



Fast Track Proposed Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22VAC40-72
Regulation title	Standards for Licensed Assisted Living Facilities
Action title	Change generator requirements
Date this document prepared	August 15, 2007

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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

The proposed amendments delete some of the generator-related requirements for assisted living facilities. Facilities will no longer be required to have either an emergency generator on-site or an agreement to obtain one in an emergency that disrupts electrical power. In addition, specific services to be provided by emergency electrical power were deleted. Moreover, the requirement for availability of a 96-hour supply of emergency generator fuel was removed. A clarification was made to the requirement regarding compliance with the Virginia Uniform Statewide Building Code so that it is clear that it relates to the connection for temporary electric power, not to the emergency electrical power source.

In respect to the emergency plan, an addition was made to the requirement to contact the local emergency coordinator, i.e., an element was added to determine any assistance that would be provided to the facility by the local emergency management office. Another change in the plan removed procedures related to the operation and testing of emergency generators and replaced them with procedures for maintaining and operating all emergency equipment.

Statement of final agency action

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

The State Board of Social Services approved the fast-track action for 22 VAC 40-72, Standards for Licensed Assisted Living Facilities, on August 15, 2007.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

The following sections of the Code of Virginia are the sources of legal authority to promulgate the regulation: § 63.2-217 (mandatory) says that State Board shall adopt regulations as may be necessary or desirable to carry out the purpose of Title 63.2, and § 63.2-1732 (mandatory and discretionary) addresses the State Board’s overall authority to promulgate regulations for assisted living facilities and specifies content areas to be included in the standards.

The promulgating entity is the State Board of Social Services.

Purpose

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

The amended regulation is needed to remove some of the generator-related requirements, which were considered by many assisted living providers to be overly burdensome due to cost. The Joint Commission on Administrative Rules (JCAR) has provided the department clarification of legislative intent regarding Senate Bill 181 (2004) that requires that each assisted living facility with six or more residents be able to connect to a temporary emergency electrical power source for the provision of electricity during an interruption of the normal electric power supply. JCAR clarified that the legislation related only to the ability to connect to a power source, not to actually having a power source on-site or having an agreement to obtain one, or to being able to provide specific services in an emergency.

Moreover, the word “emergency” means something different in the Virginia Uniform Statewide Building Code than it does in the assisted living facility regulation. Therefore, the regulation needs to be clarified to ensure that the connection need not be one capable of supporting “emergency” power, which must meet higher standards that are typically required of health care facilities, such as hospitals.

The amended regulation also includes a few changes to the requirement that an assisted living facility have an emergency preparedness and response plan. An assisted living facility must determine what assistance, if any, will be provided to the facility by the local emergency management office. The amended regulation will require that the emergency preparedness and response plan address maintaining and operating emergency equipment, evacuations and sheltering in place. These changes are essential to protecting the health, safety, and welfare of residents in emergency situations.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The fast-track process is being used because there is a sense of urgency regarding the effective date of the proposed changes. The current situation seems to have created a problem for facilities as they attempt to make decisions regarding the best way to proceed to come into compliance with standards. Some of the generator-related standards would involve a significant cost for many facilities. It will be a great help both to providers and licensing inspectors once the proposed regulations become effective.

We expect this rulemaking to be noncontroversial since we have involved provider associations in the proposed changes and there appears to be agreement regarding the revisions.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

22 VAC 40-72-930 – Emergency preparedness and response plan.

Adds that the emergency preparedness and response plan include a determination of assistance, if any, that will be provided to the facility by the local emergency management office. Clarifies that the plan include an analysis of potential hazards that would disrupt operation of the facility and include procedures for both conducting evacuations and sheltering in place. Broadens procedures regarding operation and testing of emergency generators to cover maintaining and operating all emergency equipment.

22 VAC 40-72-960 – Emergency equipment and supplies.

Changes language regarding ability to connect to a temporary emergency electrical power source for the provision of electricity to reflect more closely exact Code language. Clarifies that reference to the Building Code relates to installation of a connection for temporary electric power. Removes specific requirements for heating, cooling, lighting, refrigeration, and operation of medical equipment in an emergency. Removes requirement for emergency generator on-site or obtained in an emergency that disrupts normal electrical power. Clarifies requirement for flashlights and battery lanterns. Removes the provision for a supply of emergency generator fuel.

Issues

Please identify the issues associated with the proposed regulatory action, including:

1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;

2) the primary advantages and disadvantages to the agency or the Commonwealth; and
 3) other pertinent matters of interest to the regulated community, government officials, and the public.
 If there are no disadvantages to the public or the Commonwealth, please indicate.

The primary advantage to the removal and clarification of some of the generator-related standards is a significant cost savings for many assisted living facilities. Somewhat strengthened requirements for emergency and preparedness and response plans will result in greater protection of the health, safety, and welfare of residents and staff in an emergency. The advantage to the Commonwealth is that the proposed requirements are in line with legislative intent.

There may be a disadvantage to residents of assisted living facilities during times of electrical power outages. Any disadvantages to the public or the Commonwealth are outweighed by supporting the viability of the portions of the assisted living facility industry most affected by the original requirements.

Regulatory flexibility analysis

Please 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) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of 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 proposed regulation.

The reduction in generator-related requirements and clarification regarding installation of temporary electric power connections has eliminated or minimized any adverse impact on assisted living facilities, almost all of which are small businesses.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	None
Projected cost of the regulation on localities	None
Description of the individuals, businesses or other entities likely to be affected by the regulation	Assisted living facilities

<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means 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.</p>	<p>Approximately 600; almost all are small businesses</p>
<p>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>Reduction in costs</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. 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 regulation.

The proposed regulation is the least intrusive and least burdensome alternative available to accomplish the purpose of the action.

Family impact

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

In some instances, there might be no decrease in disposable family income attributable to rate increases by assisted living facilities due to costs for emergency generators. In addition, some facilities that claimed to be considering closure may now remain a viable alternative for care of a family member.

Detail of changes

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

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
22 VAC 40-72-930		The standard contains requirements for an emergency preparedness and response plan.	The proposed changes to the plan include: addition of a determination of assistance, if any, that will be provided to the facility by the local emergency management office; clarification regarding analysis of potential hazards that would disrupt normal operation of the facility; clarification regarding procedures that address evacuations and sheltering in place; and broadening procedures regarding operation and testing of emergency generators to cover maintaining and operating all emergency equipment. The changes will allow for better emergency planning to increase the protection of residents in an emergency.
22 VAC 40-72-960		The standard specifies requirements for emergency equipment and supplies.	The proposed changes include: language revision to reflect more closely exact language of the Code of Virginia regarding ability to connect to a temporary emergency electrical power source for the provision of electricity; clarification that reference to the Building Code relates to installation of a connection for temporary electric power; removal of specific requirements for heating, cooling, lighting, refrigeration, and operation of medical equipment in an emergency; removal of requirement for emergency generator on-site or obtained in an emergency that disrupts electrical power; clarification of requirements for flashlights and battery lanterns; and removal of provision for a supply of emergency generator fuel. Changes were made as a result of clarification of legislative intent and will allow facilities to pursue less costly alternatives to emergency equipment.