



Virginia Department of Planning and Budget **Economic Impact Analysis**

22 VAC 40-73 Standards for Licensed Assisted Living Facilities
Department of Social Services
Town Hall Action/Stage: 6132/10251
April 8, 2025

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 19. The analysis presented below represents DPB’s best estimate of the potential economic impacts as of the date of this analysis.¹

Summary of the Proposed Amendments to Regulation

As a result of a 2022 legislative mandate, the State Board of Social Services (Board) proposes to update the regulation governing assisted living facilities (ALFs) to add requirements that address the involuntary discharge of a resident, including an appeals process.

This proposed stage follows a fast-track stage that was published in 2023, but received ten or more objections to the use of the fast-track process. The Board has since made significant revisions to the proposed text, many of which are intended to address concerns raised in the public comments at the fast-track stage and to implement the recommendations of a Regulatory Advisory Panel. This analysis addresses the cumulative changes relative to the current regulation and their expected economic impact.

Background

ALFs are non-medical residential settings that provide or coordinate personal and health care services, 24-hour supervision, and assistance for the care of four or more adults who are

¹ Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

aged, infirm or disabled.² Chapter 706 of the 2022 *Acts of Assembly* created specific requirements for the regulation governing ALFs with respect to the circumstances in which residents may be involuntarily discharged, the opportunity to appeal an involuntary discharge, and the process for such an appeal.

The legislation specifies that residents may only be involuntarily discharged in accordance with Board regulations, provided that the ALF has met the regulatory requirements and has made reasonable efforts to meet the needs of the resident. Further, an involuntary discharge may only occur for one of the following reasons: (i) nonpayment of contracted charges, provided that the resident has been given at least 30 days to cure the delinquency after notice was provided to the resident and the resident's legal representative or designated contact person; (ii) for the resident's failure to substantially comply with the terms and conditions of the resident agreement between the resident and the ALF; (iii) if the ALF closes in accordance with the regulations; or (iv) when the resident develops a condition or care need that ALFs are prohibited to handle under § 63.2-1805 D of the Code or the Board's regulations.

Chapter 706 also requires ALFs to “make reasonable efforts, as appropriate, to resolve any issues with the resident upon which the decision to discharge is based and document such efforts in the resident's file” except when “an emergency discharge is necessary due to an immediate and serious risk to the health, safety, or welfare of the resident or others.” Further, the legislation requires an ALF to provide a written discharge notice to the resident and the resident's legal representative or designated contact person, as well as a copy of that notice to the Department of Social Services (DSS) and the State Long-Term Care Ombudsman at least 30 days prior to the involuntary discharge or within five days of an emergency discharge. This notice must include the ALF's decision to discharge the resident, the reasons for the discharge, the date on which the discharge will occur, and information regarding the resident's right to appeal within the 30-day notice period.³ Additionally, the legislation provides that the ALF shall

² See <https://www.dss.virginia.gov/facility/alf.cgi>. The website further specifies that, “Assisted living facilities are not nursing homes. A nursing home is a facility in which the primary function is the provision, on a continuing basis, of nursing services and health-related services for the treatment and inpatient care of two or more non-related individuals. Nursing homes are regulated by the Virginia Department of Health.”

³ DSS is required to furnish a discharge notice form which includes information regarding the process for initiating an appeal, the number for a toll-free information line, a hearing request form, the facility's obligation to assist the resident in filing an appeal and provide, upon request, a postage prepaid envelope addressed to the agency, and a statement of the resident's right to continue to reside in the facility, free from retaliation, until the appeal has a final case decision, subject to an emergency discharge or development of a certain type of condition or care need.

provide relocation assistance to the resident prior to the involuntary discharge.⁴ Lastly, the legislation directs the Board to “adopt regulations that establish a process for appeals filed pursuant to this [legislation].”

Accordingly, the proposed changes include adding definitions for “involuntary discharge” as “the movement of a resident out of the [ALF] initiated by the facility,” and for “emergency discharge” as “the unplanned discharge of a resident from the facility due to immediate and serious risk to the health, safety, or welfare of the resident or others within the facility.”

Section 430 (Discharge of residents) would be revised significantly to update current requirements and align with the requirements in Chapter 706. These proposed changes are summarized as follows:

- Replace a current requirement that the ALF “adopt and conform to a written policy that provides for a general notice of an intent to move within a certain timeframe” with the more specific requirement that the ALF develop and implement written policies and procedures in accordance with § 63.2-1805 of the Code of Virginia, this section, and the new proposed section 435.
- Specify the circumstances under which an involuntary discharge may occur (in accordance with the legislation) and that unless an emergency discharge is necessary the facility shall make reasonable efforts, as appropriate, to resolve any issues that form the basis of the decision to discharge with the resident. This would include providing residents with 30 days to cure the basis for the discharge.
- Require the use of the discharge notice form provided by DSS for all emergency and involuntary discharges, which includes information on the resident’s right to an appeal, and a form to request an appeal hearing.
- Require that the ALF adhere to notification requirements (timelines and recipients) that are identical to the legislation, and that a copy of the notice be retained in the resident’s record.

⁴ DSS reports that this requirement appears more generally in the current regulation, and that it does not mean the ALF has to find the resident another placement. Rather, the requirement applies to situational assistance such as packing belongings, providing a list of possible alternative accommodations, working with the family to help the person transition to another level of care, and preparing copies of records.

- Remove a current notification requirement for public-pay residents as this is addressed in Department of Aging and Rehabilitative Services regulations 22 VAC 30-80-45 and 22 VAC 30-110-40.
- Specify that the required relocation assistance include (i) assisting the resident (or representative) with the discharge and transfer process, (ii) providing a list of facilities that could meet the resident’s needs and arranging an appointment, (iii) providing assistance with packing, and (iv) providing assistance with moving and transportation. These requirements are discretionary as the components of the relocation assistance are not specified in the legislation.
- Specify that the facility shall not be required to pay more for relocation assistance than the monthly charges for accommodations, services, and care as described in the resident agreement (22 VAC 40-73-390 A) and in no case shall the facility be required to move and transport a resident's belongings outside the state unless such assistance is for a location outside the state within 50 miles of the facility.

Section 435 would be newly added to address appeals of emergency or involuntary discharge, as required by the legislation. In accordance with the legislation, this section would specify that a resident may appeal any involuntary or emergency discharge, except in the case of an ALF closing, that the discharge appeal must be filed with DSS’ Division of Appeals and Fair Hearings (Division) within 30 days of receiving a discharge notice, and that a resident who no longer resides in the facility due to an emergency discharge retains a right to file an appeal.

This section would also contain the following requirements for ALFs: (i) ALFs shall allow the resident to continue to reside in the facility, free from retaliation, until the appeal has reached its final department case decision, except in the case of emergency discharges or if the resident has developed a condition or care need prohibited by Virginia Code § 63.2-1805 D or 22 VAC 40-73-310 H; (ii) ALFs shall “assist the resident and the resident’s legal representative, if any, when the resident is filing an appeal”⁵; and (iii) ALFs shall, upon request, provide a postage prepaid envelope addressed to the Division.

⁵ DSS does not believe that this requirement is a conflict of interest, since residents “commonly need at least minimal support for instrumental activities of daily living,” and that this assistance could include contacting family members or connecting the resident with an advocate.

Lastly, section 435 would specify the timeline for appeals: (i) the Division would be required to confirm receipt of the appeal with the resident and the ALF within 10 days; (ii) conduct a hearing within 30 days following the date of confirmation (unless all parties agree to a different timeframe); and (iii) send a written department case decision within 20 days of the hearing. This section would also specify that a final department case decision may be appealed in court, in accordance with the Administrative Process Act, but that ALFs would not be required to meet the requirements (i)-(iii) above if a resident chose to do so.

Estimated Benefits and Costs

The proposed changes would implement the changes required by the 2022 legislation, which was intended to protect residents of ALFs by clarifying the grounds for involuntary discharge, providing them with a 30-day written notice of an involuntary discharge (or within five days after an emergency discharge), providing an additional 30 days to cure the grounds for discharge (prior to the notice, except in the case of closure or emergency discharges), establishing a formal appeals process, as well as establishing the right to remain in the ALF until the Division has made a final department case decision. These changes broadly serve to help residents and their families resolve nonpayment or other grounds for discharge, plan for the residents' accommodation and care needs post-discharge (if they need a level of care that the ALF is prohibited from providing) or appeal a discharge that they believe was unjustified. However, these changes would create new costs for DSS as well as for ALFs.

DSS reports that the Division of Appeals and Fair Hearings would need two additional staff members, a Senior Hearing Officer and an Administrative Technician, to process ALF involuntary discharge appeals. The reported cost for the staff is \$187,708 per year; DSS reports that appropriations for these positions have been provided in the state budget. In addition, DSS Licensing would 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; this amount has also been appropriated.

In general, ALFs would face reduced flexibility and increased oversight in making discharge decisions for residents. Currently, ALF decisions to discharge individuals can only be appealed with the facility, if they have an appeals process. DSS reports that the agency does not have data on the number of involuntary discharges or appeals that currently occur. At the very

least, ALFs would be responsible for helping the resident pack and move their belongings, coordinating with the resident's legal representative and the facility the resident is moving to, meeting all the notification requirements, and maintaining sufficient documentation to justify the decision to meet the burden of proof if the decision is appealed. DSS estimates that 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. Thus, most of the costs to ALFs would depend on the number of involuntary and emergency discharges, and the number of such decisions that are appealed.

The proposed changes may reduce the number of discharges if ALFs were discharging individuals on grounds that would not meet the new standards for involuntary or emergency discharges or would be likely to face an appeal. Essentially, ALFs' ability to turnover residents who were expensive to accommodate or care for would be reduced. To the extent this occurs it could affect the composition of payers in the ALF's resident pool, or the mix of residents' care needs, such that the ALFs revenues are decreased and/or operating costs (mainly staffing needs) are increased.

ALFs that are unable to meet the supervision needs of residents with significant behavioral issues would face a greater need to need to document any problematic behaviors so that they can meet the burden of proof if the discharge is appealed. As a result, they may delay initiating the involuntary discharge process, which could inadvertently lead to more emergency discharges and worse safety outcomes for that individual and/or for other residents. Thus, an unintended consequence of the proposed changes, and the legislative mandate, is that while some residents may benefit, say by having additional time to resolve nonpayment, other residents who can no longer be adequately cared for at the ALF may be made worse off.

Lastly, ALFs would incur costs arising from the appeals process. DSS estimates that attorney fees for an appeal could range from \$1500-\$4000 depending on the time involved. An ALF could be particularly impacted if a resident appealed an involuntary discharge that was based on nonpayment and remained in the facility until DSS made a final case determination, while continuing not to pay.⁶

⁶ Involuntary discharge based on nonpayment requires that residents and their representatives be given 30 days to cure the nonpayment, followed by 30 days' notice of discharge during which the resident can file an appeal,

Businesses and Other Entities Affected

DSS reports that there are currently 564 licensed ALFs, more than half of which are likely to be small businesses. This includes eight ALFs that are operated by local agencies, as noted below.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁷ An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As noted above, the new requirements would create new costs for DSS and for ALFs. Thus, an adverse impact is indicated.

Small Businesses⁸ Affected:⁹

The proposed amendments do appear to adversely affect small businesses.

Types and Estimated Number of Small Businesses Affected

As indicated above, DSS reports that more than half of the 564 licensed ALFs would be considered small businesses. DSS does not collect information on whether individual licensees meet the criteria for small businesses.

Costs and Other Effects

The proposed amendments create direct costs in terms of required documentation and procedural changes. ALFs may incur additional costs depending on the number of

followed by up to 60 days until a final department case decision. Thus, it is possible that a resident may stay for up to four months without the ALF receiving payment.

⁷ Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define “adverse impact,” state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

⁸ Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

⁹ If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

involuntary or emergency discharges they make and the number of such discharges that are appealed. As mentioned previously, these could include relocation costs and attorney fees.

Alternative Method that Minimizes Adverse Impact

The main discretionary costs that would be added pertain to packing and moving residents' belongings following an involuntary or emergency discharge; the proposed text would limit such costs to the monthly charges and limits the distance to within the state or within 50 miles of the facility if the resident is moving out of state. The actual cost to ALFs depend on the number of involuntary discharges, the quantity of possessions and the distance they would have to be moved. The Board could interpret relocation assistance more narrowly and only require ALFs to provide a list of facilities for residents to consider moving to, minimal assistance with setting up initial appointments, and providing documentation to maintain continuity of care and services. However, since these amendments were based on the Board's recommendations, as well as the recommendations of a Regulatory Advisory Panel that included organizations representing ALFs, these requirements may not be overly burdensome.

Localities¹⁰ Affected¹¹

DSS reports that there are currently eight ALFs operated by local or regional entities. This includes two ALFs operated by Chesterfield and Orange counties, respectively, and six ALFs operated by the Fairfax County Redevelopment and Housing Authority, Mount Rogers Community Services Board (CSB), New River Valley CSB, Region Ten CSB, and Western Tidewater CSB. These localities and local entities may face additional costs depending on the number of involuntary discharges and appeals. The local entities may pass on any increased costs to the localities that fund them.

Projected Impact on Employment

The proposed amendments are unlikely to affect total employment.

¹⁰ "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

¹¹ § 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Effects on the Use and Value of Private Property

The proposed amendments would increase costs and financial risks for privately owned ALFs, thereby making them less profitable and reducing the value of these businesses. The proposed amendment would not affect real estate development costs.