



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22VAC40-72
Regulation title	Standards for Licensed Assisted Living Facilities
Action title	Assisted Living Facility Liability Insurance Disclosure
Date this document prepared	October 17, 2013

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of this action is to implement Chapter 320 of the 2013 Acts of Assembly, which amended §§ 63.2-1805 and 63.2-1808 of the Code of Virginia (Code) relating to assisted living facility (ALF) liability insurance disclosure. The regulatory action will establish the minimum amount of liability insurance coverage to be maintained by an ALF for purposes of disclosure. The action also will include changes to the regulations to require an ALF to disclose to any resident, prospective resident, and his legal representative, if any, whether or not it maintains the minimum amount of liability insurance coverage.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

Section 63.2-217 of the Code provides the State Board of Social Services (Board) the general authority for the development of regulations to carry out the purposes of Title 63.2. Section 63.2-1732 gives the Board the authority to adopt regulations to carry out provisions related to licensed ALFs and to protect the

health, safety, and welfare of residents. This regulatory action will implement amendments by the 2013 Session of the General Assembly related to liability insurance disclosure in §§ 63.2-1805 and 63.2-1808 of the Code.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The regulatory action is necessary to amend the ALF regulation to meet the requirements of state law, i.e., to establish a minimum amount of liability insurance coverage for purposes of disclosure and to require ALFs to disclose whether or not they maintain this minimum amount. Knowing whether a facility maintains at least the minimum amount of coverage will allow residents and potential residents to make informed decisions regarding residence in assisted living facilities and possible compensation for injuries and losses from negligent acts of a facility.

Substance

Please detail any changes that will be proposed. Be sure to define all acronyms. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

Proposed changes will add an item to the disclosure statement and the resident agreement with an assisted living facility that requires an ALF to state whether or not it maintains the minimum amount of liability insurance coverage. An additional change will ensure that the information regarding liability insurance coverage is kept current for those individuals required by the Code to be given the information, i.e., residents, prospective residents, and legal representatives, if any.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

Including the requirements for liability insurance disclosure in already existing standards i.e., disclosure and resident agreement with the facility, is the least burdensome and least intrusive method to incorporate the mandates of state statutes. There is no less intrusive or less costly alternative for small businesses for achieving the purpose of the regulation.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

Please also indicate pursuant to your Public Participation Guidelines whether a panel will be appointed to assist in the development of the proposed regulation. Please state one of the following: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.

The agency is seeking comments on this regulatory action, including but not limited to 1) ideas to be considered in the development of this proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) the probable effect of the regulation on affected small businesses, and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to Judith McGreal, Virginia Department of Social Services, Division of Licensing Programs, 801 East Main Street, Richmond, VA 23219, telephone: (804) 726-7157, fax: (804) 726-7132, email: judith.mcgregal@dss.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.

A panel will not be used to assist in the development of the proposed regulation. Meetings have already been held with ALF provider associations and representatives of trial lawyers' association/law firms. On October 17, 2013, rather than approve a fast track regulatory action, the State Board of Social Services approved a Notice of Intended Regulatory Action. Although initially the changes were not expected to be controversial, as ALFs will not be required to actually have liability insurance coverage, it became apparent that there are concerns regarding the minimum amount for disclosure purposes.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed changes will not have any impact on the institution of the family and family stability.
