COMMONWEALTH *of* VIRGINIA

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MEMORANDUM

TO: KARIN CLARK
Virginia Department of Social Services

FROM: Jennifer C. Williamson
Senior Assistant Attorney General

DATE: July 8, 2026

SUBJECT: Review of Final 22 VAC 40-73
Amend Sections to Add Appeal Process for Discharges

I am in receipt of and have reviewed the attached regulations being amended as required by Chapter 706 of the 2022 Acts of Assembly, which amended Virginia Code § 63.2-1805 and requires the State Board of Social Services ("State Board") to adopt regulations regarding the discharge of residents. You have asked the Office of the Attorney General to review this action and determine if the State Board has the statutory authority to promulgate the regulations and if the regulations comport with applicable state law.

Pursuant to Virginia Code § 63.2-217, the State Board is required to promulgate regulations as may be necessary or desirable to carry out the purposes of Title 63.2 of the Virginia Code. Additionally, and as stated above, Virginia Code § 63.2-1805 requires the State Board to adopt regulations addressing the discharge of residents. The regulations comport with applicable state law.

Accordingly, it is my opinion the State Board has the authority to promulgate these regulations, subject to compliance with the provisions of Article 2 of the Administrative Process Act ("APA") and Executive Order 17 (2026), and that in so doing the State Board does not exceed that authority.

If you have any questions, please feel free to call me at (804) 225-3197.

Attachment

Project 7391 - Final

Department of Social Services

Update Standards to Add Appeal Process for Discharges

22VAC40-73-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Activities of daily living" or "ADLs" means bathing, dressing, toileting, transferring, bowel control, bladder control, eating, and feeding. A person's degree of independence in performing these activities is a part of determining appropriate level of care and services.

"Administer medication" means to open a container of medicine or to remove the ordered dosage and to give it to the resident for whom it is ordered.

"Administrator" means the licensee or a person designated by the licensee who is responsible for the general administration and management of an assisted living facility and who oversees the day-to-day operation of the facility, including compliance with all regulations for licensed assisted living facilities.

"Admission" means the date a person actually becomes a resident of the assisted living facility and is physically present at the facility.

"Advance directive" means, as defined in § 54.1-2982 of the Code of Virginia, (i) a witnessed written document, voluntarily executed by the declarant in accordance with the requirements of § 54.1-2983 of the Code of Virginia or (ii) a witnessed oral statement, made by the declarant subsequent to the time the declarant is diagnosed as suffering from a terminal condition and in accordance with the provisions of § 54.1-2983 of the Code of Virginia.

"Ambulatory" means the condition of a resident who is physically and mentally capable of self-preservation by evacuating in response to an emergency to a refuge area as defined by 13VAC5-63, the Virginia Uniform Statewide Building Code, without the assistance of another person, or from the structure itself without the assistance of another person if there is no such refuge area within the structure, even if such resident may require the assistance of a wheelchair, walker, cane, prosthetic device, or a single verbal command to evacuate.

"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. 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.

"Assisted living facility" means, as defined in § 63.2-100 of the Code of Virginia, any congregate residential setting that provides or coordinates personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for the maintenance or care of four or more adults who are aged or infirm or who have disabilities and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Behavioral Health and Developmental Services, but including any portion of such facility not so licensed; (ii) the home or residence of an individual who cares for or maintains only persons related to that individual by blood or marriage; (iii) a facility or portion of a facility serving individuals who are infirm or who have disabilities between ~~the ages of~~ 18 and 21 years of age, or 22 years of age if enrolled in an educational program for individuals with disabilities pursuant to § 22.1-214 of the Code of Virginia, when such facility is licensed by the department as a children's residential facility under Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 of the Code of Virginia, but including any portion of the facility not so licensed; and (iv) any housing project for individuals who are 62 years of age or older or individuals with disabilities that provides

no more than basic coordination of care services and is funded by the U.S. Department of Housing and Urban Development, ~~by~~ the U.S. Department of Agriculture, or ~~by~~ the Virginia Housing Development Authority. Included in this definition are any two or more places, establishments, or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more adults who are aged or infirm or who have disabilities. Maintenance or care means the protection, general supervision, and oversight of the physical and mental well-being of an individual who is aged or infirm or who has a disability.

"Attorney-in-fact" means strictly, one who is designated to transact business for another: a legal agent.

"Behavioral health authority" means the organization, appointed by and accountable to the governing body of the city or county that established it, that provides mental health, developmental, and substance abuse services through its own staff or through contracts with other organizations and providers.

"Board" means the State Board of Social Services.

"Building" means a structure with exterior walls under one roof.

"Cardiopulmonary resuscitation" or "CPR" means an emergency procedure consisting of external cardiac massage and artificial respiration; the first treatment for a person who has collapsed, has no pulse, and has stopped breathing; and attempts to restore circulation of the blood and prevent death or brain damage due to lack of oxygen.

"Case management" means multiple functions designed to link clients to appropriate services. Case management may include a variety of common components such as initial screening of needs, comprehensive assessment of needs, development and implementation of a plan of care, service monitoring, and client follow-up.

"Case manager" means an employee of a public human services agency who is qualified and designated to develop and coordinate plans of care.

~~"Chapter" or "this chapter" means these regulations, that is, Standards for Licensed Assisted Living Facilities, 22VAC40-73, unless noted otherwise.~~

"Chemical restraint" means a psychopharmacologic drug that is used for discipline or convenience and not required to treat the resident's medical symptoms or symptoms from mental illness or intellectual disability and that prohibits the resident from reaching the resident's highest level of functioning.

"Commissioner" means the commissioner of the department, the commissioner's designee, or an authorized representative.

"Community services board" or "CSB" means a public body established pursuant to § 37.2-501 of the Code of Virginia that provides mental health, developmental, and substance abuse programs and services within the political subdivision participating on the board.

"Companion services" means assistance provided to residents in such areas as transportation, meal preparation, shopping, light housekeeping, companionship, and household management.

"Conservator" means a person appointed by the court who is responsible for managing the estate and financial affairs of an incapacitated person and, where the context plainly indicates, includes a "limited conservator" or a "temporary conservator." The term includes (i) a local or regional program designated by the Department for Aging and Rehabilitative Services as a public conservator pursuant to Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5 of the Code of Virginia or (ii) any local or regional tax-exempt charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code to provide conservatorial services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the

incapacitated person. If a tax-exempt charitable organization has been designated by the Department for Aging and Rehabilitative Services as a public conservator, it may also serve as a conservator for other individuals.

"Continuous licensed nursing care" means around-the-clock observation, assessment, monitoring, supervision, or provision of medical treatments provided by a licensed nurse. Individuals requiring continuous licensed nursing care may include:

1. Individuals who have a medical instability due to complexities created by multiple, interrelated medical conditions; or

2. Individuals with a health care condition with a high potential for medical instability.

"Days" means calendar days unless noted otherwise.

"Department" means the Virginia Department of Social Services.

"Department's representative" means an employee or designee of the Virginia Department of Social Services~~,~~ acting as an authorized agent of the Commissioner of Social Services.

"Dietary supplement" means a product intended for ingestion that supplements the diet, is labeled as a dietary supplement, is not represented as a sole item of a meal or diet, and contains a dietary ingredient (e.g., vitamins, minerals, amino acids, herbs or other botanicals, dietary substances such as enzymes, and concentrates, metabolites, constituents, extracts, or combinations of the preceding types of ingredients). Dietary supplements may be found in many forms, such as tablets, capsules, liquids, or bars.

"Direct care staff" means supervisors, assistants, aides, or other staff of a facility who assist residents in the performance of personal care or daily living activities.

"Discharge" means the movement of a resident out of the assisted living facility [initiated by the resident or the resident's legal representative, if any].

"Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

"Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

"Emergency discharge" means the unplanned discharge of a resident from the facility due to immediate and serious risk to the health, safety, or welfare of the resident or others [~~within the facility~~] .

"Emergency placement" means the temporary status of an individual in an assisted living facility when the person's health and safety would be jeopardized by denying entry into the facility until the requirements for admission have been met.

"Emergency restraint" means a restraint used when the resident's behavior is unmanageable to the degree an immediate and serious danger is presented to the health and safety of the resident or others.

"General supervision and oversight" means assuming responsibility for the well-being of residents, either directly or through contracted agents.

"Guardian" means a person appointed by the court who is responsible for the personal affairs of an incapacitated person, including responsibility for making decisions regarding the person's support, care, health, safety, habilitation, education, therapeutic treatment, and, if not inconsistent with an order of involuntary admission, residence. Where the context plainly indicates, the term includes a "limited guardian" or a "temporary guardian." The term includes (i) a local or regional program designated by the Department for Aging and Rehabilitative Services as a public guardian pursuant to Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5 of the Code of Virginia or (ii) any local or regional tax-exempt charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code to provide guardian services to incapacitated persons. Such tax-exempt

charitable organization shall not be a provider of direct services to the incapacitated person. If a tax-exempt charitable organization has been designated by the Department for Aging and Rehabilitative Services as a public guardian, it may also serve as a guardian for other individuals.

"Habilitative service" means activities to advance a normal sequence of motor skills, movement, and self-care abilities or to prevent avoidable additional deformity or dysfunction.

"Health care provider" means a person, corporation, facility, or institution licensed by the Commonwealth to provide health care or professional services, including a physician or hospital, dentist, pharmacist, registered or licensed practical nurse, optometrist, podiatrist, chiropractor, physical therapist, physical therapy assistant, clinical psychologist, or health maintenance organization.

"Household member" means any person domiciled in an assisted living facility other than residents or staff.

"Imminent physical threat or danger" means clear and present risk of sustaining or inflicting serious or life-threatening injuries.

"Independent clinical psychologist" means a clinical psychologist who is chosen by the resident of the assisted living facility and who has no financial interest in the assisted living facility, directly or indirectly, as an owner, officer, or employee or as an independent contractor with the facility.

"Independent living status" means that the resident is assessed as capable of performing all activities of daily living and instrumental activities of daily living independently without requiring the assistance of another person and is assessed as capable of taking medications without the assistance of another person. If the policy of a facility dictates that medications are administered or distributed centrally without regard for ~~the residents'~~ resident capacity, this policy shall not be considered in determining independent status.

"Independent physician" means a physician who is chosen by the resident of the assisted living facility and who has no financial interest in the assisted living facility, directly or indirectly, as an owner, officer, or employee or as an independent contractor with the facility.

"Individualized service plan" or "ISP" means the written description of actions to be taken by the licensee, including coordination with other services providers, to meet the assessed needs of the resident.

"Instrumental activities of daily living" or "IADLs" means meal preparation, housekeeping, laundry, and managing money. A person's degree of independence in performing these activities is a part of determining appropriate level of care and services.

"Intellectual disability" means a disability~~,~~ originating before ~~the age of~~ 18 years~~,~~ of age characterized concurrently by (i) significantly subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning, administered in conformity with accepted professional practice, that is at least two standard deviations below the mean and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills.

"Intermittent intravenous therapy" means therapy provided by a licensed health care professional at medically predictable intervals for a limited period of time on a daily or periodic basis.

"Involuntary discharge" means the movement of a resident out of the assisted living facility that is initiated by the facility.

"Legal representative" means a person legally responsible for representing or standing in the place of the resident for the conduct of the resident's affairs. This may include a guardian, conservator, attorney-in-fact under durable power of attorney ("durable power of attorney" defines the type of legal instrument used to name the attorney-in-fact and does not change the meaning

of attorney-in-fact), trustee, or other person expressly named by a court of competent jurisdiction or the resident as the resident's agent in a legal document that specifies the scope of the representative's authority to act. A legal representative may only represent or stand in the place of a resident for the functions for which the legal representative has legal authority to act. A resident is presumed competent and is responsible for making all health care, personal care, financial, and other personal decisions that affect the resident's life unless a representative with legal authority has been appointed by a court of competent jurisdiction or has been appointed by the resident in a properly executed and signed document. A resident may have different legal representatives for different functions. For any given standard, the term "legal representative" applies solely to the legal representative with the authority to act in regard to the functions relevant to that particular standard.

"Licensed health care professional" means any health care professional currently licensed by the Commonwealth of Virginia to practice within the scope of that health care professional's profession, such as a nurse practitioner, registered nurse, licensed practical nurse (nurses may be licensed or hold multistate licensure pursuant to § 54.1-3000 of the Code of Virginia), clinical social worker, dentist, occupational therapist, pharmacist, physical therapist, physician, physician assistant, psychologist, and speech-language pathologist. Responsibilities of physicians referenced in this chapter may be implemented by nurse practitioners or physician assistants in accordance with their protocols or practice agreements with their supervising physicians and in accordance with the law.

"Licensee" means any person, association, partnership, corporation, company, or public agency to whom the license is issued.

"Manager" means a designated person who serves as a manager pursuant to 22VAC40-73-170 and 22VAC40-73-180.

"Mandated reporter" means persons specified in § 63.2-1606 of the Code of Virginia who are required to report matters giving reason to suspect abuse, neglect, or exploitation of an adult.

"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 performance of the activity is not considered to be totally dependent.

"Medical/orthopedic restraint" means the use of a medical or orthopedic support device that has the effect of restricting the resident's freedom of movement or access to the resident's body for the purpose of improving the resident's stability, physical functioning, or mobility.

"Medication aide" means a staff person who has current registration with the Virginia Board of Nursing to administer drugs that would otherwise be self-administered to residents in an assisted living facility in accordance with the Regulations Governing the Registration of Medication Aides (18VAC90-60). This definition also includes a staff person who is an applicant for registration as a medication aide in accordance with subdivision 2 of 22VAC40-73-670.

"Mental illness" means a disorder of thought, mood, emotion, perception, or orientation that significantly impairs judgment, behavior, capacity to recognize reality, or ability to address basic life necessities and requires care and treatment for the health, safety, or recovery of the individual or for the safety of others.

"Mental impairment" means a disability that reduces an individual's ability to reason logically, make appropriate decisions, or engage in purposeful behavior.

"Minimal assistance" means dependency in only one activity of daily living or dependency in one or more of the instrumental activities of daily living as documented on the uniform assessment instrument.

"Moderate assistance" means dependency in two or more of the activities of daily living as documented on the uniform assessment instrument.

"Nonambulatory" means the condition of a resident who by reason of physical or mental impairment is not capable of self-preservation without the assistance of another person.

"Nonemergency restraint" means a restraint used for the purpose of providing support to a physically weakened resident.

"Physical impairment" means a condition of a bodily or sensory nature that reduces an individual's ability to function or to perform activities.

"Physical restraint" means any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the resident cannot remove easily, which restricts freedom of movement or access to the resident's body.

"Physician" means an individual licensed to practice medicine or osteopathic medicine in any of the 50 states or the District of Columbia.

"Premises" means a building or group of buildings under one license, together with the land or grounds on which the buildings are located.

"Prescriber" means a practitioner who is authorized pursuant to §§ 54.1-3303 and 54.1-3408 of the Code of Virginia to issue a prescription.

"Private duty personnel" means an individual hired, either directly or through a licensed home care organization, by a resident, family member, legal representative, or similar entity to provide one-on-one services to the resident, such as a private duty nurse, home attendant, personal aide, or companion. Private duty personnel are not hired by the facility, either directly or through a contract.

"Private pay" means that a resident of an assisted living facility is not eligible for an auxiliary grant.

"Psychopharmacologic drug" means any drug prescribed or administered with the intent of controlling mood, mental status, or behavior. Psychopharmacologic drugs include not only the obvious drug classes, such as antipsychotic, antidepressants, and the antianxiety/hypnotic class, but any drug that is prescribed or administered with the intent of controlling mood, mental status, or behavior, regardless of the manner in which it is marketed by the manufacturers and regardless of labeling or other approvals by the U.S. Food and Drug Administration.

"Public pay" means that a resident of an assisted living facility is eligible for an auxiliary grant.

"Qualified" means having appropriate training and experience commensurate with assigned responsibilities, or if referring to a professional, possessing an appropriate degree or having documented equivalent education, training, or experience. There are specific definitions for "qualified assessor" and "qualified mental health professional" in this section.

"Qualified assessor" means an individual who is authorized to perform an assessment, reassessment, or change in level of care for an applicant to or resident of an assisted living facility. For public pay individuals, a qualified assessor is an employee of a public human services agency trained in the completion of the uniform assessment instrument (UAI). For private pay individuals, a qualified assessor is an employee of the assisted living facility trained in the completion of the UAI or an independent private physician or a qualified assessor for public pay individuals.

"Qualified mental health professional" means a behavioral health professional who is trained and experienced in providing psychiatric or mental health services to individuals who have a psychiatric diagnosis, including (i) a physician licensed in Virginia; (ii) a psychologist~~:~~, which is an individual with a master's degree in psychology from a college or university accredited by an association recognized by the U.S. Secretary of Education, with at least one year of clinical

experience; (iii) a social worker~~:~~, which is an individual with at least a master's degree in human services or related field (e.g., social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, or human services counseling) from a college or university accredited by an association recognized by the U.S. Secretary of Education, with at least one year of clinical experience providing direct services to persons with a diagnosis of mental illness; (iv) a registered psychiatric rehabilitation provider (RPRP) registered with the International Association of Psychosocial Rehabilitation Services (IAPSRS); (v) a clinical nurse specialist or psychiatric nurse practitioner licensed in the Commonwealth of Virginia with at least one year of clinical experience working in a mental health treatment facility or agency; (vi) any other licensed mental health professional; or (vii) any other person deemed by the Department of Behavioral Health and Developmental Services as having qualifications equivalent to those described in this definition. Any unlicensed person who meets the requirements contained in this definition shall either be under the supervision of a licensed mental health professional or employed by an agency or organization licensed by the Department of Behavioral Health and Developmental Services.

"Rehabilitative services" means activities that are ordered by a physician or other qualified health care professional that are provided by a rehabilitative therapist (e.g., physical therapist, occupational therapist, or speech-language pathologist). These activities may be necessary when a resident has demonstrated a change in ~~the resident's capabilities~~ capability and are provided to restore or improve the resident's level of functioning.

"Resident" means any adult residing in an assisted living facility for the purpose of receiving maintenance or care. The definition of resident also includes adults residing in an assisted living facility who have independent living status. Adults present in an assisted living facility for part of the day for the purpose of receiving day services are also considered residents.

"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

the activities of daily living. 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 the activities of daily living. This definition includes the services provided by the facility to individuals who are assessed as capable of maintaining themselves in an independent living status.

"Respite care" means services provided in an assisted living facility for the maintenance or care of adults who are aged or infirm or who have a disability for a temporary period of time or temporary periods of time that are regular or intermittent. Facilities offering this type of care are subject to this chapter.

"Restorative care" means activities designed to assist the resident in reaching or maintaining the resident's level of potential. These activities are not required to be provided by a rehabilitative therapist and may include activities such as range of motion, assistance with ambulation, positioning, assistance and instruction in the activities of daily living, psychosocial skills training, and reorientation and reality orientation.

"Restraint" means either "physical restraint" or "chemical restraint" as these terms are defined in this section.

"Safe, secure environment" means a self-contained special care unit for residents with serious cognitive impairments due to a primary psychiatric diagnosis of dementia who cannot recognize danger or protect their own safety and welfare. There may be one or more self-contained special care units in a facility or the whole facility may be a special care unit. Nothing in this definition limits or contravenes the privacy protections set forth in § 63.2-1808 of the Code of Virginia.

"Sanitizing" means treating in such a way to remove bacteria and viruses through using a disinfectant solution (e.g., bleach solution or commercial chemical disinfectant) or physical agent (e.g., heat).

"Serious cognitive impairment" means severe deficit in mental capability of a chronic, enduring, or long-term nature that affects areas such as thought processes, problem-solving, judgment, memory, and comprehension and that interferes with such things as reality orientation, ability to care for self, ability to recognize danger to self or others, and impulse control. Such cognitive impairment is not due to (i) acute or episodic conditions, (ii) conditions arising from treatable metabolic or chemical imbalances, or (iii) reactions to medication or toxic substances. For the purposes of this chapter, serious cognitive impairment means that an individual cannot recognize danger or protect the individual's own safety and welfare.

"Significant change" means a change in a resident's condition that is expected to last longer than 30 days. It does not include short-term changes that resolve with or without intervention, a short-term acute illness or episodic event, or a well-established, predictive, cyclic pattern of clinical signs and symptoms associated with a previously diagnosed condition where an appropriate course of treatment is in progress.

"Skilled nursing treatment" means a service ordered by a physician or other prescriber that is provided by and within the scope of practice of a licensed nurse.

"Skills training" means systematic skill building through curriculum-based psychoeducational and cognitive-behavioral interventions. These interventions break down complex objectives for role performance into simpler components, including basic cognitive skills, such as attention, to facilitate learning and competency.

"Staff" or "staff person" means personnel working at a facility who are compensated or have a financial interest in the facility, regardless of role, service, age, function, or duration of employment at the facility. "Staff" or "staff person" also includes those individuals hired through a contract with the facility to provide services for the facility.

"Substance abuse" means the use of drugs enumerated in the Virginia Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia), without a compelling medical reason, or alcohol that (i) results in psychological or physiological dependence or danger to self or others as a function of continued and compulsive use or (ii) results in mental, emotional, or physical impairment that causes socially dysfunctional or socially disordering behavior; and (iii) because of such substance abuse, requires care and treatment for the health of the individual. This care and treatment may include counseling, rehabilitation, or medical or psychiatric care. All determinations of whether a compelling medical reason exists shall be made by a physician or other qualified medical personnel.

"Systems review" means a physical examination of the body to determine if the person is experiencing problems or distress, including cardiovascular system, respiratory system, gastrointestinal system, urinary system, endocrine system, musculoskeletal system, nervous system, sensory system, and the skin.

"Transfer" means movement of a resident to a different assigned living area within the same licensed facility.

"Trustee" means one who stands in a fiduciary or confidential relation to another; especially one who, having legal title to property, holds it in trust for the benefit of another and owes a fiduciary duty to that beneficiary.

"Uniform assessment instrument" or "UAI" means the department-designated assessment form. There is an alternate version of the form that may be used for private pay residents. Social and financial information that is not relevant because of the resident's payment status is not included on the private pay version of the form.

"Volunteer" means a person who works at an assisted living facility who is not compensated. An exception to this definition is a person who, either as an individual or as part of an organization, is only present at or facilitates group activities on an occasional basis or for special events.

22VAC40-73-430. Discharge of residents.

A. The facility shall develop and implement written policies and procedures regarding the discharge of residents in accordance with § 63.2-1805 of the Code of Virginia, this section, and 22VAC40-73-435.

B. No facility shall require more than 30 days of notice when a resident initiates plans to move from the facility.

C. When actions, circumstances, conditions, ~~or~~ care needs, or resident preferences occur that will result in the discharge of a resident, discharge planning shall begin immediately~~, and there shall be documentation of such, including the beginning date of discharge planning~~. The ~~resident shall be moved within 30 days, except that if persistent efforts have been made and the time frame is not met, the facility~~ date that discharge planning began shall ~~document the reason and the efforts that have been made~~ be documented in the resident's record.

~~B. As soon as~~ D. In the event of an involuntary or emergency discharge ~~planning begins~~, the ~~assisted living~~ facility shall notify the resident~~,~~ and the resident's legal representative ~~and~~ or designated contact person, if any, ~~of the planned discharge, the reason for the discharge, and that the resident will be moved within 30 days unless there are extenuating circumstances relating to inability to place the resident in another setting within the time frame referenced in subsection A of this section. Written notification of the actual discharge date and place of discharge shall be given to the resident, the resident's legal representative and contact person, if any, and additionally for public pay residents, the eligibility worker and assessor, at least 14 days prior to~~

~~the date that the resident will be discharged~~ in accordance with subsection G of this section and review the plan for the [involuntary or emergency] discharge to take place.

~~C. The assisted living facility shall adopt and conform to a written policy regarding the number of days notice that is required when a resident wishes to move from the facility. Any required notice of intent to move shall not exceed 30 days~~ E. Involuntary discharge of residents may only occur under the following circumstances:

1. The facility determines that it cannot meet the individual's needs as specified in § 63.2-1805 B of the Code of Virginia and has met the requirements pursuant to § 63.2-1805 of the Code of Virginia and other applicable statutory and regulatory requirements, provided that the resident and the resident's legal representative or designated contact person, if any, has been given written notice and at least 30 days to cure the basis for [the involuntary] discharge.

2. Nonpayment of contracted charges, provided that the resident has been given at least 30 days to cure the delinquency after notice of such nonpayment was provided to the resident and the resident's legal representative or designated contact person, if any.

3. The resident's failure to substantially comply with the terms and conditions relating to the basis for [the involuntary] discharge, as allowed by this chapter, of the resident agreement between the resident and the assisted living facility, provided that the resident and the resident's legal representative or designated contact person, if any, has been given written notice and at least 30 days to cure the basis for [the involuntary] discharge.

4. The facility closes in accordance with regulations.

5. The resident develops a condition or care need that is prohibited pursuant to § 63.2-1805 D of the Code of Virginia or 22VAC40-73-310 H.

~~D. The~~ F. Unless an emergency discharge is necessary, the facility shall ~~assist the~~, prior to involuntarily discharging a resident ~~and his legal representative, if any, in~~, make reasonable efforts, as appropriate, to resolve any issues with the resident upon which the decision to [involuntarily] discharge ~~or transfer process~~ is based. The ~~facility~~ decision and such efforts shall ~~help the resident prepare for relocation, including discussing~~ be documented in the resident's ~~destination. Primary responsibility for transporting the resident and his possessions rests with the resident or his legal representative~~ record.

~~E. When a resident's condition presents an immediate and serious risk to the health, safety, or welfare of the resident or others and emergency discharge is necessary, the 14-day advance notification of planned discharge does not apply, although the reason for the relocation shall be discussed with the resident and, when possible, his legal representative prior to the move.~~

~~F. Under emergency conditions, the resident's legal representative, designated contact person, family, caseworker, social worker, or any other persons, as appropriate, shall be informed as rapidly as possible, but no later than the close of the day following discharge, of the reasons for the move. For public pay residents, the eligibility worker and assessor shall also be so informed of the emergency discharge within the same time frame. No later than five days after discharge, the information shall be provided in writing to all those notified.~~

G. For ~~public pay residents, in the event of a resident's death~~ all involuntary and emergency discharges, the ~~assisted living~~ facility shall ~~provide written notification to the eligibility worker and assessor within five days after the resident's death~~ use the department-provided [involuntary or emergency] discharge notice form and adhere to the following notification requirements:

1. In the event of an involuntary discharge, the facility shall notify the resident and the resident's legal representative or designated contact person, if any, in writing at least 30 days prior to the [involuntary] discharge date;

2. In the event of an emergency discharge, the facility shall notify the resident and the resident's legal representative or designated contact person, if any, as soon as possible, and provide written notice within five days after the emergency discharge;

3. The facility shall provide a copy of the [involuntary or emergency] discharge notice to the regional licensing office and the State Long-Term Care Ombudsman at least 30 days prior to an involuntary discharge and within five days after an emergency discharge; and

4. A copy of the [involuntary or emergency] discharge notice shall be retained in the resident's record.

H. ~~Discharge statement. 1. At the time of discharge, the assisted living~~ The facility shall provide ~~to~~ the resident and~~, as appropriate, his~~ the resident's legal representative ~~and~~ or designated contact person, if any, with the department-provided [involuntary or emergency] discharge appeal hearing request form at the time of involuntary or emergency discharge notice. The notice shall include a ~~dated~~ statement ~~signed by the licensee or administrator that contains the following information: a. The date on which the resident, his legal representative, or designated contact person was notified of the planned discharge and the name of the legal representative or designated contact person who was notified; b. The reason or reasons for the discharge; c. The actions taken by the facility to assist the resident in the discharge and relocation process; and d. The date of the actual discharge from the facility and the resident's destination. 2. A copy of the written statement shall be retained in the resident's record~~ that the resident may continue to reside in the facility pursuant to [~~the terms of 22VAC40-73-435 D~~ § 63.2-1805 of the Code of Virginia] , unless it is an emergency discharge or the facility is closing.

I. The facility shall provide relocation assistance for residents who are being involuntarily or emergency discharged, which shall include:

1. Assisting the resident and the resident's legal representative or designated contact person, if any, in the discharge [~~or transfer~~] process;

2. Providing a list of facilities that may be able to meet the resident's needs or arranging an appointment with the resident and the resident's legal representative or designated contact person, if any, and a case manager who can provide such information;

3. If needed, providing assistance with packing the resident's possessions or paying for a third party to do so, less any insurance, government, or other comparable assistance that the resident is entitled to receive; and

4. If needed, providing assistance with moving and transportation to the resident's new location or paying for a third party to provide such moving and transportation, less any insurance, government, or other comparable assistance that the resident is entitled to receive.

J. No facility shall be required to pay more for relocation assistance as described in subsection I of this section than the monthly charges for accommodations, services, and care as described in the resident agreement (22VAC40-73-390 A), and no facility shall be required to move and transport a resident's belongings outside the state unless such assistance is for a location outside the state within 50 miles of the facility.

K. If the facility employs a third party to pack, move, or transport the resident's belongings as described in subdivisions I 3 and I 4 of this section, no costs shall be billed to the resident.

L. [For all discharges, including involuntary and emergency discharges, the following regulations apply:

1.] If the discharge timeframe is not met, although persistent efforts have been made, the facility shall document the reason.

[~~M.~~ 2.] When the resident is discharged and moves to another caregiving facility, the ~~assisted living~~ discharging facility shall provide to the receiving facility such information related to the resident as is necessary to ensure continuity of care and services. Original information pertaining to the resident shall be maintained by the ~~assisted living~~ facility from which the resident was discharged. The ~~assisted living~~ facility shall maintain a listing of all information shared with the receiving facility.

[~~J. N.~~ 3.] Within 60 days of the date of discharge, ~~each~~ the facility shall provide the resident ~~or his~~ and the resident's legal representative ~~shall be given~~ a final statement of account, any refunds due, and return of any money, property, or things of value held in trust or custody by the facility.

22VAC40-73-435. Involuntary and emergency discharge appeals.

A. A resident may appeal any involuntary or emergency discharge, except discharges resulting from the closing of the facility in accordance with this chapter, by completing the department-provided [involuntary or emergency] discharge appeal hearing request form and submitting it to the department's Division of Appeals and Fair Hearings.

B. [~~A discharge~~ An] appeal [of an involuntary or emergency discharge] must be filed with the department's Division of Appeals and Fair Hearings within 30 days of the resident and the resident's legal representative or designated contact person, if any, receiving the written [involuntary or emergency] discharge notice. An appeal is considered filed upon receipt by the department's Division of Appeals and Fair Hearings.

C. A resident who no longer resides in the facility due to an emergency discharge retains the right to file an appeal pursuant to subdivision A 5 of § 63.2-1805 of the Code of Virginia.

D. When a resident appeals [~~a~~ an involuntary] discharge, the facility shall:

1. Allow [~~the~~ a] resident [who has been issued an involuntary discharge] to continue to reside in the facility, free from retaliation, until the appeal has a final department case decision, as defined in § 2.2-4001 of the Code of Virginia, unless [~~the discharge is an emergency discharge or~~] the resident has developed a condition or care need that is prohibited by 22VAC40-73-310 H in accordance with § 63.2-1805 D of the Code of Virginia;

2. Assist the resident and the resident's legal representative or designated contact person, if any, with filing the appeal; and

3. Upon request, provide a postage prepaid envelope addressed to the department's Division of Appeals and Fair Hearings.

[E. When a resident appeals an emergency discharge, the following applies:

1. The facility shall assist the resident and the resident's legal representative or designated contact person, if any, with filing the appeal; and

2. The facility shall, upon request, provide a postage prepaid envelope addressed to the department's Division of Appeals and Fair Hearings.

3. A resident who has been issued an emergency discharge does not have the right to remain in the facility pending the final case decision of the appeal.]

~~E.~~ F.] The [involuntary and emergency] discharge appeal process.

1. The department's Division of Appeals and Fair Hearings will conduct the [involuntary and emergency] discharge appeal hearings.

2. The Division of Appeals and Fair Hearings will provide written confirmation of receipt of the [involuntary or emergency] discharge appeal hearing request form to the resident and the resident's legal representative or designated contact person, if any, and the facility

within 10 days of receipt of the [involuntary or emergency] discharge appeal hearing request form.

3. The hearing officer will conduct an appeal hearing within 30 days following the date of confirmation, unless a different timeframe is agreed upon by the parties and the hearing officer.

4. The burden of proof shall be upon the facility to present evidence to support that the [involuntary or emergency] discharge was in compliance with § 63.2-1805 of the Code of Virginia and this chapter.

5. A final written department case decision, as defined in § 2.2-4001 of the Code of Virginia, will be sent by mail and electronic mail to the resident and the resident's legal representative or designated contact person, if any, and the facility within 20 days of the hearing, unless the case record is held open by the hearing officer to receive additional evidence.

6. The final department case decision may be appealed in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

[~~7. When a resident appeals a final department case decision, the requirements in subsection D of this section do not apply.~~

G. The facility shall not be required to receive the resident back into the facility if the resident was involuntarily discharged, and the resident voluntarily moved out of the facility prior to the final case decision.

H. If a resident is moved out of the facility under an emergency discharge, and the case decision reverses the discharge, and the resident wishes to move back to the facility, the facility shall:

1. Determine if the resident has significant changes, including prohibited conditions pursuant to § 63.2-1805 D of the Code of Virginia or 22VAC40-73-310 H;

2. Receive the resident back into the facility;

3. Have the resident or the appropriate legal representative, if applicable, sign a resident agreement pursuant to 22VAC40-73-390; and

4. Update the Individualized Service Plan (ISP) pursuant to 22VAC40-73-450 and the Uniform Assessment Instrument (UAI) pursuant to 22VAC40-73-440 within seven days of the resident's return.]

FORMS (22VAC40-73)

~~Report of Tuberculosis Screening (eff. 10/2011)~~

~~Virginia Department of Health Report of Tuberculosis Screening Form (undated)~~

~~Virginia Department of Health TB Control Program Risk Assessment Form, TB 512 (eff. 9/2016)~~

[~~Assisted Living Facility Discharge Notice and Appeal Hearing Request (DRAFT)~~

Assisted Living Facility Involuntary or Emergency Discharge Notice Form

Assisted Living Facility Involuntary or Emergency Appeal Hearing Request Form]

Instructions for Completing the
Assisted Living Facility Involuntary or Emergency Discharge Notice Form
Required by the Virginia Department of Social Services

The Assisted Living Facility Involuntary or Emergency Discharge Notice form is required by the *Standards for Licensed Assisted Living Facilities* (22VAC40-73). The facility is required to complete this form for all involuntary and emergency discharges. A copy must be provided to the resident and the resident's legal representative or designated contact person, if any. This form must also be used to notify the Virginia Department of Social Services (VDSS) Division of Licensing Programs (DOLP), the State Long Term Care Ombudsman (ombudsman@dars.virginia.gov), and local departments of social services (LDSS) for public pay residents. A copy of this form shall be retained in the resident's record.

The facility is required to provide the resident, the resident's legal representative or designated contact person, if any, with an involuntary or emergency discharge appeal hearing request form at the time of involuntary or emergency discharge notice.

Please refer to 22VAC40-73-430 & 22VAC40-73-435 for requirements relating to involuntary or emergency discharges and involuntary or emergency discharge appeals.

The involuntary or emergency discharge notice form starts on the page after these instructions. The facility must complete the form in its entirety. If needed, the facility can attach additional documentation.

This form can be accessed on the VDSS website and is available in two versions: a fillable PDF and a Microsoft Word document (Doc). Both versions can be completed electronically and must be printed. Please select the version that best suits your preferences and capabilities.

- No additional topics or items may be added to the form.
- Information entered on this form must be fully and accurately disclosed in plain language, easily read, and in at least 12-point type if completed electronically.

Please contact your Licensing Inspector if you have any questions about the involuntary or emergency discharge notice or involuntary or emergency discharge appeal request form.

DO NOT ATTACH THESE INSTRUCTIONS TO THE INVOLUNTARY OR EMERGENCY DISCHARGE NOTICE

ASSISTED LIVING FACILITY INVOLUNTARY OR EMERGENCY DISCHARGE NOTICE

RESIDENT INFORMATION	
Name:	**Phone number:**
Email Address:	
LEGAL REPRESENTATIVE OR DESIGNATED CONTACT PERSON (if applicable)	
Name:	**Phone Number:**
Address:	
Email Address:	**Relationship:**
FACILITY INFORMATION	
Facility Name:	**Phone Number:**
Address:	
Facility Administrator or Designee:	
Email Address:	
DISCHARGE INFORMATION	
Date of Discharge Notice:	**Projected or Actual Discharge Date:**
Type of Discharge (Check only one)	☐ **Involuntary** ☐ **Emergency**

Reason for Discharge
(Must select one or more of the reasons below)

- ☐ **You have a medical condition or care need that is not allowed in an ALF.**
- ☐ **This facility can no longer meet your care needs.**
- ☐ **You did not follow the terms and conditions of your resident agreement.**
- ☐ **You did not pay your monthly charges.**
- ☐ **This facility is closing on .**
- ☐ **This is an Emergency Discharge due to an immediate and serious risk to the health, safety, or welfare of you or others.**

Discharge Details
(Explain circumstances for the involuntary or emergency discharge and reasonable efforts made to resolve issues)

INVOLUNTARY OR EMERGENCY DISCHARGE PLANS	
Resident's Destination:	**Phone Number:**
Address:	

Involuntary or Emergency Discharge Planning Assistance
(Actions taken by the facility to assist with the discharge and relocation process)

YOUR INVOLUNTARY OR EMERGENCY DISCHARGE APPEAL RIGHTS

You have the right to appeal this involuntary or emergency discharge, unless it is due to the facility closing.

If you were discharged under an involuntary discharge, you have the right to continue to reside in the facility, free from retaliation, until the appeal has a final case decision unless you have developed a condition or care need that is prohibited in § 63.2-1805 D of the Code of Virginia or *Standards for Licensed Assisted Living Facilities*, 22VAC40-73. If you have received an involuntary discharge notice and move out before a final case decision is made on your appeal, you will be considered discharged, regardless of the outcome of your appeal. If you wish to be re-admitted to the facility, you will need to apply as a prospective resident for admission at the facility.

If you are discharged under an emergency discharge and no longer live in the facility, you can still appeal if you file the request within 30 days from the date you received the written discharge notice.

The facility must assist you and your legal representative, if any, to file an appeal and provide, upon your request, a postage prepaid envelope addressed to the VDSS Division of Appeals and Fair Hearings.

HOW TO APPEAL

You may file an appeal by completing the attached involuntary or emergency discharge appeal hearing request form and submitting it to VDSS Division of Appeals and Fair Hearings.

Appeals must be filed within 30 days from the date you received your involuntary or emergency discharge notice.

Discharge Appeal Hearing Requests may be submitted by:
Fax: (804) 726-7656,
Email: appeals@dss.virginia.gov, or
Mail: VDSS Division of Appeals and Fair Hearings
5600 Cox Road Glen Allen, VA. 23060

If you have questions about involuntary or emergency discharge appeals, ~~you may~~ contact:

VDSS Division of Appeals and Fair Hearings
Toll free number: 1-800-552-7096 or
Email: appeals@dss.virginia.gov

If you need help, contact:

Virginia Long-Term Care Ombudsman Program:

Toll free number: 1-800-552-5019 or Email: ombudsman@dars.virginia.gov

SIGNATURES

X	
Licensee, Administrator, or Designee	Date
X	
Resident	Date
X	
Resident's Legal Representative or Designated Contact, if applicable	Date

ASSISTED LIVING FACILITY INVOLUNTARY OR EMERGENCY DISCHARGE APPEAL HEARING REQUEST

Instructions: If you wish to appeal your involuntary or emergency discharge, please complete this form and submit to VDSS Division of Appeals and Fair Hearings within 30 days of receiving your involuntary or emergency discharge notice.

The completed hearing request form and additional documentation can be submitted by fax at (804) 726-7656, email at appeals@dss.virginia.gov or mail to VDSS Division of Appeals and Fair Hearings, 5600 Cox Road, Glen Allen, VA 23060. Please attach a copy of your involuntary or emergency discharge notice.

RESIDENT INFORMATION	
Name:	**Phone Number:**
Current Address:	
Email Address:	
LEGAL REPRESENTATIVE OR DESIGNATED CONTACT PERSON (if applicable)	
Name:	**Phone Number:**
Address:	
Email Address:	**Relationship:**
DISCHARGING FACILITY INFORMATION	
Name:	**Phone Number:**
Address:	
Facility Administrator or Designee:	
Facility Email Address:	

DISCHARGE INFORMATION		
Type of Discharge (Check only one)	☐ **Involuntary**	☐ **Emergency**
Date you received the discharge notice:	**Projected or Actual Discharge Date:**	
Are you still residing at the facility pending the discharge appeal?	☐ **Yes**	☐ **No**
Reason for Discharge:		

Reason for Involuntary or Emergency Discharge Appeal

In the box below, please describe why you disagree with your involuntary or emergency discharge. If more space is needed, you may attach additional pages.

SIGNATURES	
X **Resident**	**Date:**
X **Resident's Legal Representative or Designated Contact, if applicable**	**Date:**