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## Proposed Regulation Agency Background Document

<b>Agency name</b>	State Board of Social Services
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	22 VAC40-73
<b>VAC Chapter title(s)</b>	<i>Standards for Licensed Assisted Living Facilities</i>
<b>Action title</b>	Amends sections to add appeal process for discharges.
<b>Date this document prepared</b>	February 19, 2025

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

Standards for Licensed Assisted Living Facilities, 22VAC40-73, provide regulations for the Department of Social Services (DSS) to license, inspect and monitor assisted living facilities (ALF). This action will amend this regulation as required by Chapter 706 of the 2022 Acts of Assembly, which amended § 63.2-1805 of the Code of Virginia and requires DSS to adopt regulations regarding involuntary discharge of residents. The amendments in this action add definitions of emergency discharge and involuntary discharge, terms and conditions for an involuntary discharge, and an appeal process for ALF residents to appeal certain discharge decisions should they choose to do so.

### Acronyms and Definitions

*Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.*

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DSS – Department of Social Services  
VAC – Virginia Administrative Code  
ALF – Assisted Living Facility  
DARS – Department of Aging and Rehabilitative Services

### Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”*

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Pursuant to Chapter 706 of the 2022 Acts of Assembly, which amended § 63.2-1805 of the Code of Virginia, DSS is required to adopt regulations regarding involuntary discharge of residents in assisted living facilities. This action provides ALF and residents requirements for involuntary discharge situations and creates a discharge appeal process to follow should one be needed. This action is intended to expand protections and offer clarification for facilities and residents.

### Legal Basis

*Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.*

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The State Board of Social Services has the legal authority to adopt regulations and requirements for licensing ALF in accordance with §§ 63.2-217, 63.2-217.1, 63.2-1732, 63.2-1805, and 63.2-1808. The Code mandates promulgation of regulations to address involuntary discharge of ALF residents, including time frames, notification requirements, conditions, and the process for appeal. This regulatory action will provide direction for involuntary discharge, pursuant to § 63.2-1805.

### Purpose

*Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.*

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This action will amend this regulation as required by Chapter 706 of the 2022 Acts of Assembly, which amended § 63.2-1805 of the Code of Virginia and requires DSS to adopt regulations regarding involuntary discharge of residents. This regulatory change is essential to protect the health, safety, and welfare of residents residing in an ALF by clearly describing conditions for involuntary discharge from an ALF, and requirements to notify residents of their right to appeal an involuntary or emergency discharge. The amendments in this action add definitions of emergency discharge and involuntary discharge, terms and conditions for an involuntary discharge, and an appeal process for ALF residents to appeal certain discharge decisions should they choose to do so. This action will ensure that ALF residents are not discharged inappropriately and allow residents a legal remedy to appeal the discharge if discharge requirements are not followed.

## Substance

*Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.*

This amendment will add a definition of 'emergency discharge' and 'involuntary discharge' and clarify the terms and conditions for when and how these types of discharges are permitted, including time frames and the option for a resident to appeal the facility's decision to discharge.

## Issues

*Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.*

The primary advantage of this action for the public is allowing residents in an ALF to appeal an involuntary discharge, which has not previously been permitted. There are no disadvantages to the public from this action. There are no advantages or disadvantages to the agency or Commonwealth, as this action is required by state law, § 63.2-1805. There could be disadvantages to the regulated programs (ALFs) if the programs do not follow requirements when involuntarily discharging residents, as the residents can now appeal the discharge, and there is a legal remedy for residents that previously did not exist.

## Requirements More Restrictive than Federal

*Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.*

There are no applicable federal requirements.

## Agencies, Localities, and Other Entities Particularly Affected

*Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.*

Other State Agencies Particularly Affected

There is currently one ALF operated by another state agency, the Department of Veteran’s Services. The impact to this state agency could be additional costs for attorney fees if a resident appeals an involuntary discharge and maintaining the resident’s health and safety during the appeal, or additional costs for relocation assistance, if needed by the resident.

Localities Particularly Affected

There are currently two ALF operated by Chesterfield and Orange counties. The impact to these localities could be additional costs for attorney fees if a resident appeals an involuntary discharge and to maintain the resident’s health and safety during the appeal or additional costs for relocation assistance, if needed by the resident.

Other Entities Particularly Affected

There are currently six ALF operated by the Fairfax County Redevelopment and Housing Authority, Mounty Rogers CSB, New River Valley CSB, Region Ten CSB, and Western Tidewater CSB. The impact to these other entities could be additional costs for attorney fees if a resident appeals an involuntary discharge and to maintain the resident’s health and safety during the appeal or additional costs for relocation assistance if needed by the resident.

**Economic Impact**

*Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits) anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.*

**Impact on State Agencies**

<p><i>For your agency:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including:</p> <ul style="list-style-type: none"> <li>a) fund source / fund detail;</li> <li>b) delineation of one-time versus on-going expenditures; and</li> <li>c) whether any costs or revenue loss can be absorbed within existing resources.</li> </ul>	<p>DSS Office of Appeals and Fair Hearings will need two staff, a Senior Hearing Officer and an Administrative Technician, to process ALF involuntary discharge appeals. The cost for the staff is \$187,708 for FY25 and \$187,708 each year thereafter. Funds were provided in the state budget.</p> <p>DSS Licensing will need to upgrade the licensing information system to track and monitor ALF discharges and appeals. The estimated one-time cost is \$500,000 for FY25.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>There is currently one ALF operated by the Department of Veteran’s Services. The appeal process for involuntary discharges could result in costs for any attorney fees and to maintain the resident’s health and safety during the appeal. Attorney fees for an appeal could range from \$1500-\$4000 depending on the time involved for the appeal. There is no information to estimate how many involuntary discharges will occur and how many of those involuntary discharges will be appealed. Additional costs could be incurred associated with relocation assistance if a resident needs support following an involuntary or</p>

	<p>emergency discharge. Additional costs could be the ALF staff resources if the ALF provides the assistance, or the cost of a third party to pack, move, and transport a resident's belongings. Relocation assistance for a third party to pack, move, and transport a resident's belongings could cost \$600-\$4000 depending on the volume of the resident's belongings and the distance to the new facility. The cost ALF incur depend on the number of involuntary or emergency discharges and the number of residents requiring relocation assistance.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>This change will bring state agencies into compliance with state code, § 63.2-1805 and will allow DSS licensing to track discharge and appeals data to better understand the scope of the issue.</p>

**Impact on Localities**

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.*

<p>Projected costs, savings, fees, or revenues resulting from the regulatory change.</p>	<p>See ORM form table 2.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>See ORM form table 2.</p>

**Impact on Other Entities**

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.*

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>See ORM form table 4.</p>
<p>Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that:  a) is independently owned and operated, and;  b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>See ORM form table 4.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to:  a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses;</p>	<p>See ORM form table 4.</p>

b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	
Benefits the regulatory change is designed to produce.	See ORM form table 4.

### Alternatives to Regulation

*Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.*

There are no other alternatives since this regulatory action is required by § 63.2-1805 of the Code of Virginia.

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.*

### Regulatory Flexibility Analysis

*Consistent with § 2.2-4007.1 B of the Code of Virginia, describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.*

There are no other alternative regulatory methods, since this regulatory action is required by § 63.2-1805 of the Code of Virginia.

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.*

### Public Comment

*Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency’s response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.*

Committer	Comment	Agency response
Virginia Center for Assisted Living (VHCA-VCAL)	<p>VCAL opposes the Fast-Track Process to update the Standards for Licensed Assisted Living Facilities to Add Appeal Process for Discharges</p> <p>The proposed changes do not provide adequate details for the new Division of Appeals and Fair Hearing, therefore more time is needed for DSS to develop and publish those pertinent details for proper review and comment from stakeholders.</p>	<p>Fast-track process ended due to public objection comments. This action will undergo the standard regulatory process.</p> <p>The regulation has been revised to provide clarification and details of the discharge appeal process.</p>
Alexander Ford	<p>Our Commonwealth's Seniors Must Have the Right to Appeal</p> <p>In support of all the other many commenters here who have highlighted the very serious issues that come with not having any current appeals process for Involuntary Discharge, I strongly advocate for an appeals process for residents on the Fast Track. We must not delay this fair and reasonable due process right for the elderly in Virginia.</p> <p>I am distressed by the loophole that Assisted Living Facilities are using to unnecessarily discharge seniors for unethical and even illegal motivations. Creating great distress and harm that could be avoided, if the appeals process was in place.</p> <p>We must close this loophole immediately and give our elderly and impaired the right to appeal and have a voice. These Virginia residents have been needlessly and unfairly exposed, unprotected, and without due process for too long.</p> <p>It is concerning to see how many Assisted Living Communities are trying to delay this and drag it out.</p>	<p>Fast-track process ended due to public objection comments. This action will undergo the standard regulatory process.</p>
Anonymous	<p>I have a family member in Assisted Living. I'm aware that Virginia ALF residents have no due process or protections against unlawful or unnecessary evictions. Our elders in Virginia deserve better. Please do not delay the implementation of</p>	<p>Fast-track process ended due to public objection comments. This action will undergo the standard regulatory process.</p>

	<p>an appeals process for ALF residents.</p>	
<p>Anonymous</p>	<p>ALFs are Abusing Residents w/ Threat of Involuntary Discharge. FAST TRACK NEEDED</p> <p>ALFs have the unchecked and unregulated ability to evict residents on short notice, and have used this to unnecessarily and unfairly discharge residents for items such as raising issues about improper care, asking questions, or to sell the resident's room to a higher bidder.</p> <p>The elderly and infirm, who are often paying everything they have worked for their entire lives to these private pay facilities, currently have no rights, protections, or reasonable due process in this area.</p> <p>The implementation of an Appeals Process and protections against this form of elder abuse from ALFs is long overdue.</p> <p>Any ALF company that can't work with these reasonable protections for the elderly and infirm can leave the state. There will be a more humane company to take their place.</p> <p>ALFs use the ability to discharge residents at will, without protection/regulation, as a means to intimidate residents and families, and this is well documented. ALFs scare and threaten families with this unregulated ability to discharge residents at their whim. The message is that the elderly have no voice and no rights. This also creates an atmosphere where residents are afraid to organize a residents council even though they have the explicit right to do so, to share feedback about their community; and there is a general environment where residents are afraid to voice fair and reasonable issues, or concerns. Or basic needs. It is a grave imbalance that</p>	<p>Fast-track process ended due to public objection comments. This action will undergo the standard regulatory process.</p>

	<p>is being abused, and is abusive to ALF residents.</p> <p>Elderly and impaired Virginians deserve much better than that. Even more so at the prices these profit-driven companies charge. They are more concerned with Executive and Manager bonuses. They charge as much as possible, and pay their staff as little as possible. The margins are significant. Profit as the priority, far exceeds a focus on care. The companies that are most vocally against this, and protesting as a group — those companies should raise the most eyebrows among DSS inspectors, state ombudsmen, and the media / journalists. Virginians need an appeals process yesterday, and so we as an organization of Virginia ALF families and residents, support fast tracking the appeals process, for the law that was passed a year and 1/2 ago.</p> <p>Also, there should be something in the regulation that puts the onus of documenting any issues with the resident in writing, and the resident or their representative needs to confirm receipt.</p> <p>In the regulation, residents should be granted a remedy period to correct or react to any written communications from the ALF.</p> <p>We have seen too often a facility discharging a resident with absolutely no documentation of any issues, and they do not put anything in writing to the resident or family. That must change.</p> <p>Too often the ALF is serving discharges for untoward and unethical reasons, out of left field to the resident or family, and the ALF has absolutely no documentation for any communication about it. They must be required to provide notices in writing to prevent abuse.</p>	<p>The proposed regulation includes requirements for written notification and documentation.</p> <p>The proposed regulation requires the ALF to make appropriate reasonable efforts to resolve issues with the resident prior to discharge and provides at least 30 days for the resident to cure a delinquency in the event of non-payment.</p> <p>The proposed regulation includes requirements for written notification and documentation.</p>
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	<p>Please fast track these long overdue rights and access to due process for the voters of Virginia.</p>	
<p>disability Law Center of Virginia (dLCV)</p>	<p>The disAbility Law Center of Virginia (dLCV) thanks you for this opportunity to comment on State Board of Social Services 22VAC40-73. Standards for Licensed Assisted Living Facilities (Fast Track). As the designated Protection and Advocacy System for the Commonwealth of Virginia, dLCV routinely works with people with disabilities receiving services in Virginia. In addition, dLCV receives calls from residents in Assisted Living Facilities (ALF) and their legal representatives. During the past two years, dLCV conducted an ALF Monitoring Project where our advocates and attorneys visited 75 ALF throughout Virginia and interviewed both residents and administrators.</p> <p>As stated by The Consumer Voice for Quality Long Term Care, “The threat of transfer or discharge . . . can be both frightening and stressful for residents and their families. Too often, a facility may respond to a resident’s difficulties, increasing need for care, or repeated questions or complaints from family members by attempting to transfer or discharge the resident.” In our experiences as advocates, we have seen this happen often.</p> <p>As a result, dLCV fully supports the right to appeal an involuntary discharge from an ALF and the need for the swift development of regulations to fully implement the appeal process. Specific and consistent regulations with long needed protections need to be implemented sooner rather than later to protect residents who are being involuntarily discharged from their home.</p> <p>General Concerns</p> <p>1. The regulations should require a “safe” discharge for residents who have mental illness, cognitive</p>	<p>The regulation was revised to clarify when involuntary and emergency discharges are permitted and describes the discharge</p>

	<p>impairment, physical disability, no support system, limited income, and no safe, accessible and appropriate place to live. The previous living arrangement may no longer be available or safe and may be inhabitable. A family member's home may have stairs leading into the dwelling and may not have space or an accessible bathroom. The regulations must address the options when no safe discharge has been found.</p> <p>2. Since the resident can be discharged for not following the "terms and conditions of the resident agreement between the resident and the ALF" (presumed to be the Admissions Contract), the regulations must require documentation that the resident or legal representative signed and was given a copy of the resident agreement. The regulations must require that contract be written and explained in a way that the resident can understand.</p> <p>3. The regulations must require that conditions in the agreement may not be designed to adversely impact residents.</p> <p>4. Prior to or at admission, the long-term costs and possibility of discharge when resident funds are depleted, must be addressed and documented.</p> <p>5. The regulations must include a provision for when the representative payee, responsible party or guardian receives the resident's funds but is not paying the resident's bill. Adult Protective Services should be notified and the resident protected from discharge.</p> <p>6. The regulations must include a provision for assistance in the administrative hearing process. In some areas of the state, a lawyer may be available through legal aid, or the local long-term ombudsman may be able to assist. If these resources are not available, other resources must be available.</p>	<p>appeal process which allows residents a legal remedy to appeal the discharge if discharge requirements are not followed.</p> <p>The current regulation requires the resident and legal representative, if any, to sign and receive a copy of the resident agreement.</p> <p>The current regulation requires ALF to protect the physical and mental well-being of residents.</p> <p>The current regulation requires ALF to review the costs of accommodations and services, facility rules, and actions, circumstances, and conditions that could result in discharge prior to admission.</p> <p>Provisions for representative payees, guardians, or other related individuals who are not paying the resident's bill is beyond the purview of this regulation.</p> <p>Provisions for assistance in the administrative hearing process is beyond the purview of this regulation.</p>
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	<p>7. The regulations should require the treating physician, psychiatrist, or psychologist to document their review of the discharge.</p> <p>8. The regulations must specify the recourse if the resident successfully appeals but had already been discharged.</p> <p>9. If the ALF decides to no longer participate in Auxiliary Grant program, they must be responsible for assisting the resident to obtain another Auxiliary Grant placement.</p> <p>10. The regulations must make clear that an ALF cannot discharge to a homeless shelter absent express consent. The regulations must identify resources available to assist the resident where no legal representative or designated contact person or family member who is able or willing to assist.</p> <p>The terms used in the regulations, ALF Discharge Notice Form and ALF Discharge Appeal Hearing Request Form should be listed in the Definition section.</p> <p>1. There should be a definition of Auxiliary Grant, which is referenced in private pay and public pay definitions.</p> <p>2. Add Designated Contact Person which is used on the ALF Discharge Notice Form.</p> <p>3. Either use Developmental Disability, which would include intellectual disability and autism spectrum disorder, or use Intellectual Disability but include Autism Spectrum Disorder.</p> <p>4. Revise the definition for Involuntary Discharge to read "Involuntary discharge" means when a facility requires a resident to move out of the assisted living facility and not be allowed to return."</p> <p>5. Define Assessor for Public Pay Residents. This term will be unfamiliar to many residents.</p>	<p>Adding requirements for physicians and other healthcare professionals to review the discharge would be burdensome, as not all discharges are due to medical or mental health needs.</p> <p>If the final case decision overturns the discharge, the resident will be permitted to continue residing at the facility.</p> <p>The current regulation requires ALF to assist residents in the discharge process.</p> <p>Requirements related to housing resources are beyond the scope of this action and purview of this regulation.</p> <p>The form title is described in the proposed regulation and does not need to be included in the definitions section.</p> <p>Defining auxiliary grant is beyond the scope of this action.</p> <p>The term "designated contact person" is described in current regulation, 22VAC40-73-380 A 10.</p> <p>Revising the definition of Intellectual Disability or adding the definition of Developmental Disability is beyond the scope of this action.</p> <p>The definition of involuntary discharge has been revised for clarification.</p> <p>Qualified assessor is defined in current regulation.</p>
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	<p>6. Define Memory Care Unit.</p> <p>7. Include a definition of Representative Payee.</p> <p>8. Define Resident Agreement, as facilities often use other terminology such as which we assume is the Admission Agreement or Admission Contract.</p> <p>9. Add State Long-Term Care Ombudsman. We recommend that the State Long-Term Care Ombudsman be added as a resource on the ALF Discharge Notice Form.</p> <p>22VAC40-73-435. Appeal of an emergency or involuntary discharge</p> <p>1. The Regulations state, "D. The facility shall provide a postage prepaid envelope addressed to the department to use if the appeal is mailed, if requested by the resident." We recommend that the facility fax the appeal if requested by the resident.</p> <p>2. The State Long-Term Care Ombudsman and The disAbility Law Center of Virginia be added as possible resources. Discharge Notice Form (22VAC40-73-430)</p> <p>1. Align the Involuntary Discharge Notice with that used by nursing facilities.</p> <p>2. We note that when viewed online, the print is too small for an older adult, even one without visual impairment. However, when printed, the font size is adequate.</p> <p>3. The mailing address or email of the legal representative should be included.</p> <p>4. The form should include list the acceptable reasons for discharge. The form should specify the only acceptable reasons for discharge, and not allow for any added reasons.</p> <p>5. Include a space for the resident to sign as receiving the Discharge Form.</p>	<p>The term "memory care unit" is not used in the regulation. "Safe, secure environment" is defined and used in regulation.</p> <p>"Representative Payee" is not used in the regulation.</p> <p>Resident agreement requirements are in 22VAC40-73-390.</p> <p>The State Long-Term Care Ombudsman's contact information has been added to the discharge notice form.</p> <p>The proposed regulation states the ALF shall assist the resident with filing the appeal. Discharge appeals can be filed by mail, fax, or email.</p> <p>The State Long-Term Care Ombudsman's contact information has been added to the discharge notice form.</p> <p>The discharge notice form has been revised to include all required information in accordance with § 63.2-1805 of the Code of Virginia.</p> <p>The discharge notice form includes sections for the legal representative's contact information.</p> <p>The discharge notice form includes reasons for an involuntary discharge in accordance with § 63.2-1805 of the Code of Virginia.</p> <p>The discharge notice form includes space for all required signatures.</p>
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	<p>6. Include the disAbility Law Center of Virginia and State Long-Term Care Ombudsman, and their toll-free numbers, as possible resources. Do not suggest sending discharge notices to dLCV.</p> <p>Discharge Appeal Hearing Request Form</p> <p>1. Add "Resident" to "Resident/Appellant" Information. The term "Appellant" will be unfamiliar to many.</p> <p>2. The resident needs to be able to appoint someone to act on their behalf if they are not able to act, with space for such appointment resident on the form.</p>	<p>The requirement to post the suggested resource's contact information exists in current regulation regarding resident rights.</p> <p>The discharge appeal hearing request form was revised to replace "appellant" with "resident".</p> <p>The discharge notice form includes fields to list a legal representative or designated contact person.</p>
Teresa Skehan	<p>I believe that our advocacy for seniors must never take a back seat. We must have strong protection and appeal rights for assisted living residents. An appeal is the right to examine; to shape a point-of-view. We must support the appeal process and all it entails. Assisted living facilities cannot have the latitude to discharge occupants and send them to unacceptable domains such as: shelters for the homeless, shelters unfit and ineffectual in caring for residents with particular needs. The time is now. Assisted living residents must have the protection of an appeals process; the protection of which has to be rapid and functional. That is why I endorse the proposed regulation.</p>	<p>Fast-track process ended due to public objection comments. This action will undergo the standard regulatory process.</p>
Anonymous	<p>I do not support the fast-tracking of this regulations. It would be beneficial for all parties involved for the proposed change to the regulation to undergo the standard regulatory process in order to allow sufficient time for analysis of its possible impact. The proposed regulation in question should impose a specific time frame of less than 10 days for the state's final disposition.</p>	<p>Fast-track process ended due to public objection comments. This action will undergo the standard regulatory process.</p> <p>The regulation was revised to specify that a final case decision will be provided within 20 days of the hearing.</p>
Michael Schuster, Northern	<p>Assisted Living Facility Residents Need Due Process Protections Now</p>	<p>Fast-track process ended due to public objection comments. This action will undergo the standard regulatory process.</p>

<p>Virginia Aging Network</p>	<p>I have been an advocate for residents of long-term care facilities for over thirty years - both in the District of Columbia and now in Virginia. As the attorney for the D.C. Long-Term Care Ombudsman Program (LTCOP) (until 1995), I wrote the District of Columbia Nursing Homes and Community Residence Facilities Protections Act, granting assisted living facility (called community facilities (CRFs) in D.C.) residents extensive due process rights in involuntary discharge situations, as well as authorizing the long-term ombudsman to request hearings on behalf of residents. See, D.C. Code secs. 44-1000.01, et seq. I represented both the LTCO and CRF residents in many administrative hearings dealing with involuntary discharge. ALF residents in Virginia should be accorded the same due process rights as nursing home residents and tenants in the community. Often these hearings are the only forum in which residents can raise quality of care issues, which are usually the real basis for an involuntary discharge. The District of Columbia more extensive law (than the proposed rule) has stood the test of time - over thirty years. Assisted Living Facilities (i.e., Community Residence Facilities in D.C.) - large and small - have been able to adapt to the law, and residents have been protected. There is no legitimate reason to delay the adoption of this proposed rule.</p>	
<p>Randy Jackson</p>	<p>I am not in favor of the fast tracking of the proposed changes to the discharge process of residents in any assisted living facility. It would be beneficial to all parties involved for the proposed change to the regulation to undergo the <b>standard regulatory process</b> in order to allow sufficient time for analysis of its possible impact. The proposed regulation in question should impose a specific time frame of less</p>	<p>Fast-track process ended due to public objection comments. This action will undergo the standard regulatory process.</p>

	than 10 days for the state's final disposition (ruling).	The regulation was revised to specify that a final case decision will be provided within 20 days of the hearing.
Spring Arbor Senior Living	I do not support the fast-tracking of this regulation. It would be beneficial for all parties involved for the proposed change to the regulation to undergo the <u>standard regulatory process</u> in order to allow sufficient time for analysis of its possible impact. The proposed regulation in question should impose a specific time frame of less than 10 days for the state's final disposition [ruling].	Fast-track process ended due to public objection comments. This action will undergo the standard regulatory process.  The regulation was revised to specify that a final case decision will be provided within 20 days of the hearing.
Terri Lynch	Need the fast track for regulations for appeals. I am a longtime advocate for older adults. I strongly support the proposed regulations and their consideration on a fast track. Nursing home residents have appeal rights, and, in Virginia, many assisted living residents are as impaired as nursing home residents in other states. Tenants in multifamily housing have some safeguards against evictions. However, there is no such protection for assisted living residents. We have seen discharged residents sent to homeless shelters, and shelters are not equipped to serve people who have that level of service need. Assisted living residents need the protection of an appeal process and they need this protection quickly. Please enact these regulations on the fast track.	Fast-track process ended due to public objection comments. This action will undergo the standard regulatory process.
Erica Wood	Need Fast Track for Appeal Regulations As an advocate for assisted living residents, I strongly support the proposed appeal regulations, and the need for fast tracking the approval process. Appeals are in place for nursing home residents; and those in the community have certain safeguards against evictions -- but there is no recourse for assisted living residents who are inappropriately discharged. Some residents have nowhere to go and end up in shelters. Older adults are making up an increasingly higher	Fast-track process ended due to public objection comments. This action will undergo the standard regulatory process.

	<p>percentage of the homeless population. Assisted living residents need the protection of an appeal process -- and because of the lack of affordable housing that can accommodate their needs, they require this protection quickly. Time is of the essence to protect them.</p>	
<p>Alice Reynolds</p>	<p>The process and procedure for an appeal, as currently set forth in the proposed regulations, is vague, undefined, and incomplete. As a result, a number of critical areas of concern involving the proposed appeal process and relevant procedures to be utilized for such an appeal have not been adequately addressed in the proposed regulations or the agency provided discharge notice form.</p> <p>A few examples of these areas of concern include, but are not limited to, the following:</p> <p>The failure to include a specified and acceptable timeframe for the department to notify the facility and resident of the receipt of the appeal, for setting of the appeal for hearing, and the ruling on an appeal.</p> <p>A listing of the documents that the facility and/or resident will be required to present for the appeal.</p> <p>Clarification that the requirement for facilities to assist a resident in the appeal is limited to assistance with the actual filing of the request and does not include assistance in the resident's preparation for a hearing. Further consideration of the obvious and inherent conflict of interest in requiring such facility assistance is required.</p> <p>The standard for granting an appeal and the applicable burden of proof.</p> <p>Information regarding the right to have an administrative or judicial review of the hearing officer's decision, the timeframe for requesting same and whether the</p>	<p>Fast-track process ended due to public objection comments. This action will undergo the standard regulatory process.</p> <p>The regulation has been revised to provide clarification and details of the discharge appeal process.</p> <p>The proposed regulation requires that the facility shall assist the resident with filing the appeal and upon request, provide a postage prepaid envelope addressed to the Department. These requirements are in § 63.2-1805.</p> <p>The regulation has been revised to specify that the burden of proof is on the facility to present evidence to support that the discharge was in compliance with § 63.2-1805 of the Code of Virginia and regulations.</p> <p>The regulation has been revised to include language related to appealing a final</p>

	<p>resident’s right to stay in the facility extends to this level of review.</p> <p>All of the above noted deficiencies in the proposed regulations have significant cost implications to both residents and facilities. Virginia Code §63.2-1805 requires that the resident be allowed to stay in the facility pending finalization of the appeal. Facilities faced with non-paying residents will already have significant account balances that necessitated discharge. Charges incurred during the required 30-day cure period, the 30-day notice of discharge period, and an appeal that might extend for multiple months will quickly increase the balances owed by the residents and their family members. It will be unlikely that facilities will be able to recover these balances. The obvious burden on the facilities must be addressed through the appeal process and procedures must be implemented to minimize the burden on the facilities.</p> <p>It is understood that the appeal process for involuntary discharge is mandated by statute and will have beneficial impacts for residents of assisted living facilities. However, more time is needed through the regular regulatory process for consideration of all relevant issues and crafting regulations to address the needs of all parties involved.</p>	<p>department case decision and specific exclusions.</p>
<p>Theresa Granier</p>	<p>I do not support the fast-tracking of this regulation. It would be beneficial for all parties involved for the proposed change to the regulation to undergo the <u>standard regulatory process</u> in order to allow sufficient time for analysis of its possible impact. The proposed regulation in question should impose a specific time frame of less than 10 days for the state’s final disposition [ruling].</p>	<p>Fast-track process ended due to public objection comments. This action will undergo the standard regulatory process.</p> <p>The regulation was revised to specify that a final case decision will be provided within 20 days of the hearing.</p>
<p>Ann Marie Painter</p>	<p>I do not support the fast-tracking of this regulation. It would be beneficial for all parties involved for the proposed change to the regulation to undergo the <u>standard regulatory process</u> in order to allow</p>	<p>Fast-track process ended due to public objection comments. This action will undergo the standard regulatory process.</p>

	<p>sufficient time for analysis of its possible impact. The proposed regulation in question should impose a specific time frame of less than 10 days for the state’s final disposition.</p>	<p>The regulation was revised to specify that a final case decision will be provided within 20 days of the hearing.</p>
<p>Chloe Burke</p>	<p>I object to the utilization of the fast-track process, as opposed to the customary regulatory promulgation process, for the implementation of the Involuntary Discharge regulations. It is my firm belief that Assisted Living Facilities (ALFs) require more comprehensive information regarding the new appeals process and the role of the newly established Division of Appeals and Fair Hearings.</p> <p>The proposed regulations, unfortunately, lack the requisite level of detail necessary for ALFs to fully comprehend the intricacies of the appeals process. Specifically, there is a notable absence of information regarding when a resident may initiate an appeal, the precise documentation that must be submitted to the Division, the expected timeframe for response to such requests, as well as the timelines that the Department of Social Services (DSS) will adhere to when conducting an appeal hearing and disseminating the notice of findings to both the resident and the facility.</p> <p>Given the significance of these matters, it is imperative that ALFs are provided with clear guidelines and instructions, enabling them to navigate the appeals process with confidence and precision. The current lack of specificity within the proposed regulations not only hampers ALFs' ability to comply effectively but also raises concerns about the potential for procedural ambiguities and inconsistencies.</p> <p>I respectfully urge you to reconsider the use of the fast-track process and instead opt for the customary regulatory promulgation process. By doing so, we can ensure that ALFs are equipped with the</p>	<p>Fast-track process ended due to public objection comments. This action will undergo the standard regulatory process.</p> <p>The regulation has been revised to provide clarification and details of the discharge appeal process.</p>

	necessary information and guidance to effectively administer the appeals process in accordance with the established protocols. Thank you, Chloe Burke	
Eric Hayes, Cardinal Senior Living	<p>Objection to Fast Track</p> <p>Thank you for the opportunity to weigh in on these proposed changes to the discharge procedures. I would like to enter in as an objection to the Fast Track process on a decision to allow adequate time in evaluating the potential outcomes as a result of the proposed. It is important to note that a resident's best interest is always at the core of the any decision made. In addition, a business must have appropriate avenues to access to ensure the best decision can be carried out for all parties involved. As others have commented, there's language in the proposed that should receive attention for change due to uncertainty of interpretation.</p>	<p>Fast-track process ended due to public objection comments. This action will undergo the standard regulatory process.</p> <p>The regulation has been revised to provide clarification and details of the discharge appeal process.</p>
Maryanne Lee	I do not support the fast track of this proposed regulation. It is important for communities to recognize when they can not provide the proper care or meet the needs of residents. Allowing the fast track can cause a significant negative impact on the community's team members as well as financially causing a burden that will be spread to other areas of the business. There needs to be an extensive deep dive into all the areas that this will affect prior to making such a large and unnecessary change.	Fast-track process ended due to public objection comments. This action will undergo the standard regulatory process.
Steven H. Wilkins, Legacy at Imperial Village on behalf of VALA	I do not support the fast track of this proposed regulation. The impact to the communities by allowing residents to stay within a community greatly diminishes the ability of the care givers and the community to provide proper care. This detracts from companies being able to afford to have care givers due to the reduction in resources. Executive Directors down to front line staff perform their jobs because they	Fast-track process ended due to public objection comments. This action will undergo the standard regulatory process.

	<p>have servant hearts, but the reality is that companies have to be able to pay their employees. This process needs to go through the standard regulatory process and create real positive change to an already taxed industry.</p>	
<p>Ed Corbeil, Spring Arbor Senior Living</p>	<p>I do not support the fast track of this proposed regulation; rather it would be beneficial for all parties involved for the proposed change to the regulation to undergo the standard regulatory process in order to allow sufficient time for analysis of its possible impact. Additionally, the proposed regulation in question, in reference to the state's final disposition [ruling] should have a specific time frame of less than 10 days. A long process without a specific time frame will result in greater, more adverse financial loss to assisted living providers.</p>	<p>Fast-track process ended due to public objection comments. This action will undergo the standard regulatory process.</p> <p>The regulation was revised to specify that a final case decision will be provided within 20 days of the hearing.</p>
<p>Mark Klyczek, The Huntington Assisted Living</p>	<p>I am opposed to using the fast track process rather than the normal regulatory promulgation process for the Involuntary Discharge regulations because ALFs need more information about the new appeals process and the role of the Division of Appeals and Fair Hearings.</p> <p>The proposed regulations do not provide enough detail for ALFs to know what the newly created "Division of Appeals and Fair Hearing" process for appeals will require, such as when a resident may have filed an appeal, the documentation required to be submitted to the Division and the timeframe for response to such requests, as well as the timelines DSS will use for conducting an appeal hearing and providing the notice of findings to the resident and facility. Thank you</p>	<p>Fast-track process ended due to public objection comments. This action will undergo the standard regulatory process.</p> <p>The regulation has been revised to provide clarification and details of the discharge appeal process.</p>
<p>Emily Londono, Spring Arbor Senior Living</p>	<p>Objection to Fast Track Pursuant to Virginia Code §2.2-4012.1, the Virginia Assisted Living Association (VALA) files this formal objection to the fast-track rulemaking process currently in</p>	

	<p>progress to update 22VAC40-73, Standards for Licensed Assisted Living Facilities (Standards), to add an appeal process for the involuntary discharge of residents.</p> <p>We request the Virginia Department of Social Services (VDSS) and the State Board of Social Services (SBSS) to utilize the Standard Regulatory Process in amending the Standards to add an appeal process for discharge instead of using the Fast-Track regulatory process.</p> <p>The 2022 amendments to Virginia Code §63.2-1805 specifically require, among other things, that the State Board of Social Services adopt regulations that establish a process for appeals filed pursuant to the amended subsection addressing the involuntary discharge of residents. The actual process and procedure for an appeal, as currently set forth in the proposed regulations, is vague, undefined, and incomplete. As a result, a number of critical areas of concern involving the proposed appeal process and relevant procedures to be utilized for such an appeal have not been adequately addressed in the proposed regulations or the agency provided discharge notice form. A few examples of these areas of concern include, but are not limited to, the following:</p> <ul style="list-style-type: none"> <li>•The failure to include a specified and acceptable timeframe for the department to notify the facility and resident of the receipt of the appeal, for setting of the appeal for hearing, and the ruling on an appeal;</li> <li>•A listing of the documents that the facility and/or resident will be required to present for the appeal;</li> <li>•Clarification that the requirement for facilities to assist a resident in the appeal is limited to assistance with the actual filing of the request and does not include assistance in</li> </ul>	<p>Fast-track process ended due to public objection comments. This action will undergo the standard regulatory process.</p> <p>The regulation has been revised to provide clarification and details of the discharge appeal process.</p> <p>The regulation was revised to specify the timeframes for the discharge appeal process.</p> <p>The regulation has been revised to specify that the burden of proof is on the facility to present evidence to support that the discharge was in compliance with § 63.2-1805 of the Code of Virginia and regulations.</p> <p>The proposed regulation requires that the facility shall assist the resident with filing the</p>
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	<p>the resident's preparation for a hearing;</p> <ul style="list-style-type: none"> <li>•The standard for granting an appeal and the applicable burden of proof;</li> <li>•Information regarding the right to have an administrative or judicial review of the hearing officer's decision, the timeframe for requesting same and whether the resident's right to stay in the facility extends to this level of review.</li> </ul> <p>All of the above noted deficiencies in the proposed regulations have significant cost implications to both residents and facilities. Virginia Code §63.2-1805 requires that the resident be allowed to stay in the facility pending finalization of the appeal unless the discharge is an emergency discharge or the resident has developed a prohibited condition or care need. Facilities faced with non-paying residents will already have significant account balances that necessitated discharge. Charges incurred during the required 30-day cure period, the 30-day notice of discharge period, and an appeal that might extend for multiple months will quickly increase the balances owed by the residents and their family members. It will be unlikely that facilities will be able to recover these balances. The obvious burden on the facilities must be addressed through the appeal process and procedures must be implemented to minimize the burden on the facilities.</p>	<p>appeal and upon request, provide a postage prepaid envelope addressed to the Department. These requirements are in § 63.2-1805.</p> <p>The regulation has been revised to specify that the burden of proof is on the facility to present evidence to support that the discharge was in compliance with § 63.2-1805 of the Code of Virginia and regulations.</p> <p>The regulation has been revised to include language related to appealing a final department case decision and specific exclusions.</p>
<p>Amanda Joyce</p>	<p>Need Fast Track As a long-term care ombudsman in Virginia, I have witnessed residents having no place to go and have no recourse to appeal an arbitrary or retaliatory discharge. This needs to be addressed yesterday and residents in licensed assisted living in Virginia should be afforded the right to appeal discharge actions taken against them and take comfort in that this protection is in place. Eviction protections and</p>	<p>Fast-track process ended due to public objection comments. This action will undergo the standard regulatory process.</p>

	<p>appeals exist in other sects such as the community and nursing homes, so make it so for those who reside in assisted living facilities. I strenuously support fast tracking these regulations.</p>	
<p>Debbie Collier</p>	<p>I strongly support the appeal rights for residents at assisted living facilities. As a long-term care ombudsman, I strongly support the importance of the appeal rights and the need for swift development of regulations to fully implement the process. Residents can be given a 2 week notice to leave a facility and have no right to appeal the decision. They often have nowhere to go, and the facility can give the notice without a valid reason. Therefore, I strongly support the appeal rights of residents in assisted living facilities.</p>	<p>Fast-track process ended due to public objection comments. This action will undergo the standard regulatory process.</p>
<p>Nathan Salisbury</p>	<p>Objection to Fast Track Pursuant to Virginia Code §2.2-4012.1, the Virginia Assisted Living Association (VALA) files this formal objection to the fast-track rulemaking process currently in progress to update 22VAC40-73, Standards for Licensed Assisted Living Facilities (Standards), to add an appeal process for the involuntary discharge of residents.</p> <p>We request the Virginia Department of Social Services (VDSS) and the State Board of Social Services (SBSS) to utilize the Standard Regulatory Process in amending the Standards to add an appeal process for discharge instead of using the Fast-Track regulatory process.</p> <p>The 2022 amendments to Virginia Code §63.2-1805 specifically require, among other things, that the State Board of Social Services adopt regulations that establish a process for appeals filed pursuant to the amended subsection addressing the involuntary discharge of residents. The actual process and procedure for an appeal, as currently set forth in the proposed regulations, is vague, undefined, and incomplete. As a</p>	<p>Fast-track process ended due to public objection comments. This action will undergo the standard regulatory process.</p> <p>The regulation has been revised to provide clarification and details of the discharge appeal process.</p>

	<p>result, a number of critical areas of concern involving the proposed appeal process and relevant procedures to be utilized for such an appeal have not been adequately addressed in the proposed regulations or the agency provided discharge notice form. A few examples of these areas of concern include, but are not limited to, the following:</p> <ul style="list-style-type: none"> <li>•The failure to include a specified and acceptable timeframe for the department to notify the facility and resident of the receipt of the appeal, for setting of the appeal for hearing, and the ruling on an appeal;</li> <li>•A listing of the documents that the facility and/or resident will be required to present for the appeal;</li> <li>•Clarification that the requirement for facilities to assist a resident in the appeal is limited to assistance with the actual filing of the request and does not include assistance in the resident’s preparation for a hearing;</li> <li>•The standard for granting an appeal and the applicable burden of proof;</li> <li>•Information regarding the right to have an administrative or judicial review of the hearing officer’s decision, the timeframe for requesting same and whether the resident’s right to stay in the facility extends to this level of review.</li> </ul> <p>All of the above noted deficiencies in the proposed regulations have significant cost implications to both residents and facilities. Virginia Code §63.2-1805 requires that the resident be allowed to stay in the facility pending finalization of the appeal unless the discharge is an emergency discharge or the resident has developed a prohibited condition or care need. Facilities faced with non-paying residents will already have significant account balances that necessitated discharge. Charges incurred during</p>	<p>The regulation was revised to specify the timeframes for the discharge appeal process.</p> <p>The regulation has been revised to specify that the burden of proof is on the facility to present evidence to support that the discharge was in compliance with § 63.2-1805 of the Code of Virginia and regulations.</p> <p>The proposed regulation requires that the facility shall assist the resident with filing the appeal and upon request, provide a postage prepaid envelope addressed to the Department. These requirements are in § 63.2-1805.</p> <p>The regulation has been revised to specify that the burden of proof is on the facility to present evidence to support that the discharge was in compliance with § 63.2-1805 of the Code of Virginia and regulations.</p> <p>The regulation has been revised to include language related to appealing a final department case decision and specific exclusions.</p>
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	<p>the required 30-day cure period, the 30-day notice of discharge period, and an appeal that might extend for multiple months will quickly increase the balances owed by the residents and their family members. It will be unlikely that facilities will be able to recover these balances. The obvious burden on the facilities must be addressed through the appeal process and procedures must be implemented to minimize the burden on the facilities.</p>	
Debbie Ray	<p>Fast track is not needed. Fast track is not good</p>	<p>Fast-track process ended due to public objection comments. This action will undergo the standard regulatory process.</p>
Debbie Looney, Gregory's Assisted Living	<p>Stop fast track. Please do not fast track</p>	<p>Fast-track process ended due to public objection comments. This action will undergo the standard regulatory process.</p>
Linda Taylor, Gregory's Assisted Living	<p>Fast track is not needed. Please stop the fast track.</p>	<p>Fast-track process ended due to public objection comments. This action will undergo the standard regulatory process.</p>
Kristen Gregory, Gregory's Assisted Living	<p>Objection to fast track I added a comment and forgot the word do not need fast track for discharge</p>	<p>Fast-track process ended due to public objection comments. This action will undergo the standard regulatory process.</p>
Barbara Gregory, Gregory's Assisted Living	<p>Fast track request Please help out assisted living facility with better regulations and faster actions</p>	<p>Fast-track process ended due to public objection comments. This action will undergo the standard regulatory process.</p>
Clyde Ray Gregory, Gregory's Assisted Living	<p>Fast track Please approve the fast track for Virginia Assisted Living Facilities</p>	<p>Fast-track process ended due to public objection comments. This action will undergo the standard regulatory process.</p>
Kristen Gregory, Gregory's Assisted Living	<p>Fast track is a needed. Thank you for considering and approving a fast track for assisted living regulations.</p>	<p>Fast-track process ended due to public objection comments. This action will undergo the standard regulatory process.</p>
Virginia Assisted Living Association (VALA)	<p>Objection to Fast-Track Process to add Appeal Process for Involuntary Discharges</p> <p>Pursuant to Virginia Code §2.2-4012.1, the Virginia Assisted Living Association (VALA) files this formal objection to the fast-track rulemaking process currently in progress to update 22VAC40-73, Standards for Licensed Assisted Living Facilities (Standards), to add an appeal process for the involuntary discharge of residents. We request the Virginia Department of Social Services (VDSS) and the State Board of</p>	<p>Fast-track process ended due to public objection comments. This action will undergo the standard regulatory process.</p>

	<p>Social Services (SBSS) to utilize the Standard Regulatory Process in amending the Standards to add an appeal process for discharge instead of using the Fast-Track regulatory process.</p> <p>The 2022 amendments to Virginia Code §63.2-1805 specifically require, among other things, that the State Board of Social Services adopt regulations that establish a process for appeals filed pursuant to the amended subsection addressing the involuntary discharge of residents. The actual process and procedure for an appeal, as currently set forth in the proposed regulations, is vague, undefined, and incomplete. As a result, a number of critical areas of concern involving the proposed appeal process and relevant procedures to be utilized for such an appeal have not been adequately addressed in the proposed regulations or the agency provided discharge notice form. A few examples of these areas of concern include, but are not limited to, the following:</p> <ul style="list-style-type: none"> <li>• The failure to include a specified and acceptable timeframe for the department to notify the facility and resident of the receipt of the appeal, for setting of the appeal for hearing, and the ruling on an appeal;</li> <li>• A listing of the documents that the facility and/or resident will be required to present for the appeal;</li> <li>• Clarification that the requirement for facilities to assist a resident in the appeal is limited to assistance with the actual filing of the request and does not include assistance in the resident's preparation for a hearing;</li> <li>• The standard for granting an appeal and the applicable burden of proof;</li> </ul>	<p>The regulation was revised to specify the timeframes for the discharge appeal process.</p> <p>The regulation has been revised to specify that the burden of proof is on the facility to present evidence to support that the discharge was in compliance with § 63.2-1805 of the Code of Virginia and regulations.</p> <p>The proposed regulation requires that the facility shall assist the resident with filing the appeal and upon request, provide a postage prepaid envelope addressed to the Department. These requirements are in § 63.2-1805.</p> <p>The regulation has been revised to specify that the burden of proof is on the facility to present evidence to support that the discharge was in compliance with</p>
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<ul style="list-style-type: none"> <li>Information regarding the right to have an administrative or judicial review of the hearing officer's decision, the timeframe for requesting same and whether the resident's right to stay in the facility extends to this level of review.</li> </ul> <p>All of the above noted deficiencies in the proposed regulations have significant cost implications to both residents and facilities. Virginia Code §63.2-1805 requires that the resident be allowed to stay in the facility pending finalization of the appeal unless the discharge is an emergency discharge or the resident has developed a prohibited condition or care need. Facilities faced with non-paying residents will already have significant account balances that necessitated discharge. Charges incurred during the required 30-day cure period, the 30-day notice of discharge period, and an appeal that might extend for multiple months will quickly increase the balances owed by the residents and their family members. It will be unlikely that facilities will be able to recover these balances. The obvious burden on the facilities must be addressed through the appeal process and procedures must be implemented to minimize the burden on the facilities.</p> <p>In addition to addressing the concerns listed previously, we also recommend the below changes (in red) to the proposed text (dated 8/16/23) on the Virginia Regulatory Town Hall:</p> <p>22VAC40-73-430. Discharge of Residents</p> <p><u>B. 1. The facility shall assist the resident and resident's legal representative, if any, in the discharge or transfer process. The facility and the department shall help the resident prepare for relocation, including discussing the resident's destination. Primary responsibility for transporting the resident and his possessions rests</u></p>	<p>§ 63.2-1805 of the Code of Virginia and regulations.</p> <p>The regulation has been revised to include language related to appealing a final department case decision and specific exclusions.</p>
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	<p><u>with the resident or his legal representative.</u></p> <ul style="list-style-type: none"> <li>• The Department should also provide assistance in relocating the resident.</li> <li>• The primary responsibility for transporting the resident was eliminated in the proposed text but not requested to be eliminated by the Virginia General Assembly. This clarification should remain in the regulations.</li> </ul> <p><u>B. 4. d. Place the resident will be discharged to or the name of the individual who will be relocating the resident.</u></p> <ul style="list-style-type: none"> <li>• The facility may not always know where the resident will be residing after discharge. Sometimes, a family member or legal guardian will receive the resident and not disclose the resident's next housing location.</li> </ul> <p><u>E. 4. The resident develops a condition or care need that is prohibited pursuant to § 63.2-1805 D of the Code of Virginia and or 22VAC40-73-310 H.</u></p> <ul style="list-style-type: none"> <li>• Should the Code or the Code of Virginia change prior to being changed by the other document, the facility should have the ability to comply with whichever is applicable, in case there is a conflict.</li> </ul> <p>22VAC40-73-435. Appeal of an emergency or involuntary discharge</p> <p><u>D. The facility shall provide, if requested by the resident, a postage prepaid envelope addressed to the department to use if the appeal is mailed, if requested by the resident.</u></p>	<p>The ALF requirement to assist in the discharge process is not contingent on the resident's request. It is not the role of DSS Division of Licensing Programs to assist in relocation.</p> <p>The requirement to document discharge plans is in existing regulation.</p> <p>The suggested revision has been made to conform to language in § 63.2-1805 of the Code of Virginia.</p> <p>The regulation has been revised to provide clarification.</p>
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	<ul style="list-style-type: none"> <li>• Clarification of wording and requirements</li> </ul> <p><u>E. The facility shall inform the resident of the resident's rights to continue to reside in the facility, free from retaliation, until the appeal has a final department case decision 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.</u></p> <p><u>1. The department will notify the resident and the facility within 5-days of receipt of the resident's appeal form.</u></p> <p><u>2. The department will notify the resident and the facility of the case decision within 30 days of receipt of the appeal.</u></p> <ul style="list-style-type: none"> <li>• A timeline for decisions of appeals is crucial for the resident and the facility. It is understood that the appeal process for involuntary discharge is mandated by statute and will have beneficial impacts for residents of assisted living facilities. However, more time is needed through the regular regulatory process for consideration of all relevant issues and crafting regulations to address the needs of all parties involved.</li> </ul> <p>Thank you for considering these concerns. We welcome the opportunity to continue to work with VDSS and SBSS on creating and amending the regulations to best serve the industry including the residents and the facilities. Please let us know if you have any questions about these comments.</p>	<p>The regulation was revised to specify the timeframes for the discharge appeal process.</p> <p>Representatives from the Virginia Assisted Living Association (VALA) were invited and participated in the regulatory advisory panel to discuss the proposed changes.</p>
<p>Victoria Nelson, Commonwealth Senior Living</p>	<p>The actual process and procedure for an appeal, as currently set forth in the proposed regulations, is vague, undefined, and incomplete. As a result, a number of critical areas of concern involving the proposed appeal process and relevant procedures to be utilized</p>	<p>Fast-track process ended due to public objection comments. This action will undergo the standard regulatory process.</p> <p>The regulation has been revised to provide clarification and details of the discharge appeal process.</p>

	<p>for such an appeal have not been adequately addressed in the proposed regulations or the agency provided discharge notice form.</p> <p>A few examples of these areas of concern include, but are not limited to, the following:</p> <p>The failure to include a specified and acceptable timeframe for the department to notify the facility and resident of the receipt of the appeal, for setting of the appeal for hearing, and the ruling on an appeal;</p> <p>A listing of the documents that the facility and/or resident will be required to present for the appeal;</p> <p>Clarification that the requirement for facilities to assist a resident in the appeal is limited to assistance with the actual filing of the request and does not include assistance in the resident's preparation for a hearing.</p> <p>Further consideration of the obvious and inherent conflict of interest in requiring such facility assistance is required;</p> <p>The standard for granting an appeal and the applicable burden of proof;</p> <p>Information regarding the right to have an administrative or judicial review of the hearing officer's decision, the timeframe for requesting same and whether the resident's right to stay in the facility extends to this level of review.</p> <p>All of the above noted deficiencies in the proposed regulations have significant cost implications to both residents and facilities. Virginia Code §63.2-1805 requires that the resident be allowed to stay in the facility pending finalization of the appeal. Facilities faced with non-paying residents will already have significant account balances that necessitated discharge. Charges incurred during the required 30-day cure period, the 30-day notice of discharge period, and an appeal</p>	<p>The regulation was revised to specify the timeframes for the discharge appeal process.</p> <p>The regulation has been revised to specify that the burden of proof is on the facility to present evidence to support that the discharge was in compliance with § 63.2-1805 of the Code of Virginia and regulations.</p> <p>The proposed regulation requires that the facility shall assist the resident with filing the appeal and upon request, provide a postage prepaid envelope addressed to the Department. These requirements are in § 63.2-1805.</p> <p>The regulation has been revised to specify that the burden of proof is on the facility to present evidence to support that the discharge was in compliance with § 63.2-1805 of the Code of Virginia and regulations.</p> <p>The regulation has been revised to include language related to appealing a final department case decision and specific exclusions.</p>
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	<p>that might extend for multiple months will quickly increase the balances owed by the residents and their family members. It will be unlikely that facilities will be able to recover these balances. The obvious burden on the facilities must be addressed through the appeal process and procedures must be implemented to minimize the burden on the facilities.</p> <p>It is understood that the appeal process for involuntary discharge is mandated by statute and will have beneficial impacts for residents of assisted living facilities. However, more time is needed through the regular regulatory process for consideration of the all relevant issues and crafting regulations to address the needs of all parties involved.</p>	
<p>Regional Vice President Commonwealth Senior Living</p>	<p>The actual process and procedure for an appeal, as currently set forth in the proposed regulations, is vague, undefined, and incomplete. As a result, a number of critical areas of concern involving the proposed appeal process and relevant procedures to be utilized for such an appeal have not been adequately addressed in the proposed regulations or the agency provided discharge notice form. A few examples of these areas of concern include, but are not limited to, the following:</p> <ul style="list-style-type: none"> <li>The failure to include a specified and acceptable timeframe for the department to notify the facility and resident of the receipt of the appeal, for setting of the appeal for hearing, and the ruling on an appeal;</li> <li>A listing of the documents that the facility and/or resident will be required to present for the appeal;</li> <li>Clarification that the requirement for facilities to assist a resident in the appeal is limited to assistance with the actual filing of the request and does not include assistance in the resident's preparation for a hearing.</li> </ul>	<p>Fast-track process ended due to public objection comments. This action will undergo the standard regulatory process.</p> <p>The regulation was revised to specify the timeframes for the discharge appeal process.</p> <p>The regulation has been revised to specify that the burden of proof is on the facility to present evidence to support that the discharge was in compliance with § 63.2-1805 of the Code of Virginia and regulations.</p> <p>The proposed regulation requires that the facility shall assist the resident with filing the appeal and upon request, provide a postage prepaid envelope addressed to the Department. These requirements are in § 63.2-1805.</p>

	<p>Further consideration of the obvious and inherent conflict of interest in requiring such facility assistance is required;</p> <p>The standard for granting an appeal and the applicable burden of proof;</p> <p>Information regarding the right to have an administrative or judicial review of the hearing officer's decision, the timeframe for requesting same and whether the resident's right to stay in the facility extends to this level of review.</p> <p>All of the above noted deficiencies in the proposed regulations have significant cost implications to both residents and facilities. Virginia Code §63.2-1805 requires that the resident be allowed to stay in the facility pending finalization of the appeal. Facilities faced with non-paying residents will already have significant account balances that necessitated discharge. Charges incurred during the required 30-day cure period, the 30-day notice of discharge period, and an appeal that might extend for multiple months will quickly increase the balances owed by the residents and their family members. It will be unlikely that facilities will be able to recover these balances. The obvious burden on the facilities must be addressed through the appeal process and procedures must be implemented to minimize the burden on the facilities.</p> <p>It is understood that the appeal process for involuntary discharge is mandated by statute and will have beneficial impacts for residents of assisted living facilities. However, more time is needed through the regular regulatory process for consideration of the all relevant issues and crafting regulations to address the needs of all parties involved.</p>	<p>The regulation has been revised to specify that the burden of proof is on the facility to present evidence to support that the discharge was in compliance with § 63.2-1805 of the Code of Virginia and regulations.</p> <p>The regulation has been revised to include language related to appealing a final department case decision and specific exclusions.</p>
<p>Samuel Estep</p>	<p>The actual process and procedure for an appeal, as currently set forth in the proposed regulations, is vague, undefined, and incomplete.</p>	<p>Fast-track process ended due to public objection comments. This action will undergo the standard regulatory process.</p>

<p>As a result, a number of critical areas of concern involving the proposed appeal process and relevant procedures to be utilized for such an appeal have not been adequately addressed in the proposed regulations or the agency provided discharge notice form.</p> <p>A few examples of these areas of concern include, but are not limited to, the following:</p> <p>The failure to include a specified and acceptable timeframe for the department to notify the facility and resident of the receipt of the appeal, for setting of the appeal for hearing, and the ruling on an appeal;</p> <p>A listing of the documents that the facility and/or resident will be required to present for the appeal;</p> <p>Clarification that the requirement for facilities to assist a resident in the appeal is limited to assistance with the actual filing of the request and does not include assistance in the resident's preparation for a hearing.</p> <p>Further consideration of the obvious and inherent conflict of interest in requiring such facility assistance is required;</p> <p>The standard for granting an appeal and the applicable burden of proof;</p> <p>Information regarding the right to have an administrative or judicial review of the hearing officer's decision, the timeframe for requesting same and whether the resident's right to stay in the facility extends to this level of review.</p> <p>All of the above noted deficiencies in the proposed regulations have significant cost implications to both residents and facilities. Virginia Code §63.2-1805 requires that the resident be allowed to stay in the facility pending finalization of the appeal. Facilities faced with non-paying residents will already have significant account balances that</p>	<p>The regulation was revised to specify the timeframes for the discharge appeal process.</p> <p>The regulation has been revised to specify that the burden of proof is on the facility to present evidence to support that the discharge was in compliance with § 63.2-1805 of the Code of Virginia and regulations.</p> <p>The proposed regulation requires that the facility shall assist the resident with filing the appeal and upon request, provide a postage prepaid envelope addressed to the Department. These requirements are in § 63.2-1805.</p> <p>The regulation has been revised to specify that the burden of proof is on the facility to present evidence to support that the discharge was in compliance with § 63.2-1805 of the Code of Virginia and regulations.</p> <p>The regulation has been revised to include language related to appealing a final department case decision and specific exclusions.</p>
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<p>Margaret Nolen</p>	<p>The actual process and procedure for an appeal, as currently set forth in the proposed regulations, is vague, undefined, and incomplete. As a result, a number of critical areas of concern involving the proposed appeal process and relevant procedures to be utilized for such an appeal have not been adequately addressed in the proposed regulations or the agency provided discharge notice form.</p> <p>A few examples of these areas of concern include, but are not limited to, the following:</p> <ul style="list-style-type: none"> <li>The failure to include a specified and acceptable timeframe for the department to notify the facility and resident of the receipt of the appeal, for setting of the appeal for hearing, and the ruling on an appeal;</li> <li>A listing of the documents that the facility and/or resident will be required to present for the appeal;</li> <li>Clarification that the requirement for facilities to assist a resident in the appeal is limited to assistance</li> </ul>	<p>Fast-track process ended due to public objection comments. This action will undergo the standard regulatory process.</p> <p>The regulation was revised to specify the timeframes for the discharge appeal process.</p> <p>The regulation has been revised to specify that the burden of proof is on the facility to present evidence to support that the discharge was in compliance with § 63.2-1805 of the Code of Virginia and regulations.</p>

<p>with the actual filing of the request and does not include assistance in the resident's preparation for a hearing.</p> <p>Further consideration of the obvious and inherent conflict of interest in requiring such facility assistance is required;</p> <p>The standard for granting an appeal and the applicable burden of proof;</p> <p>Information regarding the right to have an administrative or judicial review of the hearing officer's decision, the timeframe for requesting same and whether the resident's right to stay in the facility extends to this level of review.</p> <p>All of the above noted deficiencies in the proposed regulations have significant cost implications to both residents and facilities. Virginia Code §63.2-1805 requires that the resident be allowed to stay in the facility pending finalization of the appeal. Facilities faced with non-paying residents will already have significant account balances that necessitated discharge. Charges incurred during the required 30-day cure period, the 30-day notice of discharge period, and an appeal that might extend for multiple months will quickly increase the balances owed by the residents and their family members. It will be unlikely that facilities will be able to recover these balances. The obvious burden on the facilities must be addressed through the appeal process and procedures must be implemented to minimize the burden on the facilities.</p> <p>It is understood that the appeal process for involuntary discharge is mandated by statute and will have beneficial impacts for residents of assisted living facilities. However, more time is needed through the regular regulatory process for consideration of the all relevant issues and crafting regulations to</p>	<p>The proposed regulation requires that the facility shall assist the resident with filing the appeal and upon request, provide a postage prepaid envelope addressed to the Department. These requirements are in § 63.2-1805.</p> <p>The regulation has been revised to specify that the burden of proof is on the facility to present evidence to support that the discharge was in compliance with § 63.2-1805 of the Code of Virginia and regulations.</p> <p>The regulation has been revised to include language related to appealing a final department case decision and specific exclusions.</p>
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	address the needs of all parties involved.	
Michelle Hamilton	<p>The actual process and procedure for an appeal, as currently set forth in the proposed regulations, is vague, undefined, and incomplete. As a result, a number of critical areas of concern involving the proposed appeal process and relevant procedures to be utilized for such an appeal have not been adequately addressed in the proposed regulations or the agency provided discharge notice form.</p> <p>A few examples of these areas of concern include, but are not limited to, the following:</p> <p>The failure to include a specified and acceptable timeframe for the department to notify the facility and resident of the receipt of the appeal, for setting of the appeal for hearing, and the ruling on an appeal;</p> <p>A listing of the documents that the facility and/or resident will be required to present for the appeal;</p> <p>Clarification that the requirement for facilities to assist a resident in the appeal is limited to assistance with the actual filing of the request and does not include assistance in the resident's preparation for a hearing.</p> <p>Further consideration of the obvious and inherent conflict of interest in requiring such facility assistance is required;</p> <p>The standard for granting an appeal and the applicable burden of proof;</p> <p>Information regarding the right to have an administrative or judicial review of the hearing officer's decision, the timeframe for requesting same and whether the resident's right to stay in the facility extends to this level of review.</p>	<p>Fast-track process ended due to public objection comments. This action will undergo the standard regulatory process.</p> <p>The regulation was revised to specify the timeframes for the discharge appeal process.</p> <p>The regulation has been revised to specify that the burden of proof is on the facility to present evidence to support that the discharge was in compliance with § 63.2-1805 of the Code of Virginia and regulations.</p> <p>The proposed regulation requires that the facility shall assist the resident with filing the appeal and upon request, provide a postage prepaid envelope addressed to the Department. These requirements are in § 63.2-1805.</p> <p>The regulation has been revised to specify that the burden of proof is on the facility to present evidence to support that the discharge was in compliance with § 63.2-1805 of the Code of Virginia and regulations.</p> <p>The regulation has been revised to include language related to appealing a final department case decision and specific exclusions.</p>
Dana Parson, Leading Age Virginia	Thank you for the opportunity to comment on the fast-track action to amend the Standards for Licensed Assisted Living Facilities, 22 VAC	

	<p>40-73, to add a discharge appeal process. We understand that the involuntary discharge process is mandated by statute and will have a positive impact for assisted living residents but believe that more time is needed to consider and address the relevant issues. Therefore, we encourage the Department of Social Services to amend the regulation through a standard regulatory process rather than a fast-track process to allow for a comprehensive review.</p>	<p>Fast-track process ended due to public objection comments. This action will undergo the standard regulatory process.</p>
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## Public Participation

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.*

The Department of Social Services is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, (iii) the potential impacts of the regulation, and (iv) the agency's regulatory flexibility analysis stated in that section of this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Dani Halbleib, Licensing Consultant, DSS Division of Licensing Programs, 5600 Cox Road, Glen Allen, VA 23060, [daniella.halbleib@dss.virginia.gov](mailto:daniella.halbleib@dss.virginia.gov). Fax: 804-726-7132. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

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

## Detail of Changes

*List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.*

*If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between the existing VAC Chapter(s) and the proposed regulation. If the existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.*

**Table 1: Changes to Existing VAC Chapter(s)**

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
Throughout chapter		The terms “he, his, him, and himself” are used.	Replaced the terms with the individual the regulation requirement applies to for clarification.
22VAC40-73-10		Definitions used in regulation	<p>Removed definition for chapter as it is unnecessary.</p> <p>Technical edits were made throughout this section for clarification and ease of understanding.</p> <p>New definitions added: emergency discharge and involuntary discharge.</p> <p>The definition of assisted living facility was revised due to changes in § 63.2-100 effective 07/01/2023.</p> <p>The intent, rationale, and impact is for ALF and the public to understand the meaning of these terms.</p>
22VAC40-73-430		Section describes discharge requirements, including discharge planning, notifications, and assistance the ALF provides the resident who is being discharged.	<p>The current subsections A-H are reorganized. The new subsection A is reworded requirements from current subsection C that the ALF shall develop and implement written policies and procedures regarding discharge to align with § 63.2-1805 and new section 435.</p> <p>The new subsection B is reworded requirements from current subsection C regarding minimum length of notice to the ALF when a resident initiates plans to move from the facility.</p> <p>The new subsection C is reworded requirements from current subsection A adding resident’s preferences to the list of reasons for discharge planning and removing the requirement for the resident to move in 30 days.</p> <p>The new subsection D is reworded requirements from current subsection B to describe discharge notification requirements for involuntary or emergency discharge, as required by § 63.2-1805.</p> <p>The current subsection C is removed. Requirements in current subsection C included in new subsection A and B.</p>

			<p>The new subsections E and F describe situations that allow involuntary discharges from the ALF. These sections include requirements to notify residents of the reason for certain discharges and provide 30 days to cure the basis prior to receiving a discharge notice, as required by § 63.2-1805 A 5.</p> <p>The current subsection G was reworded to add the requirement to use the DSS discharge notice form and describes the notification requirements from § 63.2-1805 A 5 and removes the notification requirement for public-pay residents as this is addressed in Department of Aging and Rehabilitative Services (DARS) regulations 22VAC30-80-45 and 22VAC30-110-40.</p> <p>The current subsection H was reworded to add the requirement from § 63.2-1805 A 5 to provide the DSS discharge appeal hearing request form at the time of involuntary or emergency discharge. The requirements related to the discharge statement were removed as this is addressed in the discharge notice form described in subsection G.</p> <p>Subsection I is revised to describe requirements to provide relocation assistance to residents who are being involuntarily or emergency discharged from the facility. The current subsection I is now subsection M and is amended for technical changes for ease of understanding.</p> <p>The new subsection J provides exceptions to the relocation assistance requirements found in subsection I.</p> <p>The new subsection K prohibits the facility from billing the resident for the fees from a third party provider of relocation assistance.</p> <p>Requirements in current subsections E-F were incorporated into subsection G.</p> <p>The new subsection L is a current requirement to document the reason if the discharge timeline is not met, which is currently in subsection A.</p> <p>The current subsection J is the new subsection N which is amended for</p>
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			<p>technical changes for ease of understanding.</p> <p>The intent and rationale is to clearly describe all discharge requirements in one section, so that the ALF, residents, and the public understand the different requirements for different types of discharges.</p> <p>The impact is clearer understanding and compliance with Code and regulation requirements for ALF discharges.</p>
	<p>22VAC40-73-435</p>		<p>A new section 435 was written to incorporate the requirements from § 63.2-1805 A 5 of the Code of Virginia. It describes the process and requirements for appealing involuntary or emergency discharges, the ALF requirements when a resident files a discharge appeal, and the discharge appeal process, including timeframes for notifications, a hearing, and the appeal case decision.</p> <p>The intent and rationale is to clearly describe the discharge appeal process so that residents, ALF, and the public understand the requirements and protections provided for involuntary and emergency discharge appeals.</p> <p>The impact is understanding and compliance with Code and regulation requirements for discharge appeals.</p>