



Proposed Regulation Agency Background Document

Agency name	Board of Long-Term Care Administrators, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC95-30-10 et seq.
Regulation title	Regulations Governing the Practice of Assisted Living Facility Administrators
Action title	Oversight of acting administrators
Date this document prepared	12/27/11

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

Brief summary

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

Regulations are intended to identify to the public that the acting administrator of an assisted living facility is an administrator in training, that the preceptor is responsible for appropriate oversight by being present in the facility for training on a regular basis (at least two hours per week), and that survey visit reports for the facility become part of the administrator-in-training reports.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

ALF=Assisted Living Facility
AIT=Administrator-in-Training

DSS=Department of Social Services

Legal basis

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

18VAC95-30-10 et seq. Regulations Governing the Practice of Assisted Living Facility Administrators are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400 (6) provides the Board the authority to promulgate regulations to administer the regulatory system:

§ 54.1-2400 -General powers and duties of health regulatory boards

The general powers and duties of health regulatory boards shall be:

- ...
- 6. *To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ [54.1-100](#) et seq.) and Chapter 25 (§ [54.1-2500](#) et seq.) of this title. ...*

In addition, the Board has specific authority in § [54.1-3103.1](#) (as amended by Chapter 609) for regulation of an acting administrator for operation of assisted living facility:

A. All licensed assisted living facilities within the Commonwealth shall be under the supervision of an administrator licensed by the Board, except as provided in subsection B of § [54.1-3102](#). If a licensed assisted living facility administrator dies, resigns, is discharged, or becomes unable to perform his duties, the assisted living facility may continue to operate with an acting administrator in accordance with the provisions of § [63.2-1803](#). The facility shall immediately notify the Board of Long-Term Care Administrators and the regional licensing office of the Department of Social Services that the assisted living facility is operating without the supervision of a licensed assisted living facility administrator and shall provide the last date of employment of the licensed administrator. When an acting administrator is named, he shall notify the Department of Social Services of his employment and, if he is intending to assume the position permanently, submit a completed application for an approved administrator-in-training program to the Board within 10 days of employment.

B. Nothing in this chapter shall prohibit an assisted living administrator from serving as the administrator of record for more than one assisted living facility as permitted by regulations of the licensing authority for the facility.

Applicable law for the Department of Social Services was amended by Chapter 609 accordingly:

§ [63.2-1803](#). Staffing of assisted living facilities.

A. An administrator of an assisted living facility shall be licensed as an assisted living facility administrator by the Virginia Board of Long-Term Care Administrators pursuant to Chapter 31 (§ [54.1-3100](#) et seq.) of Title 54.1. However, an administrator of an assisted living facility licensed for residential living care only shall not be required to be licensed. Any person meeting the qualifications for a licensed nursing home administrator under § [54.1-3103](#) shall be deemed qualified to (i) serve as an administrator of an assisted living facility or (ii) serve as the administrator of both an assisted living facility and a licensed nursing home, provided the assisted living facility and licensed nursing home are part of the same building.

B. If a licensed assisted living facility administrator dies, resigns, is discharged, or becomes unable to perform his duties, the assisted living facility shall immediately employ a licensed administrator or appoint an acting administrator who is qualified by education for an approved administrator-in-training program and has a minimum of one year of administrative or supervisory experience in a health care or long-term care facility, or has completed such a program and is awaiting licensure. The facility shall give immediate notice to the regional licensing office of the Department of Social Services and to the Board of Long-Term Care Administrators and shall provide the last date of employment of the licensed administrator. When an acting administrator is named, he shall notify the Department of his employment and, if intending to assume the position permanently, submit a completed application for an approved administrator-in-training program to the Board of Long-Term Care Administrators within 10 days of employment. An assisted living facility may be operated by an acting administrator for no more than 150 days, or not more than 90 days if the acting administrator has not applied for licensure, from the last date of employment of the licensed administrator.

C. The Department may grant an extension of up to 30 days in addition to the 150 days from the last date of employment of a licensed administrator if the acting administrator has applied for licensure as a long-term care administrator pursuant to Chapter 31 (§ [54.1-3100](#) et seq.) of Title 54.1, has completed the administrator-in-training program, and is awaiting the results of the national examination. If a 30-day extension is granted, the acting administrator shall immediately submit written notice to the Board of Long-Term Care Administrators. In no case shall an assisted living facility be operated with an acting administrator for more than 180 days, including the 30-day extension, from the last date of employment of a licensed administrator.

D. No assisted living facility shall operate under the supervision of an acting administrator pursuant to § [54.1-3103.1](#) and this section more than one time during any two-year period unless authorized to do so by the Department. Determinations regarding authorization to operate under the supervision of an acting administrator for more than one time in any two-year period shall be made by the Department on a case-by-case basis.

E. The assisted living facility shall have adequate, appropriate, and sufficient staff to provide services to attain and maintain (i) the physical, mental and psychosocial well-being of each resident as determined by resident assessments and individual plans of care and (ii) the physical safety of the residents on the premises. Upon admission and upon request, the assisted living facility shall provide in writing a description of the types of staff working in the facility and the services provided, including the hours such services are available.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

The purpose of the regulatory action is to comply with the second enactment of Chapter 609 of the 2011 Acts of the Assembly, which requires: *“That the Board of Long-Term Care Administrators shall promulgate regulations for the oversight of acting administrators of assisted living facilities who have sought licensure but who are not yet licensed as long-term care administrators by a preceptor registered or recognized by the Board.”* To implement provisions of Chapter 609, the Board will amend certain regulations for an administrator-in-training to ensure adequate oversight by the preceptor who is supervising the training of a person serving as the acting administrator for an assisted living facility to protect its residents who are generally a very vulnerable population.

Since the revised law will allow an acting administrator (unlicensed person) to remain in charge of an assisted living facility for up to 180 days (rather than the current 90 days), it is essential for the health, welfare and safety of residents in that facility to ensure appropriate oversight by the person who is supervising and training the acting administrator and to identify the status of the acting administrator to the public.

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the “Detail of changes” section.)

Regulations will require identification to the public that the acting administrator of an assisted living facility is an administrator in training, that the preceptor is responsible for appropriate oversight by being present in the facility for training on a regular basis (at least two hours per week), and that survey visit reports for the facility become part of the administrator-in-training reports. The time frame for completion of an ALF AIT program is set at 150 days since the law requires that a person serving as the ALF must have a licensed administrator within 180 days from the last date of employment of a licensed administrator.

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 the regulatory action poses no disadvantages to the public or the Commonwealth, please indicate.

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- 1) The primary advantage of the amendments is increased oversight of an unlicensed person who is serving as an acting administrator. If the acting administrator has applied for licensure and is in an AIT program, he or she may serve for 150 days with a possible 30-day extension if the acting administrator is awaiting the results of the licensure examination. During that 6-month period, the facility is being run by an unlicensed person who has not yet demonstrated minimal competency. Oversight by a preceptor and appropriate identification of the acting administrator provides a measure of assurance that the residents are adequately protected. There are no disadvantages.
 - 2) There are no advantages or disadvantages to the Commonwealth.
 - 3) There are no other pertinent issues.

Requirements more restrictive than federal

Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities particularly affected.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Townhall website, www.townhall.virginia.gov, or by mail, email or fax to Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Richmond, VA 23233 or by fax to (804) 527-4434 or to elaine.yeatts@dhp.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last date of the public comment period.

A public hearing will be held and notice of the public hearing may appear on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and the Commonwealth Calendar. Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirements creates the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.</p>	<p>a) As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation; b) The agency will not incur any one-time costs since mailings to the Public Participation Guidelines mailing lists are electronic and a public hearing will be incorporated into a meeting already scheduled. There would be no on-going expenditures relating to licensure of acting administrators that are not currently incurred and covered by application fees.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>There are no costs on localities.</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>Individuals affected by the amended regulations would be persons who are serving as acting administrators who are in training for licensure and the preceptors for their training program.</p>
<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>The estimate of those affected is less than 12 per year. Since the law became effective on July 1, 2011, only one person serving as acting administrators has applied and begun training in an AIT program. That number will likely increase as survey visits by DSS uncover additional acting administrators, and facilities become more aware of the new requirements in the law.</p>
<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs</p>	<p>There are no additional costs to affected individuals. There are no additional fee or hourly requirements for completion of a training program by an acting administrator.</p>

<p>required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	
<p>Beneficial impact the regulation is designed to produce.</p>	<p>The beneficial impact of the regulation is greater oversight of assisted living facilities being operated by unlicensed persons serving as acting administrators.</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.

Assisted living facilities (ALF’s) report that they find it very difficult to hire a licensed administrator as a replacement and must generally get someone from within the organization trained to become the licensed administrator. It is not possible to accomplish that within 90 days. Amendments to law in Chapter 609 (SB1093) would ensure that the person named as acting administrator is qualified by education to become licensed and that he is enrolled in an administrator-in-training program (AIT). Enrollment in an AIT program as a preceptee will at least ensure that there is some oversight and supervision by a preceptor of the acting administrator practice. The licensee who is the preceptor is held responsible for appropriate supervision but not for all activities that occur within the ALF under an acting administrator. The acting administrator may only serve for 150 days, but if the acting administrator has completed the program and taken the examination, a 30-day extension is allowed while he is awaiting the results of the examination and subsequent licensure by the Board.

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.

There are no alternative regulatory methods to accomplish the intent of the statutory language.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

The NOIRA was sent to interested parties by the Board, posted on Townhall and published in the Virginia Register of Regulations on September 12, 2011. There were no comments on the NOIRA.

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.

Failure to protect residents of an assisted living facility in which an unlicensed person is serving as the acting administrator could have a negative impact on the institution of the family.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
95	n/a	Provision for licensure of current administrators	The section is being repealed because it was applicable for persons serving as administrators at the time regulations were initially promulgated and expired on January 2, 2009. Repeal will avoid any possible confusion for acting administrators in ALF's.
130	n/a	Sets out the required content of a complete application package for assisted living facility administrator licensure.	The amendment will add a requirement for the most recent survey report from DSS to be included in the application package, if the applicant has been serving as the acting administrator, in order to ensure that no grounds exist for denial of the licensure application.
150	n/a	Sets out the required hours of training for an AIT program	An ALF AIT is required to be completed within 24 months, but for a person who is

		and the time frame for completion of the program.	<p>serving as an acting administrator while in an ALF AIT, the time frame is amended to require completion within 150 days. The law (§ 63.2-1803) permits an assisted living facility to be operated by an acting administrator for no more than 150 days if that person has applied for licensure. DSS can grant a 30-day extension if the acting administrator has completed the AIT program and is awaiting the results of the national examination. Therefore, The time frame for a person in an ALF AIT who is an acting administrator can be no more than 150 days. If that person is no longer an acting administrator (another licensed administrator has been hired to run the facility), he can complete the program within the 24 months currently allowed by the regulation.</p>
180	n/a	Establishes requirement for a preceptor for trainees in an ALF AIT program	<p>Subsection E is added to specify that a preceptor for a person in an ALF AIT who is serving as an acting administrator must be present in the training facility for face-to-face instruction and review of performance for a minimum of two hours per week.</p> <p>Typically, the licensed administrator of a facility serves as the preceptor for a person in an ALF AIT. If the preceptor is not physically located in the training facility, there is no specific hourly requirement for training, but there is a licensee in charge of the facility. If the ALF facility is being administered by an acting person who is concurrently in training, there is no licensee in charge and regularly present to observe, train and review performance, so a minimal requirement for the preceptor to be present is necessary.</p>
190	n/a	Sets the reporting requirements for the ALF AIT program	<p>Subsection A is amended to specify that the report of a person in an AIT who is also the acting administrator must include evidence of face-to-face instruction as required by section 180.</p> <p>Subsection B is amended to specify that such reports must be received within 5 business days following completion of the program. The more restrictive requirement is necessary because the person can only be approved as an acting administrator for additional 30 days (beyond 150 days) if he</p>

			has been approved to sit for the national examination and is waiting for the results.
n/a	201	n/a	Section 201 sets forth requirements for identification of an acting administrator in training and notification to the public by posting of the certificate issued by the board for the acting administrator and a copy of the license of the preceptor. Since the facility is being operated by an unlicensed person, it is necessary for the public to be aware of the status of that person and, if that person is in training, aware of the preceptor responsible for such training.