monitoring, and follow-up." The individual may or may not be involved in planning care.
	VOPA recommends inserting "with the identified individual needing care/services" after "... plans of care."	Wording would be awkward and the plan of care does not necessarily require the individual's involvement. The definition of case manager stands as a human service agency employee "who is qualified and designated to develop and coordinate plans of care."
	Definition of "community-based waiver services:" we didn't see this phrase used in this set of regulations.	In the previous version of the regulation, "community-based waiver services" are defined and was referred to as a facility in which a UAI was done. The definition of "community-based waiver services" was deleted in the final regulation 22 VAC 40-745-10.
	Definition of "consultation:" VOPA recommends inserting "and providers for the individual" after "... other professionals. . . "	Current definition of consultation includes "...guidance from appropriate human service agencies and other professionals..." Adding "other providers" is not needed since "providers" are essentially encompassed into the category of "professionals." Adding "other providers" lays the groundwork for trying to identify the myriad of professions that may be involved in a consultation, with providers being only one of dozens.

Commenter	Comment	Agency response
	<p>VOPA recommends the “certain” be more clearly defined for the assessors. This is very broad and leaves too much room for individual assessors’ interpretation as to when it is necessary or helpful to consult with others about the individual’s strengths and needs. By not specifying when to consult, it leaves open the option to not consult.</p>	<p>The use of “certain” is purposeful as it allows assessors the flexibility to consult when they deem fit. The intent of the regulation is not to identify the conditions under which a consultation is necessary. The option to consult or not consult needs to be based on the issues that arise in assessing the individual and the knowledge and skill of the assessor.</p>
	<p>Definition of “Independent physician”: VOPA recommends that this definition be strengthened by requiring that the physician also complete the required state approved training and has a written agreement with DMAS to complete the UAI. Conducting a physical examination is not the same as completing a functional assessment.</p>	<p>Independent physicians are considered qualified to conduct the Uniform Assessment Instrument through their extensive education and experience in diagnosing. Requiring all physicians in Virginia to undergo one-day training to complete a form would certainly alienate physicians and potentially lead to physicians directing others to complete the assessments.</p>
	<p>Definition of “Significant change”: VOPA has considerable concern with this definition as it is. A resident who has had oral surgery and needs either soft or blender prepared food could suffer neglect if the assessment and resulting care plan do not reflect this new need; even if it is only perhaps a 7-10 day need. A resident with an ear infection that affects his balance could suffer a fall if the assessment/care plan does not reflect the need for additional supports. The assessment and care plan should be working documents that are updated as the resident’s needs change and as they hopefully increase their ability to manage their own ADL/IADL.</p>	<p>Licensing confirmed that the care plan is the appropriate document for assessing and planning short-term conditions. The care plan follows the UAI and would be updated as a resident incurs a short-term illness or is recovering from surgery. Having to conduct a UAI reassessment every time a resident’s condition changes would be cost-prohibitive; there are not enough qualified assessors to handle the extensive amount of reassessments that would arise.</p>

Commenter	Comment	Agency response
	<p>22 VAC 40-745-20.A.                      VOPA has considerable concern with the loosening of the 12 month re-assessment requirement. By changing this to an annual requirement, there could be as much as 23 months between assessments. This is unacceptable. The assessment and care plan should be working documents that are to be updated as the resident's needs change and as they hopefully increase their ability to manage their own ADL/ IADL. In addition, we repeat our concern about the use of "significant change" here.</p>	<p>The requirement for annual re-assessments was not loosened in this regulation. The previous version of the regulation required assessments at least every 12 months. The revised regulation requires assessments prior to admission, at least annually, and when there is a significant change in the resident's condition. The frequency of assessments, then, are greater, not less often, than previously required.</p>
	<p>22 VAC 40-745-20 B                      Who is the appropriate authority to "deem" these previous assessors as qualified? VOPA has been informed that some current assessors simply telephone the resident in order to complete the reassessment; without seeing the resident, without talking with ALF staff, etc. This causes one to question the quality of the assessment and the ability of some assessors to handle this responsibility appropriately/ adequately. VOPA recommends inserting "to perform UAIs" at the very end of this section.</p>	<p>Human service agency staff complete training on the Uniform Assessment Instrument during their initial employment and have experience in completing the instrument, so they are well qualified to continue conducting the UAI without additional training.                      VDSS will address VOPA's concern that some current assessors conduct the evaluation over the telephone by requiring face-to-face interviews. Face-to-face evaluations were added to 22 VAC 40-745-20 A.</p>
	<p>22 VAC 40-745-20.D                      VOPA recommends inserting "the applicant/resident and" after "...coordinate with..." VOPA also recommends that the regulations be strengthened to clarify that the assessment/reassessment should be coordinated/conducted in a manner that does not disrupt the individual's plan of care, day support, work schedule, etc.</p>	<p>VDSS is concerned that prioritizing the applicant/resident's routine will compromise the timeliness. The Uniform Assessment Instrument must be completed within 30 days of admission, annually, and during significant changes. Delaying the completion due to the resident's personal or health care schedule may have deleterious effects on the resident. Assessors are trained to be respectful of the rights and needs of residents. To mandate prioritizing the resident's needs suggests that assessors require regulatory control to work in a professional manner.</p>



Commenter	Comment	Agency response
	<p>22 VAC 40-745-30 A                      There is an “adult care residences” that should be changed to assisted living facilities about midway in this paragraph.</p>	<p>“Adult care residences” was changed to “assisted living facilities.”</p>
	<p>22 VAC 40-745-30.C                      VOPA recommends that the UAI be completed face-to-face with the individual.</p>	<p>Face-to-face interviews are preferable. Changes were made to 22 VAC 40-745-20 A to require that the UAI assessments be conducted face-to-face.</p>
	<p>22 VAC 40-745-30.C.2                      Please see previous recommendations about limiting the assessment update to only “significant changes.”</p>	<p>Licensing confirmed that the care plan is the appropriate document for assessing and planning short-term conditions. The care plan follows the UAI and would be updated as a resident incurs a short-term illness or is recovering from surgery. Having to conduct a UAI reassessment every time a resident’s condition changes would be cost-prohibitive; there are not enough qualified assessors to handle the extensive amount of reassessments that would arise.</p>
	<p>22 VAC 40-745-30.C.3                      VOPA recommends that the UAI be completed face-to-face with the individual.</p>	<p>Face-to-face interviews are preferable, Changes to require this were made in 22 VAC 40-745-20.</p>

Commenter	Comment	Agency response
	<p>22 VAC 40-745-30 D                      VOPA recommends that the UAI be completed face-to-face with the individual. VOPA has considerable concern with the loosening of the 12 months re-assessment requirement. By changing this to an annual requirement, there could be as much as 23 months between assessments. This is unacceptable. The assessment and care plan should be working documents that are to be updated as the resident's needs change and as they hopefully increase their ability to manage their own ADL/ IADL. In addition, we repeat our concern about the use of "significant change" here. Perhaps DSS would consider strengthening this regulation by identifying a sanction when the assessment/ re-assessment is not completed within designated timeframes. It has been relayed to VOPA that the DSS Licensing cites the ALF, not the assessor, when the UAI is not completed in a timely manner.</p>	<p>See previous responses regarding the face-to-face interview, 12-month requirement, and "significant change" issues.</p> <p>VDSS applies sanctions for untimely assessments through its Licensing regulations. The assisted living facility is the appropriate target for sanctions, not the individual assessor, since a) the facility may be able to use another assessor; b) the facility can link work performance criteria to assessment timeliness; and c) the facility may be able to modify the assessor's workload to prevent further delays in assessments. Facilities, not individual employees, are typically the ones responsible for timely assessments.</p>
	<p>22 VAC 40-745-30 E                      VOPA recommends inserting "resident" after "At the request of the..." VOPA recommends that the ALF assist the resident and/or their representative in obtaining an independent assessment. Please clarify who will pay the assessor if it is found the placement is inappropriate.</p>	<p>"Resident" was added, so 22 VAC 40-745-30 E is now:                      "At the request of the assisted living facility, [the resident], the resident's representative, the resident's physician, DSS, or the local department of social services, an independent assessment using the Uniform Assessment Instrument shall be completed..."</p>

Commenter	Comment	Agency response
	<p>22 VAC 40-745-30 F                      VOPA recommends striking “as needed.” VOPA recommends inserting “and providers” after “professionals...”</p>	<p>As with the definition of “Consultation,” the intent of the regulation is not to identify the conditions under which a consultation is necessary, so VDSS will maintain “as needed”. The option to consult or not consult needs to be based on the issues that arise in assessing the individual and the knowledge and skill of the assessor.                      Adding “providers” is not needed since providers are encompassed into the category of “professionals.” Adding “providers” lays the groundwork for trying to identify the myriad of professions that may be involved in a consultation, with providers being only one of hundreds.</p>
	<p>22 VAC 40-745-40                      VOPA recommends that the ALF must plan for post-discharge services with the resident and/or their representative.</p>	<p>For both 22 VAC 40-745-40 and 22 VAC 40-745-50 B sections:                      Discharge planning is under the purview of Licensing regulations.</p>
	<p>22 VAC 40-745-50 B                      VOPA recommends that the ALF must plan for post-discharge services with the resident and/or their representative.</p>	
	<p>22 VAC 40-745-50 D                      VOPA recommends that the change in level of care be completed after a face-to-face assessment with the individual by the Department, DMAS or local DSS representative.</p>	<p>A face-to-face assessment is not pertinent during a review or inspection. A change can be made to the care plan at any time per 22 VAC 40-71-170 H that states that the ISP (individual services plan) “...is reevaluated as needed as the condition of the resident changes.”</p>
	<p>22 VAC 40-745-90.A.1                      Please see previous comments about “significant change” and the loosening of the 12-month requirement.</p>	<p>See previous responses.</p>
	<p>22 VAC 40-745-90.A.4                      VOPA recommends the following language be inserted at the end of this regulation “...who have been determined to meet the qualified assessor criteria and in accordance with these regulations.”</p>	<p>Changed to:                      ‘4. Clients of a community services board shall be assessed and reassessed by qualified assessors employed by the community services board.”                      “In accordance with these regulations” is implied throughout the regulation.</p>
	<p>22 VAC 40-745-90.B                      VOPA recommends that the re-assessment timeframes for private pay and public pay be the same.</p>	<p>All residents in assisted living facilities, whether private or public pay, are assessed at admission, annually, and during significant changes in their conditions.</p>

Commenter	Comment	Agency response
	<p>22 VAC 40-745-110                      VOPA recommends that for those applicants/residents who have representatives that the assessment results, level of care determination and the appeal rights be provided to them as well. VOPA recommends that the regulations designate a specific timeframe as to when the appeal rights are given. VOPA recommends immediately. Although the Virginia Code citation provided notes the right to appeal to DSS, the regulations do not provide any direction on how to appeal to DSS or to DMAS. VOPA recommends that this be included in the regulations.</p>	<p>The issue of representatives is not within the scope of this regulation. The situations in which a representative serves as proxy for the resident would need to be defined and clearly delineated. The issue requires careful consideration in the protection of the rights of the resident. Representatives may gain access to residents' Uniform Assessment Instrument, care plan, and other documents under § 37.1-134.22. The purpose of the regulation is to require assessments for assisted living facility residents. The issue of appeal rights is identified in 22 VAC 40-745-110. The section references the Code citation that addresses the timeframe and process to appeal Auxiliary Grant denials. Adding the same language in this section would be duplicative.</p>
<p>Karen Cullen,                      VDSS Division                      of Licensing                      Programs</p>	<p>22 VAC 40-745-10 and -60. Definition of "Assisted living" changed to "Assisted living care" for consistency with Licensing.</p>	<p>Changed in 22 VAC 40-745-10; 22 VAC 40-745-20 C; 22 VAC 40-745-60; and 22 VAC 40-745-100A.</p>
	<p>22 VAC 40-745-10 and -70. Definition of "Residential living" changed to "Residential living care" for consistency with Licensing.</p>	<p>Changed in 22 VAC 40-745-10; 22 VAC 40-745-20 C; 22 VAC 40-745-70; and 22 VAC 40-745-100 A.</p>
	<p>22 VAC 40-745-20B and 20C. Put the following in the definitions section 10.                      "Qualified staff of the assisted living facility is an employee of the facility with documented training by completion of a state-approved course on the Uniform Assessment Instrument for either public or private pay assessments."</p>	<p>Definitions section already includes definition of a Qualified Assessor, who is defined as an employee who has completed state-approved training on the Uniform Assessment Instrument.</p>
	<p>22 VAC 40-745-20C. Change:                      "For public pay individuals, a Uniform Assessment Instrument shall be completed by a case manager or <del>other</del> [a] qualified assessor to determine the need for residential [care] or assisted living [care] services."</p>	<p>Changed to:                      For public pay individuals, a Uniform Assessment Instrument shall be completed by a case manager or other [a] qualified assessor to determine the need for residential [care] or assisted living [care] services.</p>

Commenter	Comment	Agency response
	<p>22 VAC 40-745-40. Change: “The assisted living facility must make these notifications within 10 days of the change in the resident’s status [death or discharge].”</p>	<p>Changed to: <u>The assisted living facility must make these notifications within 40 [14] days of [prior to the resident’s planned discharge or within 5 days after the death of the resident] the [resident’s discharge or death change in the resident’s status].</u></p>
	<p>22 VAC 40-745-50D. “During an inspection or review, staff from either the Department, DMAS or the local department of social services may initiate a change in level of care for any assisted living facility for whom it is determined that the resident’s Uniform Assessment Instrument is not reflective of the resident’s current status.” What about private pay assessors?</p>	<p>The Department, DMAS, and local departments of social services may initiate a reassessment when they are reviewing or inspecting a private pay assisted living facility by arranging for private pay assessors. The additional regulation does not preclude a change in the level of care for private pay residents</p>
	<p>22 VAC 40-745-90A.4. Change: “4. Clients of a community services board shall be assessed and reassessed by staff of [a case manager or qualified assessor employed by] the community services board.”</p>	<p>Unsure of the position titles used by CSB to make UAI assessments. Changed to: 4. “Clients of a community services board shall be assessed and reassessed by <u>staff of qualified assessors employed by] the community services board.</u>”</p>
<p>Judy McGreal, VDSS Division of Licensing Programs</p>	<p>22 VAC 40-745-20 “Whenever there is a significant change...that appears to be permanent.” This seems to conflict with the definition of significant change in 22 VAC 40-745-10. Is the significant change more than 30 days or “permanent?”</p>	<p>22 VAC 40-745-20 changed to: “...using the Uniform Assessment Instrument prior to admission, at least annually, and whenever there is a significant change in the resident’s condition [<del>that appears to be permanent</del>].</p>
	<p>22 VAC 40-745-10. Definition of “assisted living.” This is now known, due to a <i>Code</i> change, as “assisted living care.” Same with “residential living,” which is now known as “residential living care.” Also see 22 VAC 40-745-20 C and 22 VAC 40-745-100 A for adding the word “care.”</p>	<p>Changed “assisted living” to “assisted living care” in VAC 40-745-10, VAC 40-745-20 C, and VAC 40-745-100 A in final regulation revision. Changed “residential living” to “residential living care” in VAC 40-745-10, VAC 40-745-20 C and VAC 40-745-100 A.</p>

Commenter	Comment	Agency response
	<p>22 VAC 40-745-20 B The wording of the second sentence is somewhat awkward. I suggest instead “Qualified staff of the assisted living facility is an employee of the facility with documented completion of a state-approved course on the Uniform Assessment Instrument for either public or private pay assessments.” I also suggest that the word “successful” be inserted before the word “completion.”</p>	<p>Changed to read that “Qualified staff” of the assisted living facility is an employee of the facility who has successfully completed state-approved training on the Uniform Assessment Instrument for either public or private pay assessments. The assisted living care facility maintains documentation of the completed training.</p>
	<p>22 VAC 40-745-20 B It does not appear that the physician has to have the training. But under the definition of qualified assessor in 22 VAC 40-745-10, the last sentence indicates that the physician does have to be trained in the completion of the UAI. Needs to be consistent, one way or the other.</p>	<p>22 VAC 40-745-10 has been corrected to make it clear that physicians do not have to be trained in completing the instrument.</p>
	<p>22 VAC 40-745-20 C Has a grandfather clause for public human services agency assessors. Why doesn’t this also apply to staff of the assisted living facility in B? I’m not sure I would want it to, but I think there should be a good reason for it applying to one and not the other. If there is not a good reason, I think it should apply to ALF staff as well.</p>	<p>Public human service agency staff are trained to complete the Uniform Assessment Instrument. The intent of the regulation is to require both human service agency and assisted living facility staff to complete training. Public service staff should not be required to attend training when they received UAI training during their initial employment.</p>
	<p>22 VAC 40-745-30 A Still includes the term “adult care residences.”</p>	<p>Changed “adult care residences” to “assisted living facilities” and did a Find/Replace to double-check other sections.</p>
	<p>22 VAC 40-745-40 The notification probably doesn’t apply to private pay residents, but this isn’t clear.</p>	<p>Changed to: “Staff of the <u>ACR</u> assisted living facility must plan for post-discharge services when the <u>[public pay]</u> resident is returned...”</p>
	<p>22 VAC 40-745-110 Does this apply to private pay residents also? It is not clear.</p>	<p>The issue of pay is not relevant here as the section refers to appealing the assessment, not payment concerns.</p>

Enter any other statement here

**All changes made in this regulatory action**

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
22 VAC 40-745-10		Adult care residence defined	The definition for “adult care residence” was deleted. It was replaced by “assisted living facility”.
22 VAC 40-745-10		"Assisted living [ <del>care</del> ]" means a level of service provided by an <del>adult care residence</del> <u>assisted living facility</u> for adults who may have physical or mental impairments and require at least moderate assistance with the activities of daily living.	“Assisted living care” is the updated terminology utilized by the Virginia Department of Social Services Division of Licensing and Department of Medical Assistance Services regulations.
22 VAC 40-745-10		Assisted Living Facility is not defined in the current regulation.	This is a new definition. It replaces “adult care residence”. The “Assisted living facility (ALF) definition is consistent with the “assisted living facility” definition in the 2005 revision to § 54.1-3100 and § 63.2-100.
22 VAC 40-745-10		Assisted living facility administrator is not defined in the current regulation.	<u>["Assisted living facility administrator" means any individual charged with the general administration of an assisted living facility, regardless of whether he has an ownership interest in the facility.]</u> The addition of “assisted living facility administrator” definition is needed to provide consistency with Licensing regulations.
22 VAC 40-745-10		Community-based waiver services is defined in the current regulation.	In response to a Virginia Office for Protection and Advocacy (VOPA) comment, the definition of community-based waiver services was stricken because its only reference in the regulation was to a section previously deleted.
22 VAC 40-745-10		The current definition of “Emergency placement” contains language requiring the emergency to be documented and approved by one of several specified individuals.	The language requiring the emergency to be documented and approved was stricken.
22 VAC 40-745-10		"Maximum physical assistance" is defined in the current regulation but contains language that is inconsistent with the current definition in § 63.2-1805	The “maximum physical assistance” definition is restored and changed to make it consistent with the definition in § 63.2-1805.
22 VAC		The current definition of	This definition is omits references to

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
40-745-10		"Qualified Assessor" requires and entity which has contracted with DMAS to perform screenings.	DMAS and clarifies that for public pay individuals the qualified assessor is an employee of a human services agency who is trained in the completion of the UAI and for private pay individuals the qualified assessor is staff of the assisted living facility trained in completion of UAI or an independent private physician.
22 VAC 40-745-10		Reassessment is not defined in the current regulation.	2005 changes to assisted living facility statutes refer to the need to reassess a resident when there is significant change. A definition of reassessment that is consistent with § 63.2-1805 has been added.
22 VAC 40-745-10		"Residential living" is defined in the current regulation.	"Residential living [care]" is consistent with Licensing and DMAS regulations.
22 VAC 40-745-10		"Significant change" is not defined in the current regulations	A definition of "significant change" was added to help provide guidance in determining the need for a reassessment of a resident to evaluate appropriate care.
22 VAC 40-745-20 A		This section currently requires residents and applicants to be assessed using the Uniform Assessment Instrument.	In response to a strong recommendation by VOPA, VDSS is clarifying that interviews must be face-to-face to eliminate assessments conducted by phone. The language also requires a reassessment at least annually or when there is a significant change in the resident's condition.
22 VAC 40-745-20 B		This section currently states that, unless a private pay resident requests the UAI to be completed by a case manager or other qualified assessor, qualified assisted living facility staff or an independent physician may complete the UAI. It also requires the administrator or designee to approve and sign the completed UAI. The section defines a qualified facility staff person as having completed state approved training on the UAI.	The wording change was due to comments from Licensing and VOPA staff who felt the section was incomplete and unclear. The change in wording intends to convey two separate points—that the training must be successfully completed, not just attended; and that there is documentation that an employee has completed the training.
22 VAC 40-745-20 C		For public pay individuals, a Uniform Assessment Instrument shall be completed by a case manager or other	Language was added to more clearly define qualified assessors. Case managers are not necessarily qualified assessors, so the more accurate wording



Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
		qualified assessor.	would be “a” qualified assessor instead of “other” qualified assessor. “Care” was added to residential and living services to be consistent with Licensing and DMAS regulations.
22 VAC 40-745-30.C.		Current language for requiring a new assessment when an individual changes facilities is if there has been a “change in the resident’s condition that would appear to warrant a change in the resident’s approved level of care”.	The language is replaced with “Significant change” which has been added in the definition section as well.
22 VAC 40-745-30 E		The current regulation addresses who may request an independent assessment to determine if the resident’s needs are being addressed.	The regulation was changed to include the resident as someone who can request the assessment. The change was based on a strong concern voiced by VOPA.
22 VAC 40-745 40		This section addresses planning and notification requirements when residents are discharged. Included is a requirement that the staff notify the local department of social services’ financial eligibility worker responsible for authorizing the auxiliary grant, of the date and place of discharge.	This section refers to residents whose assisted living facility placement was paid through Auxiliary Grants. The qualifier “public pay” clarifies that this section excludes private pay residents. Timeframes are added for notifications including those for emergency discharges or in the event of the death of a resident.
	22 VAC 40-745-40.B.	The current regulation does not address relocation of residents as the result of an order of suspension for the facility.	A new section was added addressing relocation of residents who reside in a suspended adult living facility. Local adult services/adult protective services workers will be responsible for coordinating the relocation of residents. The last sentence clarifies that a new UAI assessment is not necessary. These changes are based on 2005 changes to assisted living facility code sections.
	22 VAC 40-745-50 D		A new section was added stating that during an inspection or review, staff from the Department, DMAS or the local department of social services may initiate a change in the level of care for a resident for whom it is determined that the UAI is not reflective of the resident’s current status. This change can result in immediate adjustments to ensure a resident is receiving appropriate care.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
22 VAC 40-745-90 A. 1.		Case managers or qualified assessors shall forward to the local department of social services, the effective date of admission or change in level of care.	New language is added to this section to define whose employees may be a "Qualified Assessor" for public pay individuals. These employers include: local departments of social services, agencies on aging, centers for independent living, community service boards, local departments of health, or independent physicians.
	22 VAC 40-745-90 A.4		A new section is added requiring that clients of community service boards be assessed and reassessed by community service board employees who are qualified assessors.
	22 VAC 40-745-90.A.5	I	This is a new section in accordance with the 2005 revisions to § 63.2-1805.B. which requires that facility administrators forward to community services boards or behavioral health authorities UAI assessments that indicate behaviors indicative of mental illness, mental retardation, substance abuse, or behavioral disorders.

Enter any other statement here

**Family impact**

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

The proposed regulatory action has no specific impact on the institution of the family and family stability. The regulation does promote the appropriate assessment of care needs for Virginia’s vulnerable adults.