STANDARDS

FOR

LICENSED ASSISTED LIVING FACILITIES

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STANDARDS FOR
LICENSED ASSISTED LIVING FACILITIES
CHAPTER 73

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CHAPTER 73
STANDARDS FOR LICENSED ASSISTED LIVING FACILITIES

PART I
GENERAL PROVISIONS

22VAC40-73-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Activities of daily living" or "ADLs" means bathing, dressing, toileting, transferring, bowel control, bladder control, eating, and feeding. A person's degree of independence in performing these activities is a part of determining appropriate level of care and services.

"Administer medication" means to open a container of medicine or to remove the ordered dosage and to give it to the resident for whom it is ordered.

"Administrator" means the licensee or a person designated by the licensee who is responsible for the general administration and management of an assisted living facility and who oversees the day-to-day operation of the facility, including compliance with all regulations for licensed assisted living facilities.

"Admission" means the date a person actually becomes a resident of the assisted living facility and is physically present at the facility.

"Advance directive" means, as defined in § 54.1-2982 of the Code of Virginia, (i) a witnessed written document voluntarily executed by the declarant in accordance with the requirements of § 54.1-2983 of the Code of Virginia or (ii) a witnessed oral statement made by the declarant subsequent to the time the declarant is diagnosed as suffering from a terminal condition and in accordance with the provisions of § 54.1-2983 of the Code of Virginia.

"Ambulatory" means the condition of a resident who is physically and mentally capable of self-preservation by evacuating in response to an emergency to a refuge area as defined by 13VAC5-63, the Virginia Uniform Statewide Building Code, without the assistance of another person, or from the structure itself without the assistance of another person if there is no such refuge area within the structure, even if such resident may require the assistance of a wheelchair, walker, cane, prosthetic device, or a single verbal command to evacuate.

22VAC40-73-10. Definitions.

"Assisted living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require at least moderate assistance with the activities of daily living. Included in this level of service are individuals who are dependent in behavior pattern (i.e., abusive, aggressive, disruptive) as documented on the uniform assessment instrument.

"Assisted living facility" or “facility” means, as defined in § 63.2-100 of the Code of Virginia, any congregate residential setting that provides or coordinates personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for the maintenance or care of four or more adults who are aged or infirm or who have disabilities and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Behavioral Health and Developmental Services, but including any portion of such facility not so licensed; (ii) the home or residence of an individual who cares for or maintains only persons related to that individual by blood or marriage;(iii) a facility or portion of a facility serving individuals who are infirm or who have disabilities between 18 and 21 years of age, or 22 years of age if enrolled in an educational program for individuals with disabilities pursuant to § 22.1- 214 of the Code of Virginia, when such facility is licensed by the department as a children's residential facility under Chapter 17 (§ 63.2-1700 et seq.) of Title of the Code of Virginia, but including any portion of the facility not so licensed; and (iv) any housing project for individuals who are 62 years of age or older or individuals with disabilities that provides no more than basic coordination of care services and is funded by the U.S. Department of Housing and Urban Development, the U.S. Department of Agriculture, or the Virginia Housing Development Authority. Included in this definition are any two or more places, establishments, or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more adults who are aged or infirm or who have disabilities. Maintenance or care means the protection, general supervision, and oversight of the physical and mental well-being of an individual who is aged or infirm or who has a disability.

"Attorney-in-fact" means strictly, one who is designated to transact business for another: a legal agent.

“Automated external defibrillator” or “AED” means the same as defined in § 32.1-111.1 of the Code of Virginia.

"Behavioral health authority" means the organization, appointed by and accountable to the governing body of the city or county that established it, that provides mental health, developmental, and substance abuse services through its own staff or through contracts with other organizations and providers.

"Board" means the State Board of Social Services.

"Building" means a structure with exterior walls under one roof.

22VAC40-73-10. Definitions.

"Cardiopulmonary resuscitation" or "CPR" means an emergency procedure consisting of external cardiac massage and artificial respiration; the first treatment for a person who has collapsed, has no pulse, and has stopped breathing; and attempts to restore circulation of the blood and prevent death or brain damage due to lack of oxygen.

"Case management" means multiple functions designed to link clients to appropriate services. Case management may include a variety of common components such as initial screening of needs, comprehensive assessment of needs, development and implementation of a plan of care, service monitoring, and client follow-up.

"Case manager" means an employee of a public human services agency who is qualified and designated to develop and coordinate plans of care.

"Chemical restraint" means a psychopharmacologic drug that is used for discipline or convenience and not required to treat the resident's medical symptoms or symptoms from mental illness or intellectual disability and that prohibits the resident from reaching the resident’s highest level of functioning.

"Commissioner" means the commissioner of the department, the commissioner’s designee, or an authorized representative.

"Community services board" or "CSB" means a public body established pursuant to § 37.2-501 of the Code of Virginia that provides mental health, developmental, and substance abuse programs and services within the political subdivision participating on the board.

"Companion services" means assistance provided to residents in such areas as transportation, meal preparation, shopping, light housekeeping, companionship, and household management.

"Conservator" means a person appointed by the court who is responsible for managing the estate and financial affairs of an incapacitated person and, where the context plainly indicates, includes a "limited conservator" or a "temporary conservator." The term includes (i) a local or regional program designated by the Department for Aging and Rehabilitative Services as a public conservator pursuant to Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5 of the Code of Virginia or (ii) any local or regional tax-exempt charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code to provide conservatorial services to

22VAC40-73-10. Definitions.

incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person. If a tax- exempt charitable organization has been designated by the Department for Aging and Rehabilitative Services as a public conservator, it may also serve as a conservator for other individuals.

"Continuous licensed nursing care" means around-the-clock observation, assessment, monitoring, supervision, or provision of medical treatments provided by a licensed nurse. Individuals requiring continuous licensed nursing care may include:

1. Individuals who have a medical instability due to complexities created by multiple, interrelated medical conditions; or

2. Individuals with a health care condition with a high potential for medical instability.

“Days” means calendar days unless noted otherwise.

"Department" means the Virginia Department of Social Services.

"Department's representative" means an employee or designee of the Virginia Department of Social Services, acting as an authorized agent of the Commissioner of Social Services.

"Dietary supplement" means a product intended for ingestion that supplements the diet, is labeled as a dietary supplement, is not represented as a sole item of a meal or diet, and contains a dietary ingredient (e.g., vitamins, minerals, amino acids, herbs or other botanicals, dietary substances such as enzymes, and concentrates, metabolites, constituents, extracts, or combinations of the preceding types of ingredients). Dietary supplements may be found in many forms, such as tablets, capsules, liquids, or bars.

"Direct care staff" means supervisors, assistants, aides, or other staff of a facility who assist residents in the performance of personal care or daily living activities.

"Discharge" means the movement of a resident out of the assisted living facility.

“Electronic monitoring" means the use of a surveillance device with a fixed position video camera or audio recording device or a combination thereof that is installed in a resident’s room and broadcasts or records activities or sounds occurring within the confines of the room. “Electronic monitoring” does not include the use of a device that enables audio communication into the resident’s room from another source.

“Electronic record” means a record created, generated, sent, communicated, received, or stored by electronic means.

22VAC40-73-10. Definitions.

"Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

"Emergency placement" means the temporary status of an individual in an assisted living facility when the person's health and safety would be jeopardized by denying entry into the facility until the requirements for admission have been met.

"Emergency restraint" means a restraint used when the resident's behavior is unmanageable to the degree an immediate and serious danger is presented to the health and safety of the resident or others.

"General supervision and oversight" means assuming responsibility for the well- being of residents, either directly or through contracted agents.

"Guardian" means a person appointed by the court who is responsible for the personal affairs of an incapacitated person, including responsibility for making decisions regarding the person's support, care, health, safety, habilitation, education, therapeutic treatment, and, if not inconsistent with an order of involuntary admission, residence. Where the context plainly indicates, the term includes a "limited guardian" or a "temporary guardian." The term includes (i) a local or regional program designated by the Department for Aging and Rehabilitative Services as a public guardian pursuant to Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5 of the Code of Virginia or (ii) any local or regional tax- exempt charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code to provide guardian services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person. If a tax- exempt charitable organization has been designated by the Department for Aging and Rehabilitative Services as a public guardian, it may also serve as a guardian for other individuals.

"Habilitative service" means activities to advance a normal sequence of motor skills, movement, and self-care abilities or to prevent avoidable additional deformity or dysfunction.

"Health care provider" means a person, corporation, health care facility, or institution licensed by the Commonwealth to provide health care or professional services, including a physician or hospital, dentist, pharmacist, registered or licensed practical nurse, optometrist, podiatrist, chiropractor, physical therapist, physical therapy assistant, clinical psychologist, or health maintenance organization.

22VAC40-73-10. Definitions.

"Household member" means any person domiciled in an assisted living facility other than residents or staff.

"Imminent physical threat or danger" means clear and present risk of sustaining or inflicting serious or life-threatening injuries.

"Independent clinical psychologist" means a clinical psychologist who is chosen by the resident of the assisted living facility and who has no financial interest in the assisted living facility, directly or indirectly, as an owner, officer, or employee or as an independent contractor with the facility.

"Independent living status" means that the resident is assessed as capable of performing all activities of daily living and instrumental activities of daily living independently without requiring the assistance of another person and is assessed as capable of taking medications without the assistance of another person. If the policy of a facility dictates that medications are administered or distributed centrally without regard for resident capacity, this policy shall not be considered in determining independent status.

"Independent physician" means a physician who is chosen by the resident of the assisted living facility and who has no financial interest in the assisted living facility, directly or indirectly, as an owner, officer, or employee or as an independent contractor with the facility.

"Individualized service plan" or "ISP" means the written description of actions to be taken by the licensee, including coordination with other services providers, to meet the assessed needs of the resident.

"Instrumental activities of daily living" or "IADLs" means meal preparation, housekeeping, laundry, and managing money. A person's degree of independence in performing these activities is a part of determining appropriate level of care and services.

"Intellectual disability" means a disability originating before 18 years of age characterized concurrently by (i) significantly subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning, administered in conformity with accepted professional practice, that is at least two standard deviations below the mean and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills.

"Intermittent intravenous therapy" means therapy provided by a licensed health

22VAC40-73-10. Definitions.

care professional at medically predictable intervals for a limited period of time on a daily or periodic basis.

"Legal representative" means a person legally responsible for representing or standing in the place of the resident for the conduct of the resident's affairs. This may include a guardian, conservator, attorney-in-fact under durable power of attorney ("durable power of attorney" defines the type of legal instrument used to name the attorney- in-fact and does not change the meaning of attorney-in-fact), trustee, or other person expressly named by a court of competent jurisdiction or the resident as the resident's agent in a legal document that specifies the scope of the representative's authority to act. A legal representative may only represent or stand in the place of a resident for the functions for which the legal representative has legal authority to act. A resident is presumed competent and is responsible for making all health care, personal care, financial, and other personal decisions that affect the resident's life unless a representative with legal authority has been appointed by a court of competent jurisdiction or has been appointed by the resident in a properly executed and signed document. A resident may have different legal representatives for different functions. For any given standard, the term "legal representative" applies solely to the legal representative with the authority to act in regard to the functions relevant to that particular standard.

"Licensed health care professional" means any health care professional currently licensed by the Commonwealth of Virginia to practice within the scope of that health care professional's profession, such as a nurse practitioner, registered nurse, licensed practical nurse (nurses may be licensed or hold multistate licensure pursuant to § 54.1-3000 of the Code of Virginia), clinical social worker, dentist, occupational therapist, pharmacist, physical therapist, physician, physician assistant, psychologist, and speech-language pathologist. Responsibilities of physicians referenced in this chapter may be implemented by nurse practitioners or physician assistants in accordance with their protocols or practice agreements with their supervising physicians and in accordance with the law.

"Licensee" means any person, association, partnership, corporation, company, or public agency to whom the license is issued.

"Manager" means a designated person who serves as a manager pursuant to 22VAC40-73-170 and 22VAC40-73-180.

"Mandated reporter" means persons specified in § 63.2-1606 of the Code of Virginia who are required to report matters giving reason to suspect abuse, neglect, or exploitation of an adult.

"Maximum physical assistance" means that an individual has a rating of total dependence in four or more of the seven activities of daily living as documented on

22VAC40-73-10. Definitions.

the uniform assessment instrument. An individual who can participate in any way with performance of the activity is not considered to be totally independent.

"Medical/orthopedic restraint" means the use of a medical or orthopedic support device that has the effect of restricting the resident's freedom of movement or access to the resident's body for the purpose of improving the resident's stability, physical functioning, or mobility.

"Medication aide" means a staff person who has current registration with the Virginia Board of Nursing to administer drugs that would otherwise be self-administered to residents in an assisted living facility in accordance with the Regulations Governing the Registration of Medication Aides (18VAC90-60). This definition also includes a staff person who is an applicant for registration as a medication aide in accordance with subdivision 2 of 22VAC40-73-670.

"Mental illness" means a disorder of thought, mood, emotion, perception, or orientation that significantly impairs judgment, behavior, capacity to recognize reality, or ability to address basic life necessities and requires care and treatment for the health, safety, or recovery of the individual or for the safety of others.

"Mental impairment" means a disability that reduces an individual's ability to reason logically, make appropriate decisions, or engage in purposeful behavior.

"Minimal assistance" means dependency in only one activity of daily living or dependency in one or more of the instrumental activities of daily living as documented on the uniform assessment instrument.

"Moderate assistance" means dependency in two or more of the activities of daily living as documented on the uniform assessment instrument.

"Nonambulatory" means the condition of a resident who by reason of physical or mental impairment is not capable of self-preservation without the assistance of another person.

"Nonemergency restraint" means a restraint used for the purpose of providing support to a physically weakened resident.

"Physical impairment" means a condition of a bodily or sensory nature that reduces an individual's ability to function or to perform activities.

"Physical restraint" means any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the resident cannot remove easily, that restricts freedom of movement or access to the resident's body.

22VAC40-73-10. Definitions.

"Physician" means an individual licensed to practice medicine or osteopathic medicine in any of the 50 states or the District of Columbia.

"Premises" means a building or group of buildings, under one license, together with the land or grounds on which located.

"Prescriber" means a practitioner who is authorized pursuant to §§ 54.1-3303 and 54.1-3408 of the Code of Virginia to issue a prescription.

"Private duty personnel" means an individual hired, either directly or through a licensed home care organization, by a resident, family member, legal representative, or similar entity to provide one-on-one services to the resident, such as a private duty nurse, home attendant, personal aide, or companion. Private duty personnel are not hired by the facility, either directly or through a contract.

"Private pay" means that a resident of an assisted living facility is not eligible for an auxiliary grant.

"Psychopharmacologic drug" means any drug prescribed or administered with the intent of controlling mood, mental status, or behavior. Psychopharmacologic drugs include not only the obvious drug classes, such as antipsychotic, antidepressants, and the antianxiety/hypnotic class, but any drug that is prescribed or administered with the intent of controlling mood, mental status, or behavior, regardless of the manner in which it is marketed by the manufacturers and regardless of labeling or other approvals by the U.S. Food and Drug Administration.

"Public pay" means that a resident of an assisted living facility is eligible for an auxiliary grant.

"Qualified" means having appropriate training and experience commensurate with assigned responsibilities, or if referring to a professional, possessing an appropriate degree or having documented equivalent education, training, or experience. There are specific definitions for "qualified assessor" and "qualified mental health professional" in this section.

"Qualified assessor" means an individual who is authorized to perform an assessment, reassessment, or change in level of care for an applicant to or resident of an assisted living facility. For public pay individuals, a qualified assessor is an employee of a public human services agency trained in the completion of the uniform assessment instrument (UAI). For private pay individuals, a qualified assessor is an employee of the assisted living facility trained in the completion of the UAI or an independent private physician or a qualified assessor for public pay individuals.

22VAC40-73-10. Definitions.

"Qualified mental health professional" means a behavioral health professional who is trained and experienced in providing psychiatric or mental health services to individuals who have a psychiatric diagnosis, including (i) a physician licensed in Virginia; (ii) a psychologist, who is an individual with a master's degree in psychology from a college or university accredited by an association recognized by the U.S. Secretary of Education, with at least one year of clinical experience; (iii) a social worker, who is an individual with at least a master's degree in human services or related field (e.g., social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, or human services counseling) from a college or university accredited by an association recognized by the U.S. Secretary of Education, with at least one year of clinical experience providing direct services to persons with a diagnosis of mental illness; (iv) a registered psychiatric rehabilitation provider (RPRP) registered with the International Association of Psychosocial Rehabilitation Services (IAPSRS); (v) a clinical nurse specialist or psychiatric nurse practitioner licensed in the Commonwealth of Virginia with at least one year of clinical experience working in a mental health treatment facility or agency; (vi) any other licensed mental health professional; or (vii) any other person deemed by the Department of Behavioral Health and Developmental Services as having qualifications equivalent to those described in this definition. Any unlicensed person who meets the requirements contained in this definition shall either be under the supervision of a licensed mental health professional or employed by an agency or organization licensed by the Department of Behavioral Health and Developmental Services.

"Rehabilitative services" means activities that are ordered by a physician or other qualified health care professional that are provided by a rehabilitative therapist (e.g., physical therapist, occupational therapist, or speech-language pathologist). These activities may be necessary when a resident has demonstrated a change in capability and are provided to restore or improve the resident’s level of functioning.

"Resident" means any adult residing in an assisted living facility for the purpose of receiving maintenance or care. The definition of resident also includes adults residing in an assisted living facility who have independent living status. Adults present in an assisted living facility for part of the day for the purpose of receiving day services are also considered residents.

"Residential living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require only minimal assistance with the activities of daily living. Included in this level of service are individuals who are dependent in medication administration as documented on the uniform assessment instrument, although they may not require minimal assistance with the activities of daily living. This definition includes the services provided by the facility to individuals who are assessed as capable of maintaining themselves in an independent living status.

22VAC40-73-10. Definitions.

"Respite care" means services provided in an assisted living facility for the maintenance or care of adults who are aged or infirm or who have a disability for a temporary period of time or temporary periods of time that are regular or intermittent. Facilities offering this type of care are subject to this chapter.

"Restorative care" means activities designed to assist the resident in reaching or maintaining the resident's level of potential. These activities are not required to be provided by a rehabilitative therapist and may include activities such as range of motion, assistance with ambulation, positioning, assistance and instruction in the activities of daily living, psychosocial skills training, and reorientation and reality orientation.

"Restraint" means either "physical restraint" or "chemical restraint" as these terms are defined in this section.

"Safe, secure environment" means a self-contained special care unit for residents with serious cognitive impairments due to a primary psychiatric diagnosis of dementia who cannot recognize danger or protect their own safety and welfare. There may be one or more self-contained special care units in a facility or the whole facility may be a special care unit. Nothing in this definition limits or contravenes the privacy protections set forth in § 63.2- 1808 of the Code of Virginia.

"Sanitizing" means treating in such a way to remove bacteria and viruses through using a disinfectant solution (e.g., bleach solution or commercial chemical disinfectant) or physical agent (e.g., heat).

"Serious cognitive impairment" means severe deficit in mental capability of a chronic, enduring, or long-term nature that affects areas such as thought processes, problem-solving, judgment, memory, and comprehension and that interferes with such things as reality orientation, ability to care for self, ability to recognize danger to self or others, and impulse control. Such cognitive impairment is not due to (i) acute or episodic conditions, (ii) conditions arising from treatable metabolic or chemical imbalances, or (iii) reactions to medication or toxic substances. For the purposes of this chapter, serious cognitive impairment means that an individual cannot recognize danger or protect the individual's own safety and welfare.

"Significant change" means a change in a resident's condition that is expected to last longer than 30 days. It does not include short-term changes that resolve with or without intervention, a short-term acute illness or episodic event, or a well-established, predictive, cyclic pattern of clinical signs and symptoms associated with a previously diagnosed condition where an appropriate course of treatment is in progress.

22VAC40-73-10. Definitions.

"Skilled nursing treatment" means a service ordered by a physician or other prescriber that is provided by and within the scope of practice of a licensed nurse.

“Skills training" means systematic skill building through curriculum-based psychoeducational and cognitive-behavioral interventions. These interventions break down complex objectives for role performance into simpler components, including basic cognitive skills such as attention, to facilitate learning and competency.

"Staff" or "staff person" means personnel working at a facility who are compensated or have a financial interest in the facility, regardless of role, service, age, function, or duration of employment at the facility. "Staff" or "staff person" also includes those individuals hired through a contract with the facility to provide services for the facility.

"Substance abuse" means the use of drugs enumerated in the Virginia Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia), without a compelling medical reason, or alcohol that (i) results in psychological or physiological dependence or danger to self or others as a function of continued and compulsive use or (ii) results in mental, emotional, or physical impairment that causes socially dysfunctional or socially disordering behavior; and (iii) because of such substance abuse, requires care and treatment for the health of the individual. This care and treatment may include counseling, rehabilitation, or medical or psychiatric care. All determinations of whether a compelling medical reason exists shall be made by a physician or other qualified medical personnel.

"Systems review" means a physical examination of the body to determine if the person is experiencing problems or distress, including cardiovascular system, respiratory system, gastrointestinal system, urinary system, endocrine system, musculoskeletal system, nervous system, sensory system, and the skin.

"Transfer" means movement of a resident to a different assigned living area within the same licensed facility.

"Trustee" means one who stands in a fiduciary or confidential relation to another; especially one who, having legal title to property, holds it in trust for the benefit of another and owes a fiduciary duty to that beneficiary.

"Uniform assessment instrument" or "UAI" means the department-designated assessment form. There is an alternate version of the form that may be used for private pay residents. Social and financial information that is not relevant because of the resident's payment status is not included on the private pay version of the form.

22VAC40-73-10. Definitions.

"Volunteer" means a person who works at an assisted living facility who is not compensated. An exception to this definition is a person who, either as an individual or as part of an organization, is only present at or facilitates group activities on an occasional basis or for special events.

22VAC40-73-20. Requirements of law and applicability.

A. Chapters 17 (§ 63.2-1700 et seq.) and 18 (§ 63.2-1800 et seq.) of Title 63.2 of the Code of Virginia include requirements of law relating to licensure, including licensure of assisted living facilities.

B. This chapter applies to assisted living facilities as defined in § 63.2-100 of the Code of Virginia and in 22VAC40-73-10.

    1. Each assisted living facility shall comply with Parts I (22VAC40-73-10 et seq.) through IX (22VAC40-73-950 et seq.) of this chapter.

    2. An assisted living facility that cares for adults with serious cognitive impairments shall also comply with Part X (22VAC40-73-1000 et seq.) of this chapter.

22VAC40-73-30. Program of care.

There shall be a program of care that:

1. Meets the resident's physical, mental, emotional, psychosocial, and spiritual needs;

2. Promotes the resident's highest level of functioning;

3. Provides protection, guidance, and supervision;

4. Promotes a sense of security, self-worth, and independence; and

5. Promotes the resident's involvement with appropriate programs and community resources based on the resident's needs and interests.

PART II ADMINISTRATION AND ADMINISTRATIVE SERVICES

22VAC40-73-40. Licensee.

A. The licensee shall ensure compliance with all regulations for licensed assisted living facilities and terms of the license issued by the department; with relevant federal, state, and local laws; with other relevant regulations; and with the facility's own policies and procedures.

B. The licensee shall:

1. Give evidence of financial responsibility and solvency.

2. Be of good character and reputation in accordance with § 63.2-1702 of the Code of Virginia. Character and reputation investigation includes background checks as required by § 63.2-1721 of the Code of Virginia.

3. Meet the requirements specified in the Regulation for Background Checks for Assisted Living Facilities and Adult Day Centers (22VAC40-90).

4. Act in accordance with General Procedures and Information for Licensure (22VAC40-80).

5. Protect the physical and mental well-being of residents.

6. Exercise general supervision over the affairs of the licensed facility and establish policies and procedures concerning its operation in conformance with applicable law, this chapter, and the welfare of the residents.

7. Ensure that the licensee, the licensee’s agents, the facility administrator, or facility staff or the relatives of any of these persons shall not act as, seek to become, or become the conservator or guardian of any resident unless specifically so appointed by a court of competent jurisdiction pursuant to Article 1 (§ 64.2-2000 et seq.) of Chapter 20 of Title 64.2 of the Code of Virginia.

8. Ensure that the current license is posted in the facility in a place conspicuous to the residents and the public.

9. Ensure that the facility keeps and maintains at the facility records, reports, plans, schedules, and other information as required by this chapter for licensed assisted living facilities.

22VAC40-73-40. Licensee.

10. Ensure that any document required by this chapter to be posted shall be in at least 12-point type or equivalent size, unless otherwise specified.

11. Make certain that when it is time to discard records, they are disposed of in a manner that ensures confidentiality.

12. Ensure that at all times the department's representative is afforded reasonable opportunity to inspect all of the facility's buildings, books, and records and to interview agents, employees, residents, and any person under its custody, control, direction, or supervision as specified in § 63.2-1706 of the Code of Virginia.

C. Upon initial application for an assisted living facility license, any person applying to operate such a facility who has not previously owned or managed or does not currently own or manage a licensed assisted living facility shall be required to undergo training by the commissioner. Training for such owners and currently employed administrators shall be required at the time of initial application for licensure. In all cases, such training shall be completed prior to the granting of any initial license.

1. The commissioner may also approve training programs provided by other entities and allow owners or administrators to attend such approved training programs in lieu of training by the commissioner.

2. The commissioner may, at the commissioner’s discretion, also approve for licensure applicants who meet requisite experience criteria as established by the board.

3. The training programs shall focus on the health and safety regulations and resident rights as they pertain to assisted living facilities and shall be completed by the owner or administrator prior to the granting of an initial license.

4. The commissioner may, at the commissioner’s discretion, issue a license conditioned upon the completion by the owner or administrator of the required training.

D. The licensee shall notify in writing the regional licensing office of intent to sell or voluntarily close the facility. The following shall apply:

1. No less than 60 days prior to the planned sale date or closure, the licensee shall notify the regional licensing office, residents, and as relevant, legal representatives, case managers, assessors, eligibility workers, and designated

22VAC40-73-40. Licensee.

contact persons of the intended sale or closure of the facility and the date for such.

EXCEPTION: If plans are made at such time that 60-day notice is not possible, the licensee shall notify the regional licensing office, the residents, legal representatives, case managers, assessors, eligibility workers, and designated contact persons as soon as the intent to sell or close the facility is known.

2. If the facility is to be sold, at the time of notification specified in subdivision 1 of this subsection, the licensee shall explain to each resident, the resident's legal representative, case manager, assessor, and at least one designated contact person that the resident can choose whether to stay or relocate, unless the new licensee specifies relocation. If a resident chooses to stay, there must be a new resident agreement between the resident and the new licensee that meets the specifications of 22VAC40-73-390.

3. The licensee shall provide updates regarding the closure or sale of the facility to the regional licensing office, as requested.

22VAC40-73-45. Liability insurance.

A. Assisted living facilities shall maintain liability insurance coverage per occurrence according to the following licensed capacity tiers:

1. Tier I: A minimum of $250,000 for facilities licensed for 25 residents or fewer;

2. Tier II: A minimum of $400,000 for facilities licensed for more than 25 but no more than 75 residents;

3. Tier III: A minimum of $500,000 for facilities licensed for more than 75 but no more than 150 residents; or

4. Tier IV: A minimum of $1,000,000 for facilities licensed for 151 or more residents.

B. Each facility shall prepare and provide, upon request of the prospective resident or resident and resident's legal representative, if any, a statement that the facility maintains liability insurance in force to compensate residents or other individuals for injuries and losses from the negligent acts of the facility. The statement shall be made on the liability insurance statement form provided by the department.

22VAC40-73-50. Disclosure.

A. The assisted living facility shall prepare and provide a statement to the prospective resident and the prospective resident's legal representative, if any, that discloses information about the facility. The statement shall be on a form developed by the department and shall:

22VAC40-73-50. Disclosure.

1. Disclose information fully and accurately in plain language;

2. Be provided in advance of admission and prior to signing an admission agreement or contract;

3. Be provided upon request; and

4. Disclose the following information, which shall be kept current:

   a. Name of the facility;

   b. Name of the licensee;

   c. Ownership structure of the facility (e.g., individual, partnership, corporation, limited liability company, unincorporated association, or public agency);

   d. Description of all accommodations, services, and care that the facility offers;

   e. Fees charged for accommodations, services, and care, including clear information about what is included in the base fee and all fees for additional accommodations, services, and care;

   f. Criteria for admission to the facility and restrictions on admission;

   g. Criteria for transfer to a different living area within the same facility, including transfer to another level or type of care within the same facility or complex;

   h. Criteria for discharge;

   i. Categories, frequency, and number of activities provided for residents;

   j. General number, position types, and qualifications of staff on each shift;

   k. Whether the facility has an onsite emergency electrical power source for the provision of electricity during an interruption of the normal electric power supply. If the facility does have an onsite emergency electrical power source, the statement must include (i) the items for which the source will supply power and(ii) whether staff of the facility have been trained to maintain and operate the power source. For the purposes of this subdivision k, an onsite emergency electrical power supply shall include both permanent emergency electrical power sources and portable emergency electrical power sources, provided that such temporary electrical power supply source remains on the premises of the facility at all times. Written acknowledgement of the disclosure shall be evidenced by the signature or initials of the resident or the resident's legal representative immediately following the onsite emergency electrical power source disclosure statement.

22VAC40-73-50. Disclosure.

l. Notation that additional information about the facility that is included in the resident agreement is available upon request; and

m. The department's website address, with a note that additional information about the facility may be obtained from the website.

B. Written acknowledgment of the receipt of the disclosure by the resident or the resident's legal representative shall be retained in the resident's record.

C. The disclosure statement shall also be available to the general public, upon request.

22VAC40-73-60. Electronic records and signatures.

A. Use of electronic records or signatures shall comply with the provisions of the Uniform Electronic Transactions Act (§ 59.1-479 et seq. of the Code of Virginia).

B. In addition to the requirements of the Uniform Electronic Transactions Act, the use of electronic signatures shall be deemed to constitute a signature and have the same effect as a written signature on a document as long as the licensee:

1. Develops, implements, and maintains specific policies and procedures for the use of electronic signatures;

2. Ensures that each electronic signature identifies the individual signing the document by name and title;

3. Ensures that the document cannot be altered after the signature has been affixed;

4. Ensures that access to the code or key sequence is limited;

5. Ensures that all users have signed statements that they alone have access to and use the key or computer password for their signature and will not share their key or password with others; and

6. Ensures that strong and substantial evidence exists that would make it difficult for the signer or the receiving party to claim the electronic representation is not valid.

22VAC40-73-60. Electronic records and signatures.

C. A back-up and security system shall be utilized for all electronic documents.

22VAC40-73-70. Incident reports.

A. Each facility shall report to the regional licensing office within 24 hours any major incident that has negatively affected or that threatens the life, health, safety, or welfare of any resident.

B. The report required in subsection A of this section shall include (i) the name of the facility, (ii) the name or names of the resident or residents involved in the incident, (iii) the name of the person making the report, (iv) the date of the incident, (v) a description of the incident, and (vi) the actions taken in response to the incident.

C. The facility shall submit a written report of each incident specified in subsection A of this section to the regional licensing office within seven days from the date of the incident. The report shall be signed and dated by the administrator and include the following information:

1. Name and address of the facility;

2. Name of the resident or residents involved in the incident;

3. Date and time of the incident;

4. Description of the incident, the circumstances under which it happened, and, when applicable, extent of injury or damage;

5. Location of the incident;

6. Actions taken in response to the incident;

7. Actions to prevent recurrence of the incident, if applicable;

8. Name of staff person in charge at the time of the incident;

22VAC40-73-70. Incident reports.

9. Names, telephone numbers, and addresses of witnesses to the incident, if any; and

10. Name, title, and signature of the person making the report, if other than the administrator, and date of the completion of the report.

D. The facility shall submit to the regional licensing office amendments to the written report when circumstances require, such as when substantial additional actions are taken, when significant new information becomes available, or there is resolution of the incident after submission of the report.

E. A copy of the written report of each incident shall be maintained by the facility for at least two years from the date of the incident.

F. If applicable, the facility shall ensure that there is documentation in the resident's record as required by 22VAC40-73-470 F.

22VAC40-73-80. Management and control of resident funds.

Pursuant to § 63.2-1808 A 3 of the Code of Virginia, the resident shall be free to manage his personal finances and funds regardless of source, unless a committee, conservator, or guardian has been appointed for a resident. However, the resident may request that the facility assist with the management of personal funds, and the facility may assist the resident in such management under the following conditions:

1. There shall be documentation of this request and delegation, signed and dated by the resident and the administrator. The documentation shall be maintained in the resident's record.

2. All resident funds shall be held separately from any other moneys of the facility. No resident funds shall be borrowed, used as assets of the facility, or used for purposes of personal interest by the licensee, operator, administrator, or facility staff.

3. The resident shall be given a choice of whether he wishes his funds to be maintained in an individual resident account or in a single account for the accumulated funds of multiple residents. Either type of account may be interest-bearing. If the account is interest-bearing, the resident must be provided his appropriate portion of the interest.

22VAC40-73-80. Management and control of resident funds.

4. The facility may charge a reasonable amount for administration of the account, except for residents who are recipients of an auxiliary grant as account administration is covered by the grant.

5. The facility shall maintain a written accounting of money received and disbursed by the facility that shows a current balance. The written accounting of the funds shall be made available to the resident at least quarterly and upon request, and a copy shall also be placed in the resident's record.

6. The resident's funds shall be made available to the resident upon request.

22VAC40-73-90. Safeguarding resident's funds.

No licensee, facility administrator, or staff person shall act as either attorney-in-fact or trustee unless the resident has no other preferred designee and the resident himself expressly requests such service by or through facility personnel. When the licensee, facility administrator, or staff person acts as attorney-in-fact or trustee, the following applies:

1. There shall be documentation that the resident has requested such service and from whom, signed and dated by the resident, the licensee, the facility administrator, and if a staff person is to provide the service, the staff person. The documentation shall be maintained in the resident's record.

2. The licensee, facility administrator, or staff person so named attorney-in-fact or trustee shall be accountable at all times in the proper discharge of such fiduciary responsibility as provided under Virginia law.

3. The facility shall maintain a written accounting of money received and disbursed by the licensee, facility administrator, or staff person that shows a current balance. The written accounting of the funds shall be made available to the resident at least quarterly and upon request, and a copy shall also be placed in the resident's record.

4. The resident's funds shall be made available to the resident upon request.

5. Upon termination of the power of attorney or trust for any reason, the licensee, facility administrator, or staff person so named attorney-in-fact or trustee shall return all funds and assets, with full accounting, to the resident or to another responsible party expressly designated by the resident.

22VAC40-73-100. Infection control program.

A. The assisted living facility shall develop, in writing, and implement an infection control program addressing the surveillance, prevention, and control of disease and infection that is consistent with the federal Centers for Disease Control and Prevention (CDC) guidelines and the federal Occupational Safety and Health Administration (OSHA) bloodborne pathogens regulations.

1. A licensed health care professional, practicing within the scope of his profession and with training in infection prevention, shall participate in the development of infection prevention policies and procedures and shall ensure compliance with applicable guidelines and regulations.

2. The administrator shall ensure at least an annual review of infection prevention policies and procedures for any necessary updates. A licensed health care professional, practicing within the scope of his profession and with training in infection prevention, shall be included in the review to ensure compliance with applicable guidelines and regulations. Documentation of the review shall be maintained at the facility.

3. A staff person who has been trained in basic infection prevention shall participate in the annual review and serve as point of contact for the program. This person shall be responsible for on-going monitoring of the implementation of the infection control program.

B. The infection control program shall be applicable to all staff and volunteers and encompass all services as well as the entire premises.

C. The infection control program shall include:

1. Procedures for the implementation of infection prevention measures by staff and volunteers to include:

   a. Use of standard precautions;

   b. Use of personal protective equipment; and

   c. Means to ensure hand hygiene;

2. Procedures for other infection prevention measures related to job duties include:

   a. Determination of whether prospective or returning residents have acute infectious disease and use of appropriate measures to prevent disease transmission;

22VAC40-73-100. Infection control program

b. Use of safe injection practices and other procedures where the potential for exposure to blood or body fluids exists;

c. Blood glucose monitoring practices that are consistent with CDC recommendations. When assisted blood glucose monitoring is required, fingerstick devices shall not be used for more than one person;

d. The handling, storing, processing, and transporting of linens, supplies, and equipment in a manner that prevents the spread of infection;

e. The sanitation of rooms, including cleaning and disinfecting procedures, agents, and schedules;

f. The sanitation of equipment, including medical equipment that may be used on more than one resident (e.g., blood glucose meters and blood pressure cuffs, including cleaning and disinfecting procedures, agents, and schedules);

g. The handling, storing, processing, and transporting of medical waste in accordance with applicable regulations; and

h. Maintenance of an effective pest control program;

3. Readily accessible handwashing equipment and necessary personal protective equipment for staff and volunteers (e.g., soap, alcohol-based hand rubs, disposable towels or hot air dryers, and gloves);

4. Product specific instructions for use of cleaning and disinfecting agents (e.g., dilution, contact time, and management of accidental exposures); and

5. Initial training as specified in 22VAC40-73-120 C 4 and annual retraining of staff and volunteers in infection prevention methods, as applicable to job responsibilities and as required by 22VAC40-73-210 F.

D. The facility shall have a staff health program that includes:

1. Provision of information on recommended vaccinations, per guidelines from the CDC Advisory Committee on Immunization Practices (ACIP), to facility staff and volunteers who have any potential exposure to residents or to

22VAC40-73-100. Infection control program

infectious materials, including body substances, contaminated medical supplies and equipment, contaminated environmental surfaces, or contaminated air;

2. Assurance that employees with communicable diseases are identified and prevented from work activities that could result in transmission to other personnel or residents;

3. An exposure control plan for bloodborne pathogens;

4. Documentation of screening and immunizations offered to, received by, or declined by employees in accordance with law, regulation, or recommendations of public health authorities, including access to hepatitis B vaccine; and

5. Compliance with requirements of the OSHA for reporting of workplace associated injuries or exposure to infection.

E. The facility administrator shall immediately make or cause to be made a report of an outbreak of disease as defined by the State Board of Health. Such report shall be made by rapid means to the local health director or to the Commissioner of the Virginia Department of Health and to the licensing representative of the Department of Social Services in the regional licensing office.

F. When recommendations are made by the Virginia Department of Health to prevent or control transmission of an infectious agent in the facility, the recommendations must be followed.

PART III
PERSONNEL

22VAC40-73-110. Staff general qualifications.

All staff shall:

1. Be considerate and respectful of the rights, dignity, and sensitivities of persons who are aged or infirm or who have disabilities;

22VAC40-73-110. Staff general qualifications.

2. Be able to speak, read, understand, and write in English as necessary to carry out their job responsibilities; and

3. Meet the requirements specified in the Regulation for Background Checks for Assisted Living Facilities and Adult Day Centers (22VAC40-90).

22VAC40-73-120. Staff orientation and initial training.

A. The orientation and training required in subsections B and C of this section shall occur within the first seven working days of employment. Until this orientation and training is completed, the staff person may only assume job responsibilities if under the sight supervision of a trained direct care staff person or administrator.

B. All staff shall be oriented to:

1. The purpose of the facility;

2. The facility's organizational structure;

3. The services provided;

4. The daily routines;

5. The facility's policies and procedures;

6. Specific duties and responsibilities of their positions; and

7. Required compliance with regulations for assisted living facilities as it relates to their duties and responsibilities.

C. All staff shall be trained in the relevant laws, regulations, and the facility's policies and procedures sufficiently to implement:

1. Emergency and disaster plans for the facility;

2. Procedures for the handling of resident emergencies;

3. Use of the first aid kit and knowledge of its location;

4. Handwashing techniques, standard precautions, infection risk-reduction

22VAC40-73-120. Staff orientation and initial training.

behavior, and other infection control measures specified in 22VAC40-73-100;

5. Confidential treatment of personal information;

6. Requirements regarding the rights and responsibilities of residents;

7. Requirements and procedures for detecting and reporting suspected abuse, neglect, or exploitation of residents and for mandated reporters, the consequences for failing to make a required report, as set out in § 63.2- 1606 of the Code of Virginia;

8. Procedures for reporting and documenting incidents as required in 22VAC40-73- 70;

9. Methods of alleviating common adjustment problems that may occur when a resident moves from one residential environment to another; and

10. For direct care staff, the needs, preferences, and routines of the residents for whom they will provide care.

D. Staff orientation and initial training specified in this section may count toward the required annual training hours for the first year.

22VAC40-73-130. Reports of abuse, neglect, or exploitation.

A. All staff who are mandated reporters under § 63.2-1606 of the Code of Virginia shall report suspected abuse, neglect, or exploitation of residents in accordance with that section.

B. The facility shall notify the resident's contact person or legal representative when a report is made relating to the resident as referenced in subsection A of this section, without identifying any confidential information.

22VAC40-73-140. Administrator qualifications.

A. The administrator shall be at least 21 years of age.

22VAC40-73-140. Administrator qualifications.

B. The administrator shall be able to read and write and understand this chapter.

C. The administrator shall be able to perform the duties and carry out the responsibilities required by this chapter.

D. For a facility licensed only for residential living care that does not employ an administrator licensed by the Virginia Board of Long-Term Care Administrators, the administrator shall:

1. Be a high school graduate or shall have a General Education Development (GED) Certificate;

2. (i) Have successfully completed at least 30 credit hours of postsecondary education from a college or university accredited by an association recognized by the U.S. Secretary of Education and at least 15 of the 30 credit hours shall be in business or human services or a combination thereof; (ii) have successfully completed a course of study approved by the department that is specific to the administration of an assisted living facility; (iii) have a bachelor's degree from a college or university accredited by an association recognized by the U.S. Secretary of Education; or (iv) be a licensed nurse; and

3. Have at least one year of administrative or supervisory experience in caring for adults in a residential group care facility.

The requirements of this subsection shall not apply to an administrator of an assisted living facility employed prior to February 1, 2018, who met the requirements in effect when employed and who has been continuously employed as an assisted living facility administrator.

E. For a facility licensed for both residential and assisted living care, the administrator shall be:

1. Licensed as an assisted living facility administrator or nursing home administrator by the Virginia Board of Long-Term Care Administrators pursuant to Chapter 31 (§ 54.1-3100 et seq.) of Title 54.1 of the Code of Virginia; or

2. Authorized to temporarily practice pursuant to § 54.1-2408.4 of the Code of Virginia.

22VAC40-73-150. Administrator provisions and responsibilities.

A. Each facility shall have an administrator of record.

B. If an administrator dies, resigns, is discharged, or becomes unable to perform his duties, the facility shall immediately employ a new administrator or appoint a qualified acting administrator so that no lapse in administrator coverage occurs.

1. The facility shall notify the department's regional licensing office in writing within 14 days of a change in a facility's administrator, including the resignation of an administrator, appointment of an acting administrator, and appointment of a new administrator, except that the time period for notification may differ as specified in subdivision 2 of this subsection.

2. For a facility licensed for both residential and assisted living care, the facility shall immediately notify the Virginia Board of Long-Term Care Administrators and the department's regional licensing office that the licensed administrator died, resigned, was discharged, or became unable to perform his duties and that a new licensed administrator has been employed or that the facility is operating without an administrator licensed by the Virginia Board of Long-Term Administrators, whichever is the case, and provide the last date of employment of the previous licensed administrator.

3. For a facility licensed for both residential and assisted living care, when an acting administrator is named, he shall notify the department's regional licensing office 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 Virginia Board of Long-Term Care Administrators within 10 days of employment.

4. For a facility licensed for both residential and assisted living care, the acting administrator shall be qualified by education for an approved administrator-in-training program and have a minimum of one year of administrative or supervisory experience in a health care or long-term care facility or have completed such a program and be awaiting licensure.

5. A facility licensed only for residential living care may be operated by an acting administrator for no more than 90 days from the last date of employment of the administrator.

6. A facility licensed for both residential and assisted living care 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.

22VAC40-73-150. Administrator provisions and responsibilities.

7. An acting administrator may be granted one extension of up to 30 days in addition to the 150 days, as specified in subdivision 6 of this subsection, upon written request to the department's regional licensing office. An extension may only be granted if the acting administrator (i) has applied for licensure as a long-term care administrator pursuant to Chapter 31 (§ 54.1-3100 et seq.) of Title 54.1 of the Code of Virginia, (ii) has completed the administrator-in-training program, and (iii) is awaiting the results of the national examination. If a 30-day extension is granted, the acting administrator shall immediately submit written notice of such to the Virginia Board of Long-Term Care Administrators.

8. A person may not become an acting administrator at any assisted living facility if the Virginia Board of Long-Term Care Administrators has refused to issue or renew, suspended, or revoked his assisted living facility or nursing home administrator license.

9. No assisted living facility shall operate under the supervision of an acting administrator pursuant to §§ 54.1-3103.1 and 63.2-1803 of the Code of Virginia more than two times during any two-year period unless authorized to do so by the department.

C. The administrator shall be responsible for the general administration and management of the facility and shall oversee the day-to-day operation of the facility. This shall include responsibility for:

1. Ensuring that care is provided to residents in a manner that protects their health, safety, and well-being;

2. Maintaining compliance with applicable laws and regulations;

3. Developing and implementing all policies, procedures, and services as required by this chapter;

4. Ensuring staff and volunteers comply with residents' rights;

5. Maintaining buildings and grounds;

6. Recruiting, hiring, training, and supervising staff; and

7. Ensuring the development, implementation, and monitoring of an individualized service plan for each resident, except that a plan is not required for a resident with independent living status.

22VAC40-73-150. Administrator provisions and responsibilities.

D. The administrator shall report to the Director of the Department of Health Professions information required by and in accordance with § 54.1-2400.6 of the Code of Virginia regarding any person (i) licensed, certified, or registered by a health regulatory board or (ii) holding a multistate licensure privilege to practice nursing or an applicant for licensure, certification, or registration. Information required to be reported, under specified circumstances includes substance abuse and unethical or fraudulent conduct.

E. For a facility licensed only for residential living care, either the administrator or a designated assistant who meets the qualifications of the administrator shall be awake and on duty on the premises at least 40 hours per week with no fewer than 24 of those hours being during the day shift on weekdays unless at least one of the following applies:

1. 22VAC40-73-170 allows a shared administrator for smaller facilities.

2. If the administrator is licensed as an assisted living facility administrator or nursing home administrator by the Virginia Board of Long-Term Care Administrators, the provisions regarding the administrator in subsection F of this section apply. When such is the case, there is no requirement for a designated assistant.

F. For a facility licensed for both residential and assisted living care, the administrator shall serve on a full-time basis as the on-site agent of the licensee and shall be responsible for the day-to-day administration and management of the facility, except as provided in 22VAC40-73-170.

G. The administrator, acting administrator, or as allowed in subsection E of this section, designated assistant administrator, shall not be a resident of the facility.

22VAC40-73-160. Administrator training.

A. For a facility licensed only for residential living care that does not employ a licensed administrator, the administrator shall attend at least 20 hours of training related to management or operation of a residential facility for adults or relevant to the population in care within 12 months from the starting date of employment and annually thereafter from that date. At least two of the required 20 hours of training shall focus on infection control and prevention, and when adults with mental impairments reside in the facility, at least six of the required 20 hours shall focus on topics related to residents' mental impairments.

22VAC40-73-160. Administrator training.

Documentation of attendance shall be retained at the facility and shall include type of training, name of the entity that provided the training, and date and number of hours of training.

B. All licensed administrators shall meet the continuing education requirements for continued licensure.

C. Any administrator who has not previously undergone the training specified in 22VAC40- 73-40 C shall be required to complete that training within two months of employment as administrator of the facility. The training may be counted toward the annual training requirement for the first year, except that for licensed administrators, whether the training counts toward continuing education and for what period of time depends upon the administrator licensure requirements.

D. Administrators who supervise medication aides, as allowed by 22VAC40-73-670 3 b, but are not registered medication aides themselves, shall successfully complete a training program approved by the Virginia Board of Nursing for the registration of medication aides. The training program for such administrators must include a minimum of 68 hours of student instruction and training, but need not include the prerequisite for the program or the written examination for registration. The training shall be completed prior to supervising medication aides and may be counted toward the annual training requirement in subsection A of this section, except that for licensed administrators, whether the training counts toward continuing education and for what period of time depends upon the administrator licensure requirements. The following exceptions apply:

1. The administrator is licensed by the Commonwealth of Virginia to administer medications; or

2. Medication aides are supervised by an individual employed full time at the facility who is licensed by the Commonwealth of Virginia to administer medications.

E. Administrators who have completed the training program specified in subsection D of this section and who supervise medication aides shall be required to annually have (i) four hours of training in medication administration specific to the facility population or (ii) a refresher course in medication administration offered by a Virginia Board of Nursing approved program. Administrators are exempt from this annual medication training or refresher course during the first year after completion of the training program noted in subsection D of this section. For unlicensed administrators of a facility licensed only for residential

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living care this annual medication administration training or course may be counted toward the annual training requirement specified in subsection A of this section. For licensed administrators, whether the training counts toward continuing education and for what period of time depends upon the administrator licensure requirements.

F. If a designated assistant administrator, as allowed in 22VAC40-73-150 E supervises medication aides, the requirements of subsections D and E of this section apply to the designated assistant administrator.

22VAC40-73-170. Shared administrator for smaller facilities.

A. An administrator of a facility licensed only for residential living care, who is not licensed as an assisted living facility administrator or nursing home administrator by the Virginia Board of Long-Term Care Administrators, is allowed to be present at a facility for fewer than the required minimum 40 hours per week in order to serve multiple facilities, without a designated assistant, under the following conditions:

1. The administrator shall serve no more than four facilities.

2. The combined total licensed capacity of the facilities served by the administrator shall be 40 or fewer residents.

3. The administrator shall be awake and on duty on the premises of each facility served for at least 10 hours a week, six of which must be during the day shift.

4. The administrator shall serve as a full-time administrator (i.e., shall be awake and on duty on the premises of all facilities served for a combined total of at least 40 hours a week).

5. Each of the facilities served shall be within a 30-minute average one-way travel time of the other facilities.

6. When not present at a facility, the administrator shall be on call to that facility during the hours he is working as an administrator and shall maintain such accessibility through suitable communication devices.

7. A designated assistant may act in place of the administrator during the required minimum of 40 hours only if the administrator is ill or on vacation

22VAC40-73-170. Shared administrator for smaller facilities.

and for a period of time that shall not exceed four consecutive weeks. The designated assistant shall meet the qualifications of the administrator.

8. Each of the facilities served shall have a manager, designated and supervised by the administrator. The manager shall be awake and on duty on the premises of the facility for the remaining part of the 40 required hours per week when the administrator or designated assistant is not present at the facility. The manager shall meet the following qualifications and requirements:

   a. The manager shall be at least 21 years of age.

   b. The manager shall be able to read and write, and understand this chapter.

   c. The manager shall be able to perform the duties and to carry out the responsibilities of his position.

   d. The manager shall:

      (1) Be a high school graduate or have a General Education Development (GED) Certificate;

      (2) (i) Have successfully completed at least 30 credit hours of postsecondary education from a college or university accredited by an association recognized by the U.S. Secretary of Education and at least 15 of the 30 credit hours shall be in business or human services or a combination thereof; (ii) have successfully completed a course of study of 40 or more hours approved by the department that is specific to the management of an assisted living facility; (iii) have a bachelor's degree from a college or university accredited by an association recognized by the U.S. Secretary of Education; or (iv) be a licensed nurse; and

      (3) Have at least one year of administrative or supervisory experience in caring for adults in a residential group care facility.

   e. Subdivision 8 d of this subsection does not apply to a manager of an assisted living facility employed prior to February 1, 2018, who met the requirements in effect when employed and who has been continuously employed as an assisted living facility manager.

   f. The manager shall not be a resident of the facility.

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g. The manager shall complete the training specified in 22VAC40-73-40 C within two months of employment as manager. The training may be counted toward the annual training requirement for the first year.

EXCEPTION: A manager employed prior to December 28, 2006, who met the requirements in effect when employed and who has been continuously employed as a manager.

h. The manager shall attend at least 20 hours of training related to management or operation of a residential facility for adults or relevant to the population in care within each 12-month period. When adults with mental impairments reside in the facility, at least six of the required 20 hours of training shall focus on topics related to residents' mental impairments and at least two of the required 20 hours on infection control and prevention. Documentation of attendance shall be retained at the facility and shall include title of course, name of the entity that provided the training, and date and number of hours of training.

9. There shall be a written management plan for each facility that describes how the administrator will oversee the care and supervision of the residents and the day-to- day operation of the facility.

10. The minimum of 40 hours per week required for the administrator or manager to be awake and on duty on the premises of a facility shall include at least 24 hours during the day shift on weekdays.

B. An administrator, who is licensed as an assisted living facility administrator or nursing home administrator by the Virginia Board of Long-Term Care Administrators, may be responsible for the day-to-day administration and management of multiple facilities under the following conditions:

1. The administrator shall serve no more than four facilities.

2. The combined total licensed capacity of the facilities served by the administrator shall be 40 or fewer residents.

3. The administrator shall serve on a full-time basis as the on-site agent of the licensee or licensees, proportioning his time among all the facilities served in order to ensure that he provides sufficient administrative and management functions to each facility.

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4. Each of the facilities served shall be within a 30-minute average one-way travel time of the other facilities.

5. When not present at a facility, the administrator shall be on call to that facility during the hours he is working as an administrator and shall maintain such accessibility through suitable communication devices.

6. Each of the facilities served shall have a manager, designated and supervised by the administrator, to assist the administrator in overseeing the care and supervision of the residents and the day-to-day operation of the facility. The majority of the time, the administrator and the manager shall be present at a facility at different times to ensure appropriate oversight of the facility. The manager shall meet the qualifications and requirements specified in subdivision A 8 of this section.

EXCEPTION: In regard to subdivision A 8 of this section, the reference to 40 hours is not relevant to a facility to which this subsection applies (i.e., a facility with a licensed administrator).

7. There shall be a written management plan for each facility that includes written policies and procedures that describe how the administrator shall oversee the care and supervision of the residents and the day-to-day operation of the facility.

C. This section shall not apply to an administrator who serves both an assisted living facility and a nursing home as provided for in 22VAC40-73-180.

22VAC40-73-180. Administrator of both assisted living facility and nursing home.

A. Any person meeting the qualifications for a licensed nursing home administrator pursuant to § 54.1-3103 of the Code of Virginia may 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. Whenever an assisted living facility and a licensed nursing home have a single administrator, there shall be a written management plan that addresses the care and supervision of the assisted living facility residents. The management plan shall include the following:

1. Written policies and procedures that describe how the administrator will

22VAC40-73-180. Administrator of both assisted living facility and nursing home.

oversee the care and supervision of the residents and the day-to-day operation of the facility.

2. If the administrator does not provide the direct management of the assisted living facility or only provides a portion thereof, the plan shall specify a designated individual who shall serve as manager and who shall be supervised by the administrator.

3. The manager referred to in subdivision 2 of this subsection shall be on site and meet the qualifications and requirements of 22VAC40-73-170 A 8, A 9, and A 10.

22VAC40-73-190. Designated direct care staff person in charge.

A. When the administrator, the designated assistant, or the manager is not awake and on duty on the premises, there shall be a designated direct care staff member in charge on the premises. However, when no residents are present at the facility, the designated staff person in charge does not have to be on the premises.

B. The specific duties and responsibilities of the designated direct care staff member in charge shall be determined by the administrator.

C. Prior to being placed in charge, the staff member shall be informed of and receive training on his duties and responsibilities and provided written documentation of such duties and responsibilities.

D. The staff member shall be awake and on duty on the premises while in charge.

E. The staff member in charge shall be capable of protecting the physical and mental well-being of the residents.

F. The administrator shall ensure that the staff member in charge is prepared to carry out his duties and responsibilities and respond appropriately in case of an emergency.

G. The staff member in charge shall not be a resident of the facility.

22VAC40-73-200. Direct care staff qualifications.

A. Direct care staff shall be at least 18 years of age unless certified in Virginia as a nurse aide.

B. Direct care staff who are responsible for caring for residents with special health care needs shall only provide services within the scope of their practice and training.

C. Direct care staff shall meet one of the requirements in this subsection. If the staff does not meet the requirement at the time of employment, he shall successfully meet one of the requirements in this subsection within two months of employment. Licensed health care professionals practicing within the scope of their profession are not required to complete the training in this subsection.

1. Certification as a nurse aide issued by the Virginia Board of Nursing.

2. Successful completion of a Virginia Board of Nursing-approved nurse aide education program.

3. Successful completion of a nursing education program preparing for registered nurse licensure or practical nurse licensure.

4. Current enrollment in a nursing education program preparing for registered nurse or practical nurse licensure and completion of at least one clinical course in the nursing program that includes at least 40 hours of direct client care clinical experience.

5. Successful completion of a personal care aide training program approved by the Virginia Department of Medical Assistance Services.

6. Successful completion of an educational program for geriatric assistant or home health aide or for nurse aide that is not covered under subdivision 2 of this subsection. The program shall be provided by a hospital, nursing facility, or educational institution and may include out-of-state training. The program must be approved by the department. To obtain department approval:

   a. The facility shall provide to the department's representative an outline of course content, dates and hours of instruction received, the name of the entity that provided the training, and other pertinent information.

   b. The department will make a determination based on the information in subdivision 6 a of this subsection and provide written confirmation to the facility when the educational program meets department requirements.

7. Successful completion of the department-approved 40-hour direct care staff training provided by a registered nurse or licensed practical nurse.

22VAC40-73-200. Direct care staff qualifications.

8. Direct care staff employed prior to February 1, 2018, who only cared for residents meeting the criteria for residential living care, and who were therefore not required to meet this subsection prior to February 1, 2018, shall successfully complete a training program consistent with this subsection no later than January 31, 2019.

D. The facility shall obtain a copy of the certificate issued or other documentation indicating that the person has met one of the requirements of subsection C of this section, which shall be part of the staff member's record in accordance with 22VAC40-73-250.

E. The administrator shall develop and implement a written plan for supervision of direct care staff who have not yet met the requirements as allowed for in subsection C of this section.

22VAC40-73-210. Direct care staff training.

A. In a facility licensed only for residential living care, all direct care staff shall attend at least 14 hours of training annually.

B. In a facility licensed for both residential and assisted living care, all direct care staff shall attend at least 18 hours of training annually, except that the requirement for direct care staff who are licensed health care professionals or certified nurse aides is a minimum of 12 hours of training annually.

C. Training for the first year shall commence no later than 60 days after employment.

D. The training shall be in addition to (i) required first aid training; (ii) CPR and automated external defibrillator (AED) training, if taken; and (iii) for medication aides, continuing education required by the Virginia Board of Nursing.

E. The training shall be relevant to the population in care and shall be provided by a qualified individual through in-service training programs or institutes, workshops, classes, or conferences.

F. At least two of the required hours of training shall focus on infection control and prevention. When adults with mental impairments reside in the facility, at least four of the required hours shall focus on topics related to residents' mental impairments.

22VAC40-73-210. Direct care staff training.

G. Documentation of the type of training received, the entity that provided the training, number of hours of training, and dates of the training shall be kept by the facility in a manner that allows for identification by individual staff person and is considered part of the staff member's record.

22VAC40-73-220. Private duty personnel.

A. When private duty personnel from licensed home care organizations provide direct care or companion services to residents in an assisted living facility, the following applies:

1. Before direct care or companion services are initiated, the facility shall obtain, in writing, information on the type and frequency of the services to be delivered to the resident by private duty personnel, review the information to determine if it is acceptable, and provide notification to the home care organization regarding any needed changes.

2. The direct care or companion services provided by private duty personnel to meet identified needs shall be reflected on the resident's individualized service plan.

3. The facility shall ensure that the requirements of 22VAC40-73-250 D 1 through D 4 regarding tuberculosis are applied to private duty personnel and that the required reports are maintained by the facility or the licensed home care organization.

4. The facility shall provide orientation and training to private duty personnel regarding the facility's policies and procedures related to the duties of private duty personnel.

5. The facility shall ensure that documentation of resident care required by this chapter is maintained.

6. The facility shall monitor the delivery of direct care and companion services to the resident by private duty personnel.

22VAC40-73-220. Private duty personnel.

B. When private duty personnel who are not employees of a licensed home care organization provide direct care or companion services to residents in an assisted living facility, the requirements listed under subdivisions A 2 through A 6 of this section apply. In addition, before direct care or companion services are initiated, the facility shall:

1. Obtain, in writing, information on the type and frequency of the services to be delivered to the resident by private duty personnel, review the information to determine if it is acceptable, and provide notification to whomever has hired the private duty personnel regarding any needed changes.

2. Ensure that private duty personnel are qualified for the types of direct care or companion services they are responsible for providing to residents and maintain documentation of the qualifications.

3. Review an original criminal history record report issued by the Virginia Department of State Police, Central Criminal Records Exchange, for each private duty personnel.

   a. The report must be reviewed prior to initiation of services.

   b. The date of the report must be no more than 90 days prior to the date of initiation of services, except that if private duty personnel change clients in the same facility with a lapse in service of not more than 60 days, a new criminal history record report shall not be required.

   c. The administrator shall determine conformance to facility policy regarding private duty personnel and criminal history to protect the welfare of residents. The policy must be in writing. If private duty personnel are denied the ability to provide direct care or companion services due to convictions appearing on their criminal history record report, a copy of the report shall be provided to the private duty personnel.

   d. The report and documentation that it was reviewed shall be maintained at the facility while the private duty person is at the facility and for one year after the last date of work.

   e. Criminal history reports shall be maintained in locked files accessible only to the licensee, administrator, board president, or the respective designee.

   f. Further dissemination of the criminal history record report information is

22VAC40-73-220. Private duty personnel.

prohibited other than to the commissioner's representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination.

C. The requirements of subsections A and B of this section shall not apply to private duty personnel who only provide skilled nursing treatments as specified in 22VAC40-73-470 B.

22VAC40-73-230. Staff duties performed by residents.

A. Any resident who performs any staff duties shall meet the personnel and health requirements for that position.

B. There shall be a written agreement between the facility and any resident who performs staff duties.

1. The agreement shall specify duties, hours of work, and compensation.

2. The agreement shall not be a condition for admission or continued residence.

3. The resident shall enter into such an agreement voluntarily.

22VAC40-73-240. Volunteers.

A. Any volunteers used shall:

1. Have qualifications appropriate to the services they render; and

2. Be subject to laws and regulations governing confidential treatment of personal information.

B. No volunteer shall be permitted to serve in an assisted living facility without the permission of or unless under the supervision of a person who has received a criminal record clearance pursuant to § 63.2-1720 of the Code of Virginia.

C. The facility shall maintain the following documentation on volunteers:

1. Name.

22VAC40-73-240. Volunteers.

2. Address.

3. Telephone number.

4. Emergency contact information.

5. Information on any qualifications, orientation, training, and education required by this chapter, including any specified relevant information.

D. Duties and responsibilities of all volunteers shall be clearly differentiated from those of persons regularly filling staff positions.

E. At least one staff person shall be assigned responsibility for coordinating volunteer services, including overall selection, supervision, and orientation of volunteers.

F. Prior to beginning volunteer service, all volunteers shall attend an orientation including information on their duties and responsibilities, resident rights, confidentiality, emergency procedures, infection control, the name of their supervisor, and reporting requirements. Volunteers shall sign and date a statement that they have received and understand this information.

G. All volunteers shall be under the supervision of a designated staff person when residents are present.

22VAC40-73-250. Staff records and health requirements.

A. A record shall be established for each staff person. It shall not be destroyed until at least two years after employment is terminated.

B. All staff records shall be retained at the facility, treated confidentially, and kept in a locked area.

EXCEPTION: Emergency contact information required by subdivision C 9 of this section shall also be kept in an easily accessible place.

C. Personal and social data to be maintained on staff and included in the staff record are as follows:

1. Name;

22VAC40-73-250. Staff records and health requirements.

2. Birth date;

3. Current address and telephone number;

4. Position title and date employed;

5. Verification that the staff person has received a copy of his current job description;

6. An original criminal record report and a sworn disclosure statement;

7. Documentation of qualifications for employment related to the staff person's position, including any specified relevant information;

8. Verification of current professional license, certification, registration, medication aide provisional authorization, or completion of a required approved training course;

9. Name and telephone number of person to contact in an emergency;

10. Documentation of orientation, training, and education required by this chapter, including any specified relevant information, with annual training requirements determined by starting date of employment; and

11. Date of termination of employment.

D. Health information required by these standards shall be maintained at the facility and be included in the staff record for each staff person, and also shall be maintained at the facility for each household member who comes in contact with residents.

1. Initial tuberculosis examination and report.

   a. Each staff person on or within seven days prior to the first day of work at the facility and each household member prior to coming in contact with residents shall submit the results of a risk assessment, documenting the absence of tuberculosis in a communicable form as evidenced by the completion of the current screening form published by the Virginia Department of Health or a form consistent with it.

   b. The risk assessment shall be no older than 30 days.

2. Subsequent tuberculosis evaluations and reports.

22VAC40-73-250. Staff records and health requirements.

a. Any staff person or household member required to be evaluated who comes in contact with a known case of infectious tuberculosis shall be screened as determined appropriate based on consultation with the local health department.

b. Any staff person or household member required to be evaluated who develops chronic respiratory symptoms of three weeks duration shall be evaluated immediately for the presence of infectious tuberculosis.

c. Each staff person or household member required to be evaluated shall annually submit the results of a risk assessment, documenting that the individual is free of tuberculosis in a communicable form as evidenced by the completion of the current screening form published by the Virginia Department of Health or a form consistent with it.

3. Any individual suspected to have infectious tuberculosis shall not be allowed to return to work or have any contact with the residents and personnel of the facility until a physician has determined that the individual is free of infectious tuberculosis.

4. The facility shall report any active case of tuberculosis developed by a staff person or household member required to be evaluated to the local health department.

E. Record of any vaccinations and immunizations received as noted in 22VAC40-73-100 D.

22VAC40-73-260. First aid, CPR, and AED requirements.

A. First aid.

1. Each direct care staff member shall maintain current certification in first aid from the American Red Cross, American Heart Association, National Safety Council, American Safety and Health Institute, community college, hospital, volunteer rescue squad, or fire department. The certification must either be in adult first aid or include adult first aid. To be considered current, first aid certification from community colleges, hospitals, volunteer rescue squads, or fire departments shall have been issued within the past three years.

2. A direct care staff member who does not have current certification in first aid as specified in subdivision 1 of this subsection shall receive certification in first aid within 60 days of employment.

22VAC40-73-260. First aid, CPR, and AED requirements.

3. A direct care staff member who is a registered nurse, licensed practical nurse, or currently certified emergency medical technician, first responder, or paramedic does not have to meet the requirements of subdivisions 1 and 2 of this subsection.

4. In each building, there shall either be (i) at least one staff person at all times who has current certification in first aid that meets the specifications of this section; or (ii) an on-duty registered nurse, licensed practical nurse, or currently certified emergency medical technician, first responder, or paramedic.

B. Cardiopulmonary resuscitation (CPR).

1. There shall be at least one staff person in each building at all times who has current certification in CPR from the American Red Cross, American Heart Association, National Safety Council, or American Safety and Health Institute, or who has current CPR certification issued within the past two years by a community college, hospital, volunteer rescue squad, or fire department. The certification must either be in adult CPR or include adult CPR.

2. In facilities licensed for over 100 residents, at least one additional staff person who meets the requirements of subdivision 1 of this subsection shall be available for every 100 residents, or portion thereof. More staff persons who meet the requirements in subdivision 1 of this subsection shall be available if necessary to ensure quick access to residents in the event of the need for CPR.

C. Automated external defibrillator (AED).

1. The facility shall have and maintain an AED for use as needed; and

2. There shall be at least one staff person with access to the AED at all times who has been trained in the use of an AED issued within the past two years.

D. A listing of all staff who have current certification in first aid or CPR or who have been trained in the use of an AED in conformance with this section shall be posted in the facility so that the information is readily available to all staff at all times. The listing shall identify certification in first aid or CPR or training in the use of an AED and must be kept up to date.

E. A staff person with current certification in first aid and CPR shall be present for the duration of facility-sponsored activities off the facility premises, when facility staff are responsible for oversight of one or more residents during the activity.

22VAC40-73-270. Direct care staff training when aggressive or restrained residents are in care.

The following training is required for staff in assisted living facilities that accept, or have in care, residents who are or who may be aggressive or restrained:

1. Aggressive residents.

   a. Direct care staff shall be trained in methods of dealing with residents who have a history of aggressive behavior or of dangerously agitated states prior to being involved in the care of such residents.

   b. This training shall include, at a minimum, information, demonstration, and practical experience in self-protection and in the prevention and de-escalation of aggressive behavior.

2. Restrained residents.

   a. Prior to being involved in the care of residents in restraints, direct care staff shall be appropriately trained in caring for the health needs of such residents.

   b. This training shall include, at a minimum, information, demonstration, and experience in:

      (1) The proper techniques for applying and monitoring restraints;

      (2) Skin care appropriate to prevent redness, breakdown, and decubiti;

      (3) Active and active assisted range of motion to prevent contractures;

      (4) Observing and reporting signs and symptoms that may be indicative of obstruction of blood flow in extremities;

      (5) Turning and positioning to prevent skin breakdown and keep the lungs clear;

      (6) Provision of sufficient bed clothing and covering to maintain a normal body temperature;

      (7) Provision of additional attention to meet the physical, mental, emotional, and social needs of the restrained resident; and

22VAC40-73-270. Direct care staff training when aggressive or restrained residents are in care.

(8) Awareness of possible risks associated with restraint use and methods of reducing or eliminating such risks.

3. The training described in subdivisions 1 and 2 of this section shall meet the following criteria:

   a. Training shall be provided by a qualified health professional.

   b. A written description of the content of this training, a notation of the entity providing the training, and the names of direct care staff receiving the training shall be maintained by the facility except that, if the training is provided by the department, only a listing of direct care staff trained and the date of training are required.

4. Refresher training for all direct care staff shall be provided at least annually or more often as needed.

   a. The refresher training shall encompass the techniques described in subdivision 1 or 2 of this section, or both.

   b. The refresher training shall meet the requirements of subdivision 3 of this section.

PART IV.
STAFFING AND SUPERVISION

22VAC40-73-280. Staffing.

A. The assisted living facility shall have staff adequate in knowledge, skills, and abilities and sufficient in numbers to provide services to attain and maintain the physical, mental, and psychosocial well-being of each resident as determined by resident assessments and individualized service plans, and to ensure compliance with this chapter.

B. The assisted living facility shall maintain a written plan that specifies the number

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and type of direct care staff required to meet the day-to-day, routine direct care needs and any identified special needs for the residents in care. This plan shall be directly related to actual resident acuity levels and individualized care needs.

C. An adequate number of staff persons shall be on the premises at all times to implement the approved fire and emergency evacuation plan.

D. At least one direct care staff member shall be awake and on duty at all times in each building when at least one resident is present.

EXCEPTION: For a facility licensed for residential living care only, in buildings that house 19 or fewer residents, the staff member on duty does not have to be awake during the night if (i) none of the residents have care needs that require a staff member awake at night and (ii) the facility ensures compliance with the requirements of 22VAC40-73-930 C.

E. No employee shall be permitted to work in a position that involves direct contact with a resident until a background check has been received as required in the Regulation for Background Checks for Assisted Living Facilities and Adult Day Centers (22VAC40-90), unless such person works under the direct supervision of another employee for whom a background check has been completed in accordance with the requirements of the background check regulation (22VAC40-90).

22VAC40-73-290. Work schedule and posting.

A. The facility shall maintain a written work schedule that includes the names and job classifications of all staff working each shift, with an indication of whomever is in charge at any given time.

1. Any absences, substitutions, or other changes shall be noted on the schedule.

2. The facility shall maintain a copy of the schedule for two years.

B. The facility shall develop and implement a procedure for posting the name of the current on-site person in charge, as provided for in this chapter, in a place in the facility that is conspicuous to the residents and the public.

22VAC40-73-300. Communication among staff.

A. Procedures shall be established and reviewed with staff for communication among administrators, designated assistant administrators, managers, and designated staff persons in charge, as applicable to a facility, to ensure stable operations and sound transitions.

B. A method of written communication shall be utilized as a means of keeping direct care staff on all shifts informed of significant happenings or problems experienced by residents, including complaints and incidents or injuries related to physical or mental conditions.

1. A record shall be kept of the written communication for at least the past two years.

2. The information shall be included in the records of the involved residents.

PART V. ADMISSION, RETENTION AND DISCHARGE OF RESIDENTS

22VAC40-73-310. Admission and retention of residents.

A. No resident shall be admitted or retained:

1. For whom the facility cannot provide or secure appropriate care;

2. Who requires a level of care or service or type of service for which the facility is not licensed or which the facility does not provide; or

3. If the facility does not have staff appropriate in numbers and with appropriate skill to provide the care and services needed by the resident.

B. Assisted living facilities shall not admit an individual before a determination has been made that the facility can meet the needs of the individual. The facility shall make the determination based upon the following information at a minimum:

1. The completed UAI.

2. The physical examination report.

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3. A documented interview between the administrator or a designee responsible for admission and retention decisions, the individual, and his legal representative, if any. In some cases, conditions may create special circumstances that make it necessary to hold the interview on the date of admission.

4. A mental health screening in accordance with 22VAC40-73-330 A.

C. An assisted living facility shall only admit or retain individuals as permitted by its use and occupancy classification and certificate of occupancy. The ambulatory or nonambulatory status, as defined in 22VAC40-73-10, of an individual is based upon:

1. Information contained in the physical examination report; and

2. Information contained in the most recent UAI.

D. Based upon review of the UAI prior to admission of a resident, the assisted living facility administrator shall provide written assurance to the resident that the facility has the appropriate license to meet his care needs at the time of admission. Copies of the written assurance shall be given to the legal representative and case manager, if any, and a copy signed by the resident or his legal representative shall be kept in the resident's record.

E. All residents shall be 18 years of age or older.

F. No person shall be admitted without his consent and agreement, or that of his legal representative with demonstrated legal authority to give such consent on his behalf.

G. The facility shall not require a person to relinquish the rights specified in § 63.2-1808 of the Code of Virginia as a condition of admission or retention.

H. In accordance with § 63.2-1805 D of the Code of Virginia, assisted living facilities shall not admit or retain individuals with any of the following conditions or care needs:

1. Ventilator dependency;

2. Dermal ulcers III and IV except those stage III ulcers that are determined by an independent physician to be healing;

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3. Intravenous therapy or injections directly into the vein, except for intermittent intravenous therapy managed by a health care professional licensed in Virginia or as permitted in subsection K of this section;

4. Airborne infectious disease in a communicable state that requires isolation of the individual or requires special precautions by the caretaker to prevent transmission of the disease, including diseases such as tuberculosis and excluding infections such as the common cold;

5. Psychotropic medications without appropriate diagnosis and treatment plans;

6. Nasogastric tubes;

7. Gastric tubes except when the individual is capable of independently feeding himself and caring for the tube or as permitted in subsection K of this section;

8. Individuals presenting an imminent physical threat or danger to self or others;

9. Individuals requiring continuous licensed nursing care;

10. Individuals whose physician certifies that placement is no longer appropriate;

11. Unless the individual's independent physician determines otherwise, individuals who require maximum physical assistance as documented by the UAI and meet Medicaid nursing facility level of care criteria as defined in the State Plan for Medical Assistance Program (12VAC30-10); or

12. Individuals whose physical or mental health care needs cannot be met in the specific assisted living facility as determined by the facility.

I. When a resident has a stage III dermal ulcer that has been determined by an independent physician to be healing, periodic observation and any necessary dressing changes shall be performed by a licensed health care professional under a physician's or other prescriber's treatment plan.

J. Intermittent intravenous therapy may be provided to a resident for a limited period of time on a daily or periodic basis by a licensed health care professional under a physician's or other prescriber's treatment plan. When a course of treatment is expected to be ongoing and extends beyond a two-week period, evaluation is required at two-week intervals by the licensed health care professional.

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K. At the request of the resident in an assisted living facility and when his independent physician determines that it is appropriate, care for the conditions or care needs (i) specified in subdivisions H 3 and H 7 of this section may be provided to the resident by a physician licensed in Virginia, a nurse licensed in Virginia or a nurse holding a multistate licensure privilege under a physician's treatment plan, or a home care organization licensed in Virginia or (ii) specified in subdivision H 7 of this section may also be provided to the resident by facility staff if the care is delivered in accordance with the regulations of the Board of Nursing for delegation by a registered nurse, 18VAC90-19-240 through 18VAC90-19-280, and 22VAC40-73-470 E. This standard does not apply to recipients of auxiliary grants.

L. When care for a resident's special medical needs is provided by licensed staff of a home care agency, the assisted living facility direct care staff may receive training from the home care agency staff in appropriate treatment monitoring techniques regarding safety precautions and actions to take in case of emergency. This training is required prior to direct care staff assuming such duties. Updated training shall be provided as needed. The

training shall include content based on the resident's specific needs. The training shall be documented and maintained in the staff record.

M. Not withstanding § 63.2-1805 of the Code of Virginia, at the request of the resident, hospice care may be provided in an assisted living facility under the same requirements for hospice programs provided in Article 7 (§ 32.1-162.1 et seq.) of Chapter 5 of Title 32.1 of the Code of Virginia if the hospice program determines that such program is appropriate for the resident. However, to the extent allowed by federal law, no assisted living facility shall be required to provide or allow hospice care if such hospice care restrictions are included in a disclosure statement that is signed by the resident prior to admission. If hospice care is provided, there shall be a written agreement between the assisted living facility and any hospice program that provides care in the facility. The agreement shall include:

1. Policies and procedures to ensure appropriate communication and coordination between the facility and the hospice program;

2. Specification of the roles and responsibilities of each entity, including listing of the services that will generally be provided by the facility and the services that will generally be provided by the hospice program;

3. Acknowledgment that the services provided to each resident shall be

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reflected on the individualized service plan as required in 22VAC40-73-450 D; and

4. Signatures of an authorized representative of the facility and an authorized representative of the hospice program.

22VAC40-73-320. Physical examination and report.

A. Within the 30 days preceding admission, a person shall have a physical examination by an independent physician. The report of such examination shall be on file at the assisted living facility and shall contain the following:

1. The person's name, address, and telephone number;

2. The date of the physical examination;

3. Height, weight, and blood pressure;

4. Significant medical history;

5. General physical condition, including a systems review as is medically indicated;

6. Any diagnosis or significant problems;

7. Any known allergies and description of the person's reactions;

8. Any recommendations for care including medication, diet, and therapy;

9. Results of a risk assessment documenting the absence of tuberculosis in a communicable form as evidenced by the completion of the current screening form published by the Virginia Department of Health or a form consistent with it;

10. A statement that the individual does not have any of the conditions or care needs prohibited by 22VAC40-73-310 H;

11. A statement that specifies whether the individual is considered to be ambulatory or nonambulatory as defined in this chapter;

12. A statement that specifies whether the individual is or is not capable of self-administering medication; and

22VAC40-73-320. Physical examination and report.

13. The signature of the examining physician or his designee.

B. Subsequent tuberculosis evaluations.

1. A risk assessment for tuberculosis shall be completed annually on each resident as evidenced by the completion of the current screening form published by the Virginia Department of Health or a form consistent with it.

2. Any resident who comes in contact with a known case of infectious tuberculosis shall be screened as deemed appropriate in consultation with the local health department.

3. Any resident who develops respiratory symptoms of three or more weeks duration with no medical explanation shall be referred for evaluation for the presence of infectious tuberculosis.

4. If a resident develops an active case of tuberculosis, the facility shall report this information to the local health department.

C. As necessary to determine whether a resident's needs can continue to be met in the assisted living facility, the department may request a current physical examination by an independent physician or psychiatric evaluation by an independent physician, including diagnosis and assessments.

22VAC40-73-325. Fall risk rating.

A. For residents who meet the criteria for assisted living care, by the time the comprehensive ISP is completed, a written fall risk rating shall be completed.

B. The fall risk rating shall be reviewed and updated under each of the following circumstances:

1. At least annually;

2. When the condition of the resident changes; and

3. After a fall.

C. Should a resident who meets the criteria for assisted living care fall, the facility must show documentation of an analysis of the circumstances of the fall and interventions that were initiated to prevent or reduce risk of subsequent falls.

22VAC40-73-330. Mental health screening.

A. A mental health screening shall be conducted prior to admission if behaviors or patterns of behavior occurred within the previous six months that were indicative of mental illness, intellectual disability, substance abuse, or behavioral disorders and that caused, or continue to cause, concern for the health, safety, or welfare either of that individual or others who could be placed at risk of harm by that individual.

EXCEPTIONS:

1. If it is not possible for the screening to be conducted prior to admission, the individual may be admitted if all other admission requirements are met. The reason for the delay shall be documented and the screening shall be conducted as soon as possible, but no later than 30 days after admission.

2. The screening shall not be required for individuals under the care of a qualified mental health professional immediately prior to admission, as long as there is documentation of the person's psychosocial and behavioral functioning as specified in 22VAC40-73-340 A 1.

B. A mental health screening shall be conducted when a resident displays behaviors or patterns of behavior indicative of mental illness, intellectual disability, substance abuse, or behavioral disorders that cause concern for the health, safety, or welfare of either that resident or others who could be placed at risk of harm by the resident.

C. The mental health screening shall be conducted by a qualified mental health professional having no financial interest in the assisted living facility, directly or indirectly as an owner, officer, employee, or as an independent contractor with the facility.

D. A copy of the screening shall be filed in the resident's record.

E. If the screening indicates a need for mental health, intellectual disability, substance abuse, or behavioral disorder services for the resident, the facility shall provide:

1. Notification of the resident's need for such services to the community services board, behavioral health authority, or other appropriate licensed provider identified by the resident or his legal representative; and

2. Notification to the resident, authorized contact person of record, and physician of record that mental health services have been recommended for the resident.

22VAC40-73-340. Psychosocial and behavioral history.

A. When determining appropriateness of admission for an individual with mental illness, intellectual disability, substance abuse, or behavioral disorders, the following information shall be obtained by the facility:

1. If the prospective resident is referred by a state or private hospital, community services board, behavioral health authority, or long-term care facility, documentation of the individual's psychosocial and behavioral functioning shall be acquired prior to admission.

2. If the prospective resident is coming from a private residence, information about the individual's psychosocial and behavioral functioning shall be gathered from primary sources, such as family members, friends, or physician. Although there is no requirement for written information from primary sources, the facility must document the source and content of the information that was obtained.

B. The administrator or his designee shall document that the individual's psychosocial and behavioral history were reviewed and used to help determine the appropriateness of the admission.

C. If the individual is admitted, the psychosocial and behavioral history shall be used in the development of the person's individualized service plan and documentation of the history shall be filed in the resident's record.

22VAC40-73-350. Sex offender information.

A. The assisted living facility shall register with the Department of State Police to receive notice of the registration or reregistration of any sex offender within the same or a contiguous zip code area in which the facility is located, pursuant to § 9.1-914 of the Code of Virginia.

B. The assisted living facility shall ascertain, prior to admission, whether a potential resident is a registered sex offender if the facility anticipates the potential resident will have a length of stay greater than three days or in fact stays longer than three days and shall document in the resident's record that this was ascertained and the date the information was obtained.

C. The assisted living facility shall ensure that each resident or his legal representative is fully informed, prior to or at the time of admission and annually, that he should exercise whatever due diligence he deems necessary with respect to information on any sex offenders registered pursuant to Chapter 9 (§ 9.1-900 et. seq.) of Title 9.1 of the Code of Virginia, including how to obtain such information. Written

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acknowledgment of having been so informed shall be provided by the resident or his legal representative and shall be maintained in the resident's record.

D. At the same time that the person is informed as required in subsection C of this section, the assisted living facility shall provide notification that, upon request, the facility shall:

1. Assist the resident, prospective resident, or his legal representative in accessing the information on registered sex offenders; and

2. Provide the resident, prospective resident, or his legal representative with printed copies of the information on registered sex offenders.

22VAC40-73-360. Emergency placement.

A. An emergency placement shall occur only when the emergency is documented and approved by (i) an adult protective services worker for public pay individuals or (ii) an independent physician or an adult protective services worker for private pay individuals.

B. When an emergency placement occurs, the person shall remain in the assisted living facility no longer than seven days unless all the requirements for admission have been met and the person has been admitted.

C. The facility shall obtain sufficient information on the person to protect the health, safety, and welfare of the person while he remains at the facility as allowed by subsection B of this section.

22VAC40-73-370. Respite care.

If an assisted living facility provides respite care as defined in 22VAC40-73-10, the requirements of this chapter apply to the respite care, except as follows:

1. For individuals in respite care, the ISP shall be completed prior to the person participating in respite care and need not include expected outcome.

2. At the time an individual returns for respite care, the facility shall reevaluate the person's condition and care needs, and as needed, ensure that the uniform assessment instrument, the individualized service plan, and medication orders are updated. The reevaluation shall include observation of the person; interviews with

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the individual and his legal representative, if any; and consultation with others knowledgeable about the person, as appropriate. The reevaluation shall indicate in writing whether or not the person's condition or care needs have changed and specify any changes. The reevaluation shall be signed and dated by the staff person completing the reevaluation and by the individual in respite care or his legal representative and shall be retained in the individual's record.

3. If the period of time between respite care stays is six months or longer, a new physical examination report shall be required prior to the individual returning for respite care, except that a new tuberculosis screening would only be required one time per year. The examination shall take place within 30 days prior to the person's return for respite care.

4. The record for the individual in respite care shall include the dates of respite care.

5. The medication review required by 22VAC40-73-690 does not apply to individuals in respite care.

22VAC40-73-380. Resident personal and social information.

A. Prior to or at the time of admission to an assisted living facility, the following personal and social information on a person shall be obtained:

1. Name;

2. Last home address, and address from which resident was received, if different;

3. Date of admission;

4. Birth date or if unknown, estimated age;

5. Birthplace, if known;

6. Marital status, if known;

7. Name, address, and telephone number of all legal representatives, if any;

8. If there is a legal representative, copies of current legal documents that show proof of each legal representative's authority to act on behalf of the resident and that specify the scope of the representative's authority to make decisions and to perform other functions;

9. Name, address, and telephone number of next of kin, if known (two preferred);

22VAC40-73-380. Resident personal and social information.

10. Name, address, and telephone number of designated contact person authorized by the resident or legal representative, if appropriate, for notification purposes, including emergency notification and notification of the need for mental health, intellectual disability, substance abuse, or behavioral disorder services - if the resident or legal representative is willing to designate an authorized contact person. There may be more than one designated contact person. The designated contact person may also be listed under another category, such as next of kin or legal representative;

11. Name, address, and telephone number of the responsible individual stipulated in 22VAC40-73-550 H, if needed;

12. Name, address, and telephone number of personal physician, if known;

13. Name, address, and telephone number of personal dentist, if known;

14. Name, address, and telephone number of clergyman and place of worship, if applicable;

15. Name, address, and telephone number of local department of social services or any other agency, if applicable, and the name of the assigned case manager or caseworker;

16. Service in the armed forces, if applicable;

17. Lifetime vocation, career, or primary role;

18. Special interests and hobbies;

19. Known allergies, if any;

20. Information concerning advance directives, Do Not Resuscitate (DNR) Orders, or organ donation, if applicable;

21. Previous mental health or intellectual disability services history, if any, and if applicable for care or services;

22. Current behavioral and social functioning including strengths and problems; and

23. Any substance abuse history if applicable for care or services.

22VAC40-73-380. Resident personal and social information.

B. The personal and social information required in subsection A of this section shall be placed in the person's record and kept current.

22VAC40-73-390. Resident agreement with the facility.

A. At or prior to the time of admission, there shall be a written agreement or acknowledgment of notification dated and signed by the resident or applicant for admission or the appropriate legal representative and by the licensee or administrator. This document shall include the following:

1. Financial arrangement for accommodations, services, and care that specifies:

   a. Listing of specific charges for accommodations, services, and care to be made to the individual resident signing the agreement, the frequency of payment, and any rules relating to nonpayment;

   b. Description of all accommodations, services, and care that the facility offers and any related charges;

   c. For an auxiliary grant recipient, a list of services included under the auxiliary grant rate;

   d. The amount and purpose of an advance payment or deposit payment and the refund policy for such payment, except that recipients of auxiliary grants may not be charged an advance payment or deposit payment;

   e. The policy with respect to increases in charges and length of time for advance notice of intent to increase charges;

   f. If the ownership of any personal property, real estate, money, or financial investments is to be transferred to the facility at the time of admission or at some future date, it shall be stipulated in the agreement; and

   g. The refund policy to apply when transfer of ownership, closing of facility, or resident transfer or discharge occurs.

2. Requirements or rules to be imposed regarding resident conduct and other restrictions or special conditions.

3. Those actions, circumstances, or conditions that would result or might result in the resident's discharge from the facility.

22VAC40-73-390. Resident agreement with the facility.

4. Specific acknowledgments that:

   a. Requirements or rules regarding resident conduct, other restrictions, or special conditions have been reviewed by the resident or the resident's legal representative;

   b. The resident or the resident's legal representative has been informed of the policy regarding the amount of notice required when a resident wishes to move from the facility;

   c. The resident has been informed of the policy required by 22VAC40-73-840 regarding pets living in the facility;

   d. The resident has been informed of the policy required by 22VAC40-73-860 K regarding weapons;

   e. The resident or the resident's legal representative or responsible individual as stipulated in 22VAC40-73-550 H, has reviewed § 63.2-1808 of the Code of Virginia, Rights and Responsibilities of Residents of Assisted Living Facilities, and that the provisions of this statute have been explained;

   f. The resident or the resident's legal representative or responsible individual as stipulated in 22VAC40-73-550 H, has reviewed the facility's policies and procedures for implementing § 63.2-1808 of the Code of Virginia;

   g. The resident or resident's legal representative has reviewed and had explained the facility's policies and procedures for electronic monitoring of resident rooms as required by 22VAC40-73-755 and § 63.2-1808.2 of the Code of Virginia;

   h. The resident has been informed that the resident may refuse release of information regarding the resident's personal affairs and records to any individual outside the facility, except as otherwise provided in law and except in case of the resident's transfer to another caregiving facility, notwithstanding any requirements of this chapter;

   i. The resident has been informed that interested residents may establish and maintain a resident council, that the facility is responsible for providing assistance with the formation and maintenance of the council, whether or not such a council currently exists in the facility, and the general purpose of a resident council (See 22VAC40-73-830);

   j. The resident has been informed of the bed hold policy in case of temporary transfer or movement from the facility if the facility has such a policy (See 22VAC40-73-420 B);

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k. The resident has been informed of the policy or guidelines regarding visiting in the facility if the facility has such a policy or guidelines (See 22VAC40-73-540 C);

l. The resident has been informed of the rules and restrictions regarding smoking on the premises of the facility, including those required by 22VAC40-73-820;

m. The resident has been informed of the policy regarding the administration and storage of medications and dietary supplements;

n. The resident, upon request, has been notified in writing that the facility maintains liability insurance that provides the minimum amount of coverage set forth in 22VAC40-73-45 to compensate residents or other individuals for injuries and losses from negligent acts of the facility; and

o. The resident has received written assurance that the facility has the appropriate license to meet the resident's care needs at the time of admission, as required by 22VAC40-73-310 D.

B. Copies of the signed agreement or acknowledgment and any updates as noted in subsection C of this section shall be provided to the resident and, as appropriate, the resident's legal representative and shall be retained in the resident's record.

C. The original agreement or acknowledgment shall be updated whenever there are changes to any of the policies or information referenced or identified in the agreement or acknowledgment and dated and signed by the licensee or administrator and the resident or the resident's legal representative.

22VAC40-73-400. Monthly statement of charges and payments.

The facility shall provide to each resident or the resident's legal representative, if one has been appointed, a monthly statement that itemizes any charges made by the facility and any payments received from the resident or on behalf of the resident during the previous calendar month and shall show the balance due or any credits for overpayment. The facility shall also place a copy of the monthly statement in the resident's record.

22VAC40-73-410. Orientation and related information for residents.

A. Upon admission, the assisted living facility shall provide an orientation for new residents and their legal representatives, including emergency response procedures, mealtimes, and use of the call system. If needed, the orientation shall be modified as appropriate for residents with cognitive impairments. Acknowledgment of having received the orientation shall be signed and dated by the resident and, as appropriate, his legal representative, and such documentation shall be kept in the resident's record.

B. Upon admission and upon request, the assisted living facility shall provide to the resident and, if appropriate, his legal representative, a written description of the types of staff persons working in the facility and the services provided, including the hours such services are available.

22VAC40-73-420. Acceptance back in facility.

A. An assisted living facility shall establish procedures to ensure that any resident detained by a temporary detention order pursuant to §§ 37.2-809 through 37.2-813 of the Code of Virginia is accepted back in the assisted living facility if the resident is not involuntarily committed pursuant to §§ 37.2-814 through 37.2-819 of the Code of Virginia. The procedures shall include:

1. Obtaining written recommendations from a qualified mental health professional regarding supportive services necessary to address the mental health needs of the resident returning to the facility;

2. Documenting whether the recommendations specified in subdivision 1 of this subsection can be implemented based on facility or community resources and whether the resident can be retained at the facility or would need to be discharged;

3. Updating the resident's individualized service plan, as needed; and

4. Ensuring that direct care staff involved in the care and supervision of the resident receive clear and timely communication regarding their responsibilities in respect to the mental health needs of the resident and behavioral or emotional indicators of possible crisis situations.

22VAC40-73-420. Acceptance back in facility.

B. If an assisted living facility allows for temporary movement of a resident with agreement to hold a bed, it shall develop and follow a written bed hold policy, which includes the conditions for which a bed will be held, any time frames, terms of payment, and circumstances under which the bed will no longer be held. For recipients of an auxiliary grant, the bed hold policy must be consistent with auxiliary grant program policy and guidance.

22VAC40-73-430. Discharge of residents.

A. When actions, circumstances, conditions, or care needs occur that will result in the discharge of a resident, discharge planning shall begin immediately, and there shall be documentation of such, including the beginning date of discharge planning. The resident shall be moved within 30 days, except that if persistent efforts have been made and the time frame is not met, the facility shall document the reason and the efforts that have been made.

B. As soon as discharge planning begins, the assisted living facility shall notify the resident, the resident's legal representative and designated contact person if any, of the planned discharge, the reason for the discharge, and that the resident will be moved within 30 days unless there are extenuating circumstances relating to inability to place the resident in another setting within the time frame referenced in subsection A of this section. Written notification of the actual discharge date and place of discharge shall be given to the resident, the resident's legal representative and contact person, if any, and additionally for public pay residents, the eligibility worker and assessor, at least 14 days prior to the date that the resident will be discharged.

C. The assisted living facility shall adopt and conform to a written policy regarding the number of days notice that is required when a resident wishes to move from the facility. Any required notice of intent to move shall not exceed 30 days.

D. The facility shall assist the resident and his legal representative, if any, in the discharge or transfer process. The facility shall help the resident prepare for relocation, including discussing the resident's destination. Primary responsibility for transporting the resident and his possessions rests with the resident or his legal representative.

E. When a resident's condition presents an immediate and serious risk to the health, safety, or welfare of the resident or others and emergency discharge is

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necessary, the 14-day advance notification of planned discharge does not apply, although the reason for the relocation shall be discussed with the resident and, when possible, his legal representative prior to the move.

F. Under emergency conditions, the resident's legal representative, designated contact person, family, caseworker, social worker, or any other persons, as appropriate, shall be informed as rapidly as possible, but no later than the close of the day following discharge, of the reasons for the move. For public pay residents, the eligibility worker and assessor shall also be so informed of the emergency discharge within the same time frame. No later than five days after discharge, the information shall be provided in writing to all those notified.

G. For public pay residents, in the event of a resident's death, the assisted living facility shall provide written notification to the eligibility worker and assessor within five days after the resident's death.

H. Discharge statement.

1. At the time of discharge, the assisted living facility shall provide to the resident and, as appropriate, his legal representative and designated contact person a dated statement signed by the licensee or administrator that contains the following information:

   a. The date on which the resident, his legal representative, or designated contact person was notified of the planned discharge and the name of the legal representative or designated contact person who was notified;

   b. The reason or reasons for the discharge;

   c. The actions taken by the facility to assist the resident in the discharge and relocation process; and

   d. The date of the actual discharge from the facility and the resident's destination.

2. A copy of the written statement shall be retained in the resident's record.

I. When the resident is discharged and moves to another caregiving facility, the assisted living facility shall provide to the receiving facility such information related to the resident as is necessary to ensure continuity of care and services. Original information pertaining to the resident shall be maintained by the assisted living facility from which the resident was discharged. The assisted living facility shall maintain a listing of all information shared with the receiving facility.

22VAC40-73-430. Discharge of residents.

J. Within 60 days of the date of discharge, each resident or his legal representative shall be given a final statement of account, any refunds due, and return of any money, property, or things of value held in trust or custody by the facility.

PART VI. RESIDENT CARE AND RELATED SERVICES

22VAC40-73-440. Uniform assessment instrument (UAI).

A. All residents of and applicants to assisted living facilities shall be assessed face to face using the uniform assessment instrument in accordance with Assessment in Assisted Living Facilities (22VAC30-110). The UAI shall be completed prior to admission, at least annually, and whenever there is a significant change in the resident's condition.

B. For private pay individuals, the UAI shall be completed by one of the following qualified assessors:

1. An assisted living facility staff person who has successfully completed state-approved training on the uniform assessment instrument and level of care criteria for either public or private pay assessments, provided the administrator or the administrator's designated representative has successfully completed such training and approves and then signs the completed UAI, and the facility maintains documentation of completed training;

2. An independent physician; or

3. A qualified public human services agency assessor.

C. For a private pay individual, if the UAI is completed by an independent physician or a qualified human services agency assessor, the assisted living facility shall be responsible for coordinating with the physician or the agency assessor to ensure that the UAI is completed as required.

D. For private pay individuals, the assisted living facility shall ensure that the uniform assessment instrument is completed as required by 22VAC30- 110.

E. For public pay individuals, the UAI shall be completed by a case manager or qualified assessor as specified in 22VAC30-110.

22VAC40-73-440. Uniform assessment instrument (UAI).

F. The UAI shall be completed within 90 days prior to admission to the assisted living facility, except that if there has been a change in the resident's condition since the completion of the UAI that would affect the admission, a new UAI shall be completed.

G. When a resident moves to an assisted living facility from another assisted living facility or other long-term care setting that uses the UAI, if there is a completed UAI on record, another UAI does not have to be completed except that a new UAI shall be completed whenever:

1. There is a significant change in the resident's condition; or

2. The previous assessment is more than 12 months old.

H. Annual reassessments and reassessments due to a significant change in the resident's condition, using the UAI, shall be utilized to determine whether a resident's needs can continue to be met by the facility and whether continued placement in the facility is in the best interest of the resident.

I. During an inspection or review, staff from the department, the Department of Medical Assistance Services, or the local department of social services may initiate a change in level of care for any assisted living facility resident for whom it is determined that the resident's UAI is not reflective of the resident's current status.

J. At the request of the assisted living facility, the resident's legal representative, the resident's physician, the department, or the local department of social services an independent assessment using the UAI shall be completed to determine whether the resident's care needs are being met in the assisted living facility. The assisted living facility shall assist in obtaining the independent assessment as requested. An independent assessment is one that is completed by a qualified entity other than the original assessor.

K. The assisted living facility shall be in compliance with the requirements set forth in 22VAC30-110.

L. The facility shall maintain the completed UAI in the resident's record.

22VAC40-73-450. Individualized service plans.

A. On or within seven days prior to the day of admission, a preliminary plan of care shall be developed to address the basic needs of the resident that adequately protects his health, safety, and welfare. The preliminary plan shall be developed by a staff person with the qualifications specified in subsection B of this section and in conjunction with the resident, and, as appropriate, other individuals noted in subdivision B 1 of this section. The preliminary plan shall be identified as such and be signed and dated by the licensee, administrator, or his designee (i.e., the person who has developed the plan), and by the resident or his legal representative.

   EXCEPTION: A preliminary plan of care is not necessary if a comprehensive individualized service plan is developed, in conformance with this section, on the day of admission.

B. The licensee, administrator, or his designee who has successfully completed the department-approved individualized service plan (ISP) training, provided by a licensed health care professional practicing within the scope of his profession, shall develop a comprehensive ISP to meet the resident's service needs. State approved private pay UAI training must be completed as a prerequisite to ISP training. An individualized service plan is not required for those residents who are assessed as capable of maintaining themselves in an independent living status.

   1. The licensee, administrator, or designee shall develop the ISP in conjunction with the resident and, as appropriate, with the resident's family, legal representative, direct care staff members, case manager, health care providers, qualified mental health professionals, or other persons.

   2. The plan shall support the principles of individuality, personal dignity, freedom of choice, and home-like environment and shall include other formal and informal supports in addition to those included in subdivision C 2 of this section that may participate in the delivery of services. Whenever possible, residents shall be given a choice of options regarding the type and delivery of services.

   3. The plan shall be designed to maximize the resident's level of functional ability.

C. The comprehensive individualized service plan shall be completed within 30 days after admission and shall include the following:

   1. Description of identified needs and date identified based upon the (i) UAI; (ii) admission physical examination; (iii) interview with resident; (iv) fall risk

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rating, if appropriate; (v) assessment of psychological, behavioral, and emotional functioning, if appropriate; and (vi) other sources;

2. A written description of what services will be provided to address identified needs, and if applicable, other services, and who will provide them;

3. When and where the services will be provided;

4. The expected outcome and time frame for expected outcome;

5. Date outcome achieved; and

6. For a facility licensed for residential living care only, if a resident lives in a building housing 19 or fewer residents, a statement that specifies whether the resident does or does not need to have a staff member awake and on duty at night.

D. When hospice care is provided to a resident, the assisted living facility and the licensed hospice organization shall communicate and establish an agreed upon coordinated plan of care for the resident. The services provided by each shall be included on the individualized service plan.

E. The individualized service plan shall be signed and dated by the licensee, administrator, or his designee, (i.e., the person who has developed the plan), and by the resident or his legal representative. The plan shall also indicate any other individuals who contributed to the development of the plan, with a notation of the date of contribution. The title or relationship to the resident of each person who was involved in the development of the plan shall be included. These requirements shall also apply to reviews and updates of the plan.

F. Individualized service plans shall be reviewed and updated at least once every 12 months and as needed for a significant change of a resident’s condition. The review and update shall be performed by a staff person with the qualifications specified in subsection B of this section and in conjunction with the resident and, as appropriate, with the resident's family, legal representative, direct care staff, case manager, health care providers, qualified mental health professionals, or other persons.

G. The master service plan shall be filed in the resident's record. A current copy shall be provided to the resident and shall also be maintained in a location accessible at all times to direct care staff, but that protects the confidentiality of the contents of the

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service plan. Extracts from the plan may be filed in locations specifically identified for their retention.

H. The facility shall ensure that the care and services specified in the individualized service plan are provided to each resident, except that:

1. There may be a deviation from the plan when mutually agreed upon between the facility and the resident or the resident's legal representative at the time the care or services are scheduled or when there is an emergency that prevents the care or services from being provided.

2. Any deviation from the plan shall:

a. Be documented in writing or electronically;

b. Include a description of the circumstances warranting deviation and the date such deviation will occur;

c. Certify that a notice of such deviation was provided to the resident or his legal representative;

d. Be included in the resident’s file; and

e. Be signed by an authorized representative of the assisted living facility and the resident or his legal representative if the deviation is made due to a significant change in the resident’s condition.

3. The facility may not start, change, or discontinue medications, dietary supplements, diets, medical procedures, or treatments without an order from a physician or other prescriber.

22VAC40-73-460. Personal care services and general supervision and care.

A. The facility shall assume general responsibility for the health, safety, and well-being of the residents.

B. Care provision and service delivery shall be resident-centered to the maximum extent possible and include:

1. Resident participation in decisions regarding the care and services provided to him;

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2. Personalization of care and services tailored to the resident's circumstances and preferences; and

3. Prompt response by staff to resident needs as reasonable to the circumstances.

C. Care shall be furnished in a way that fosters the independence of each resident and enables him to fulfill his potential.

D. The facility shall provide supervision of resident schedules, care, and activities, including attention to specialized needs, such as prevention of falls and wandering from the premises.

E. The facility shall regularly observe each resident for changes in physical, mental, emotional, and social functioning.

1. Any notable change in a resident's condition or functioning, including illness, injury, or altered behavior, and any corresponding action taken shall be documented in the resident's record.

2. The facility shall provide appropriate assistance when observation reveals unmet needs.

F. The facility shall notify the next of kin, legal representative, designated contact person, or, if applicable, any responsible social agency of any incident of a resident falling or wandering from the premises, whether or not it results in injury. This notification shall occur as soon as possible but no later than 24 hours from the time of initial discovery or knowledge of the incident. The resident's record shall include documentation of the notification, including date, time, caller, and person or agency notified.

EXCEPTION: If the whereabouts of a resident are unknown and there is reason to be concerned about his safety, the facility shall immediately notify the appropriate law-enforcement agency. The facility shall also immediately notify the resident's next of kin, legal representative, designated contact person, or, if applicable, any responsible social agency.

G. The facility shall provide care and services to each resident by staff who are able to communicate with the resident in a language the resident understands or shall make provisions for communications between staff and residents to ensure an accurate exchange of information.

22VAC40-73-460. Personal care services and general supervision and care.

H. The facility shall ensure that personal assistance and care are provided to each resident as necessary so that the needs of the resident are met, including assistance or care with:

1. The activities of daily living:

   a. Bathing - at least twice a week, but more often if needed or desired;

   b. Dressing;

   c. Toileting;

   d. Transferring;

   e. Bowel control;

   f. Bladder control; and

   g. Eating/feeding;

2. The instrumental activities of daily living:

   a. Meal preparation;

   b. Housekeeping

   c. Laundry; and

   d. Managing money;

3. Ambulation;

4. Hygiene and grooming:

   a. shampooing, combing, and brushing hair;

   b. Shaving;

   c. Trimming fingernails and toenails (certain medical conditions necessitate that this be done by a licensed health care professional);

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d. Daily tooth brushing and denture care; and

e. Skin care at least twice daily for those with limited mobility; and

5. Functions and tasks:

a. Arrangements for transportation;

b. Arrangements for shopping;

c. Use of the telephone; and

d. correspondence.

I. Each resident shall be dressed in clean clothing and be free of odors related to hygiene. Each resident shall be encouraged to wear day clothing when out of bed.

J. Residents who are incontinent shall have a full or partial bath and clean clothing and linens each time their clothing or bed linen is soiled or wet.

K. The facility shall ensure each resident is able to obtain individually preferred personal care items when:

1. The preferred personal care items are reasonably available; and

2. The resident is willing and able to pay for the preferred items.

22VAC40-73-470. Health care services.

A. The facility shall ensure, either directly or indirectly, that the health care service needs of residents are met. The ways in which the needs may be met include:

1. Staff of the facility providing health care services;

2. Persons employed by a resident providing health care services; or

3. The facility assisting residents in making appropriate arrangements for health care services.

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a. When a resident is unable to participate in making appropriate arrangements, the resident's family, legal representative, designated contact person, cooperating social agency, or personal physician shall be notified of the need.

b. When mental health care is needed or desired by a resident, this assistance shall include securing the services of the local community services board, behavioral health authority, state or federal mental health clinic, or similar facility or agent in the private sector.

B. A resident's need for skilled nursing treatments within the facility shall be met by the facility's employment of a licensed nurse or contractual agreement with a licensed nurse, or by a home health agency or by a private duty licensed nurse.

C. Services shall be provided to prevent clinically avoidable complications, including:

1. Pressure ulcer development or worsening of an ulcer;

2. Contracture;

3. Loss of continence;

4. Dehydration; and

5. Malnutrition.

D. The facility shall develop and implement a written policy to ensure that staff are made aware of allergies and allergic reactions and any life-threatening conditions of residents, and actions that staff may need to take.

E. When care for gastric tubes is provided to a resident by unlicensed direct care facility staff as allowed in clause (ii) of 22VAC40-73-310 K, the following criteria shall be met:

1. Prior to the care being provided, the facility shall obtain an informed consent, signed by the resident or his legal representative, that includes at a minimum acknowledgment that:

a. An unlicensed person will routinely be providing the gastric tube care and feedings under the delegation of a registered nurse (RN) who has assessed the resident's care needs and the unlicensed person's ability to safely and adequately meet those needs;

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b. Delegation means the RN need not be present in the facility during routine gastric tube care and feedings;

c. Registered medication aides are prohibited from administering medications via gastric tubes and medications may only be administered by licensed personnel (e.g., a licensed practical nurse (LPN) or RN);

d. The tube care and feedings provided to the resident and the supervisory oversight provided by the delegating RN will be reflected on the individualized service plan as required in 22VAC40-73-450; and

e. The signed consent shall be maintained in the resident's record.

2. Only those direct care staff with written approval from the delegating RN may provide the tube care and feedings. In addition to the approval, the RN shall document:

   a. The general and resident-specific instructions he provided to the staff person; and

   b. The staff person's successful demonstration of competency in tube care.

3. The delegating RN shall be employed by or under contract with the licensed assisted living facility and shall have supervisory authority over the direct care staff being approved to provide gastric tube care and feedings.

4. The supervisory responsibilities of the delegating RN include:

   a. Monitoring the direct care staff performance related to the delegated tasks;

   b. Evaluating the outcomes for the resident;

   c. Ensuring appropriate documentation; and

   d. Documenting relevant findings and recommendations.

5. The delegating RN shall schedule supervisory oversight based upon the following criteria:

   a. The stability and condition of the resident;

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b. The experience and competency of the unlicensed direct care staff person;

c. The nature of the tasks or procedures being delegated; and

d. The proximity and availability of the delegating RN to the unlicensed direct care staff person when the nursing tasks will be performed.

6. Prior to allowing direct care staff to independently perform care for gastric tubes as provided for in this subsection, such staff must be able to successfully demonstrate performance of the entire procedure correctly while under direct observation of the delegating RN. Subsequently, each direct care staff shall be directly observed no less than monthly for at least three consecutive months, after which direct observation shall be conducted no less than every six months or more often if indicated. The delegating RN shall retain documentation at the facility of all supervisory activities and direct observations of staff.

7. Contact information for the delegating RN shall be readily available to all staff responsible for tube feedings when an RN or LPN is not present in the facility.

8. Written protocols that encompass the basic policies and procedures for the performance of gastric tube feedings, as well as any resident-specific instructions, shall be available to any direct care staff member responsible for tube feedings.

9. The facility shall have a written back-up plan to ensure that an RN, LPN, or person who is qualified as specified in this subsection is available if the direct care staff member who usually provides the care is absent.

F. When the resident suffers serious accident, injury, illness, or medical condition, or there is reason to suspect that such has occurred, medical attention from a licensed health care professional shall be secured immediately. The circumstances involved and the medical attention received or refused shall be documented in the resident's record. The date and time of occurrence, as well as the personnel involved shall be included in the documentation.

1. The resident's physician, if not already involved, next of kin, legal representative, designated contact person, case manager, and any responsible social agency, as appropriate, shall be notified as soon as possible but no later than 24 hours from the situation and action taken, or if applicable, the resident's refusal of medical attention. If a resident refuses medical attention, the resident's physician shall be notified immediately.

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2. A notation shall be made in the resident's record of such notice, including the date, time, caller, and person notified.

G. If a resident refuses medical attention, the facility shall assess whether it can continue to meet the resident's needs.

22VAC40-73-480. Restorative, habilitative, and rehabilitative services.

A. Facilities shall ensure that all restorative care and habilitative service needs of the residents are met. Facilities shall coordinate with appropriate professional service providers and ensure that any facility staff who assist with support for these service needs are trained by and receive direction from qualified professionals. Restorative and habilitative care includes range of motion, assistance with ambulation, positioning, assistance and instruction in the activities of daily living, psychosocial skills training, and reorientation and reality orientation.

B. In the provision of restorative and habilitative care, staff shall emphasize services such as the following:

1. Making every effort to keep residents active, within the limitations set by physicians' or other prescribers' orders;

2. Encouraging residents to achieve independence in the activities of daily living;

3. Assisting residents to adjust to their disabilities, to use their prosthetic devices, and to redirect their interests if they are no longer able to maintain past involvement in particular activities;

4. Assisting residents to carry out prescribed physical therapy exercises between appointments with the physical therapist; and

5. Maintaining a bowel and bladder training program.

C. Facilities shall arrange for specialized rehabilitative services by qualified personnel as needed by the resident. Rehabilitative services include physical therapy, occupational therapy, and speech-language pathology services. Rehabilitative services may be indicated when the resident has lost or has shown a change in his ability to respond to or perform a given task and requires professional rehabilitative services in an effort to regain lost function. Rehabilitative services may also be

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indicated to evaluate the appropriateness and individual response to the use of assistive technology.

D. All rehabilitative services rendered by a rehabilitative professional shall be performed only upon written medical referral by a physician or other qualified health care professional.

E. The physician's or other prescriber's orders, services provided, evaluations of progress, and other pertinent information regarding the rehabilitative services shall be recorded in the resident's record.

F. Direct care staff who are involved in the care of residents using assistive devices shall know how to operate and utilize the devices.

22VAC40-73-490. Health care oversight.

A. Each assisted living facility shall retain a licensed health care professional who has at least two years of experience as a health care professional in an adult residential facility, adult day center, acute care facility, nursing home, or licensed home care or hospice organization, either by direct employment or on a contractual basis, to provide on-site health care oversight.

1. For residents who meet the criteria for residential living care:

   a. The licensed health care professional, practicing within the scope of the health care professional’s profession, shall provide health care oversight at least every six months, or more often if indicated, based on the health care professional’s professional judgment of the seriousness of a resident's needs or the stability of a resident's condition; or

   b. If the facility employs a licensed health care professional who is on site on a full-time basis, a licensed health care professional, practicing within the scope of the health care professional’s profession, shall provide health care oversight at least annually, or more often if indicated, based on the health care professional’s professional judgment of the seriousness of a resident's needs or stability of a resident's condition.

2. For residents who meet the criteria for assisted living care:

   a. The licensed health care professional, practicing within the scope of the health care professional’s profession, shall provide health care oversight at least every three months, or more often if indicated, based on the health care

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professional's professional judgment of the seriousness of a resident's needs or stability of a resident's condition; or

b. If the facility employs a licensed health care professional who is on site on a full-time basis, a licensed health care professional, practicing within the scope of the health care professional's profession, shall provide health care oversight at least every six months, or more often if indicated, based on the health care professional's professional judgment of the seriousness of a resident's needs or stability of a resident's condition.

3. All residents shall be included at least annually in health care oversight.

B. While on site, as specified in subsection A of this section, the licensed health care professional shall provide health care oversight of the following and make recommendations for change as needed:

1. Ascertain whether a resident's service plan appropriately addresses the current health care needs of the resident.

2. Monitor direct care staff performance of health-related activities.

3. Evaluate the need for staff training.

4. Provide consultation and technical assistance to staff as needed.

5. Review documentation regarding health care services, including medication and treatment records, to assess whether services are being provided in accordance with physicians' or other prescribers' orders.

6. Monitor conformance to the facility's medication management plan and the maintenance of required medication reference materials.

7. Evaluate the ability of residents who self-administer medications to continue to safely do so.

8. Observe infection control measures and consistency with the infection control program of the facility.

C. For all restrained residents, on-site health care oversight shall be provided by a licensed health care professional at least every three months and include the

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following:

1. The licensed health care professional shall be at a minimum a registered nurse who meets the experience requirements in subdivision A of this section.

2. The licensed health care professional shall review the current condition and the records of restrained residents to assess the appropriateness of the restraint and progress toward its reduction or elimination.

3. The licensed health care professional providing the oversight for this subdivision shall also provide the oversight for subdivisions B 1 through B 8 of this section for restrained residents.

4. The oversight provided shall be a holistic review of the physical, emotional, and mental health of the resident and identification of any unmet needs.

5. The oversight shall include review of physician's orders for restraints to determine whether orders are no older than three months, as required by 22VAC40-73-710 E 2.

6. The oversight shall include an evaluation of whether direct care staff have received the restraint training required by 22VAC40-73-270 and whether the facility is meeting the requirements of 22VAC40-73-710 regarding the use of restraints.

7. The licensed health care professional shall make recommendations for change as needed.

D. The licensed health care professional who provided the health care oversight shall certify that the requirements of subsection B and, if applicable, C of this section were met, including the dates of the health care oversight. The specific residents for whom the oversight was provided must be identified. The administrator shall be advised of the findings of the health care oversight and any recommendations. All of the requirements of this subsection shall be (i) in writing, (ii) signed and dated by the health care professional, (iii) provided to the administrator within 10 days of the completion of the oversight, and (iv) maintained in the facility files for at least two years, with any specific recommendations regarding a particular resident also maintained in the resident’s record.

22VAC40-73-490. Health care oversight.

E. Action taken in response to the recommendations noted in subsection D of this section shall be documented in the resident's record if resident specific, and if otherwise, in the facility files.

22VAC40-73-500. Access by community services boards, certain local government departments, and behavioral health authorities.

All assisted living facilities shall provide reasonable access to staff or contractual agents of community services boards, local government departments with policy-advisory community services boards, or behavioral health authorities as defined in § 37.2-100 of the Code of Virginia for the purposes of:

1. Assessing or evaluating clients residing in the facility;

2. Providing case management or other services or assistance to clients residing in the facility; or

3. Monitoring the care of clients residing in the facility.

Such staff or contractual agents also shall be given reasonable access to other facility residents who have previously requested their services.

22VAC40-73-510. Mental health services coordination and support.

A. For each resident requiring mental health services, the services of the local community services board, behavioral health authority, or a public or private mental health clinic, rehabilitative services agency, treatment facility or agent, or qualified health care professional shall be secured as appropriate based on the resident's current evaluation and to the extent possible, the resident's preference for service provider. The assisted living facility shall assist the resident in obtaining the services. If the services are not able to be secured, the facility shall document the reason for such and the efforts made to obtain the services. If the resident has a legal representative, the representative shall be notified of failure to obtain services and the notification shall be documented.

B. Written procedures to ensure communication and coordination between the

22VAC40-73-510. Mental health services coordination and support.

assisted living facility and the mental health service provider shall be established to ensure that the mental health needs of the resident are addressed.

C. Efforts, which must be documented, shall be made by the assisted living facility to assist in ensuring that prescribed interventions are implemented, monitored, and evaluated for their effectiveness in addressing the resident's mental health needs.

D. If efforts to obtain the recommended services are unsuccessful, the facility must document:

1. Whether it can continue to meet all other needs of the resident.

2. How it plans to ensure that the failure to obtain the recommended services will not compromise the health, safety, or rights of the resident and others who come in contact with the resident.

3. Details of additional steps the facility will take to find alternative providers to meet the resident's needs.

E. Any contracts for mental health services between the facility and the mental health services provider:

1. Shall not contain terms that conflict with the regulations; and

2. Shall be provided to the regional licensing office within 10 days of entering into the contract.

22VAC40-73-520. Activity and recreational requirements.

A. Activities for residents shall:

1. Support the skills and abilities of residents in order to promote or maintain their highest level of independence or functioning;

2. Accommodate individual differences by providing a variety of types of activities and levels of involvement; and

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3. Offer residents a varied mix of weekly activities including those that are physical; social; cognitive, intellectual, or creative; productive; sensory; reflective or contemplative; involve nature or the natural world; and weather permitting, outdoor activity. Any given activity may involve more than one of these. Community resources as well as facility resources may be used to provide activities.

B. Resident participation in activities.

1. Residents shall be encouraged but not forced to participate in activity programs offered by the facility and the community.

2. During an activity, each resident shall be encouraged but not coerced to join in at his level of functioning, to include observing.

3. Any restrictions on participation imposed by a physician shall be documented in the resident's record.

C. Activities shall be planned under the supervision of the administrator or other qualified staff person who shall encourage involvement of residents and staff in the planning.

D. In a facility licensed for residential living care only, there shall be at least 11 hours of scheduled activities available to the residents each week for no less than one hour each day.

E. In a facility licensed for both residential and assisted living care, there shall be at least 14 hours of scheduled activities available to the residents each week for no less than one hour each day.

F. During an activity, when needed to ensure that each of the following is adequately accomplished, there shall be staff persons or volunteers to:

1. Lead the activity;

2. Assist the residents with the activity;

3. Supervise the general area;

4. Redirect any residents who require different activities; and

22VAC40-73-520. Activity and recreational requirements.

5. Protect the health, safety, and welfare of the residents participating in the activity.

G. The staff person or volunteer leading the activity shall have a general understanding of the following:

1. Attention spans and functional levels of the residents;

2. Methods to adapt the activity to meet the needs and abilities of the residents;

3. Various methods of engaging and motivating residents to participate; and

4. The importance of providing appropriate instruction, education, and guidance throughout the activity.

H. Adequate supplies and equipment appropriate for the program activities shall be available in the facility.

I. There shall be a written schedule of activities that meets the following criteria:

1. The schedule of activities shall be developed at least monthly.

2. The schedule shall include:

a. Group activities for all residents or small groups of residents; and

b. The name, if any, and the type, date, and hour of the activity.

3. If one activity is substituted for another, the change shall be noted on the schedule.

4. The current month's schedule shall be posted in a conspicuous location in the facility or otherwise be made available to residents and their families.

5. The schedule of activities for the past two years shall be kept at the facility.

6. If a resident requires an individual schedule of activities, that schedule shall be a part of the individualized service plan.

J. The facility shall promote access to the outdoors.

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K. In addition to the required scheduled activities, there shall be unscheduled staff and resident interaction throughout the day that fosters an environment that promotes socialization opportunities for residents.

22VAC40-73-530. Freedom of movement.

A. Any resident who does not have a serious cognitive impairment shall be allowed to freely leave the facility. A resident who has a serious cognitive impairment shall be subject to the provisions set forth in 22VAC40-73-1040 A or 22VAC40-73-1150 A.

B. Doors leading to the outside shall not be locked from the inside or secured from the inside in any manner that amounts to a lock, except that doors may be locked or secured in a manner that amounts to a lock in special care units as provided in 22VAC40-73-1150 A. Any devices used to lock or secure doors in any manner must be in accordance with applicable building and fire codes.

C. The facility shall provide freedom of movement for the residents to common areas and to their personal spaces. The facility shall not lock residents out of or inside their rooms.

22VAC40-73-540. Visitation in the facility.

A. Daily visits to residents in the facility shall be permitted.

B. Visiting hours shall not be restricted, except by a resident when it is the resident's choice.

C. The facility may establish a policy or guidelines so that visiting is not disruptive to other residents and facility security is not compromised. However, daily visits and visiting hours shall not be restricted as provided in subsections A and B of this section.

D. The facility shall encourage regular family involvement with the resident and shall provide ample opportunities for family participation in activities at the facility.

E. During a declared public health emergency related to a communicable disease of public health threat, each assisted living facility shall establish a protocol to allow residents to receive visits from a rabbi, priest, minister, or clergy of any religious denomination or sect consistent with guidance from the Centers for Disease Control and Prevention, the Centers for Medicare and Medicaid Services, and

22VAC40-73-540. Visitation in the facility.

subject to compliance with any executive order, order of public health, Department guidance, or any other applicable federal or state guidance having the effect of limiting visitation. The protocol may restrict the frequency and duration of visits, may require visits to be conducted virtually using interactive audio or video technology, and any such protocol may require the person visiting a resident to comply with all reasonable requirements of the assisted living facility adopted to protect the health and safety of the person, residents, and staff of the assisted living facility.

22VAC40-73-550. Resident rights.

A. The resident shall be encouraged and informed of appropriate means as necessary to exercise his rights as a resident and a citizen throughout the period of his stay at the facility.

B. The resident has the right to voice or file grievances, or both, with the facility and to make recommendations for changes in the policies and services of the facility. The residents shall be protected by the licensee or administrator, or both, from any form of coercion, discrimination, threats, or reprisal for having voiced or filed such grievances.

C. Any resident of an assisted living facility has the rights and responsibilities as provided in § 63.2-1808 of the Code of Virginia and this chapter.

D. The operator or administrator of an assisted living facility shall establish written policies and procedures for implementing § 63.2-1808 of the Code of Virginia.

E. The facility shall make its policies and procedures for implementing § 63.2-1808 of the Code of Virginia available and accessible to residents, relatives, agencies, and the general public.

F. The rights and responsibilities of residents shall be printed in at least 14-point type and posted conspicuously in a public place in all assisted living facilities. The facility shall also post the name and telephone number of the appropriate regional licensing supervisor of the department, the Adult Protective Services' toll-free telephone number, the toll-free telephone number of the Virginia Long-Term Care Ombudsman Program and any substate (i.e., local) ombudsman program serving the area, and the toll-free telephone number of the disAbility Law Center of Virginia.

G. The rights and responsibilities of residents in assisted living facilities shall be reviewed annually with each resident or his legal representative or responsible individual as stipulated in subsection H of this section and each staff person. Evidence of this review shall be the resident's, his legal representative's or

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responsible individual's, or staff person's written acknowledgment of having been so informed, which shall include the date of the review and shall be filed in the resident's or staff person's record.

H. If a resident is unable to fully understand and exercise the rights and responsibilities contained in § 63.2-1808 of the Code of Virginia and does not have a legal representative, the facility shall require that a responsible individual, of the resident's choice when possible, designated in writing in the resident's record annually be made aware of each item in § 63.2-1808 and the decisions that affect the resident or relate to specific items in § 63.2- 1808. The responsible individual shall not be the facility licensee, administrator, or staff person or family members of the licensee, administrator, or staff person.

1. A resident shall be assumed capable of understanding and exercising these rights unless a physician determines otherwise and documents the reasons for such determination in the resident's record.

2. The facility shall seek a determination and reasons for the determination from a resident's physician regarding the resident's capability to understand and exercise these rights when there is reason to believe that the resident may not be capable of such.

22VAC40-73-560. Resident records.

A. The facility shall establish written policy and procedures for documentation and recordkeeping to ensure that the information in resident records is accurate and clear and that the records are well-organized.

B. Resident records shall be identified and easily located by resident name, including when a resident's record is kept in more than one place. This shall apply to both electronic and hard copy material.

C. Any physician's notes and progress reports in the possession of the facility shall be retained in the resident's record.

D. Copies of all agreements between the facility and the resident and official acknowledgment of required notifications, signed by all parties involved, shall be retained in the resident's record. Copies shall be provided to the resident and to persons whose signatures appear on the document.

E. All resident records shall be kept current, retained at the facility, and kept in a locked area, except that information shall be made available as noted in subsection F of this section.

22VAC40-73-560. Resident records.

F. The licensee shall ensure that all records are treated confidentially and that information shall be made available only when needed for care of the resident. All records shall be made available for inspection by the department's representative.

G. Residents shall be allowed access to their own records. A legal representative of a resident shall be provided access to the resident's record or part of the record as allowed by the scope of his legal authority.

H. The complete resident record shall be retained for at least two years after the resident leaves the facility.

1. For at least the first year, the record shall be retained at the facility.

2. After the first year, the record may be retained off site in a safe, secure area. The record must be available at the facility within 48 hours.

I. A current picture of each resident shall be readily available for identification purposes or, if the resident refuses to consent to a picture, there shall be a narrative physical description, which is annually updated, maintained in his file.

22VAC40-73-570. Release of information regarding resident's personal affairs and records.

A. The resident or the appropriate legal representative has the right to release information from the resident's record to persons or agencies outside the facility.

B. The licensee is responsible for making available to residents and legal representatives a form which they may use to grant their written permission for the facility to release information to persons or agencies outside the facility. The facility shall retain a copy of any signed release of information form in the resident's record.

C. Only under the following circumstances is a facility permitted to release information from the resident's records or information regarding the resident's personal affairs without the written permission of the resident or his legal representative, where appropriate:

1. When records have been properly subpoenaed;

2. When the resident is in need of emergency medical care and is unable or unwilling to grant permission to release information or his legal representative is not available to grant permission;

3. When the resident moves to another caregiving facility

22VAC40-73-570. Release of information regarding resident's personal affairs and records.

4. To representatives of the department; or

5. As otherwise required by law.

D. When a resident is hospitalized or transported by emergency medical personnel, information necessary to the care of the resident shall be furnished by the facility to the hospital or emergency medical personnel. Examples of such information include a copy of the current medication administration record (MAR), a Do Not Resuscitate (DNR) Order, advance directives, and organ donation information. The facility shall also provide the name, address, and telephone number of the resident's designated contact person to the hospital or emergency medical personnel.

22VAC40-73-580. Food service and nutrition.

A. When any portion of an assisted living facility is subject to inspection by the Virginia Department of Health, the facility shall be in compliance with those regulations, as evidenced by an initial and subsequent annual reports from the Virginia Department of Health. The report shall be retained at the facility for a period of at least two years.

B. All meals shall be served in the dining area as designated by the facility, except that:

1. If the facility, through its policies and procedures, offers routine or regular room service, residents shall be given the option of having meals in the dining area or in their rooms, provided that:

   a. There is a written agreement to this effect, signed and dated by both the resident and the licensee or administrator and filed in the resident's record.

   b. If a resident's individualized service plan, physical examination report, mental health status report, or any other document indicates that the resident has a psychiatric condition that contributes to self-isolation, a qualified mental health professional shall make a determination in writing whether the resident should have the option of having meals in his room. If the determination is made that the resident should not have this option, then the resident shall have his meals in the dining area.

2. Under special circumstances, such as temporary illness, temporary incapacity, temporary agitation of a resident with cognitive impairment, or occasional, infrequent requests due to a resident's personal preference, meals may be served in a resident's room.

3. When meals are served in a resident's room, a sturdy table must be used.

22VAC40-73-580. Food service and nutrition.

C. Personnel shall be available to help any resident who may need assistance in reaching the dining room or when eating.

D. A minimum of 45 minutes shall be allowed for each resident to complete a meal. If a resident has been assessed on the UAI as dependent in eating/feeding, his individualized service plan shall indicate an approximate amount of time needed for meals to ensure needs are met.

E. Facilities shall develop and implement a policy to monitor each resident for:

1. Warning signs of changes in physical or mental status related to nutrition; and

2. Compliance with any needs determined by the resident's individualized service plan or prescribed by a physician or other prescriber, nutritionist, or health care professional.

F. Facilities shall implement interventions as soon as a nutritional problem is suspected. These interventions shall include the following:

1. Weighing residents at least monthly to determine whether the resident has significant weight loss (i.e., 5.0% weight loss in one month, 7.5% in three months, or 10% in six months); and

2. Notifying the attending physician if a significant weight loss is identified in any resident who is not on a physician-approved weight reduction program and obtaining, documenting, and following the physician's instructions regarding nutritional care.

G. Residents with independent living status who have kitchens equipped with stove, refrigerator, and sink within their individual apartments may have the option of obtaining meals from the facility or from another source. If meals are obtained from another source, the facility must ensure availability of meals when the resident is sick or temporarily unable to prepare meals for himself.

22VAC40-73-590. Number of meals and availability of snacks.

A. At least three well-balanced meals, served at regular intervals, shall be provided daily to each resident, unless contraindicated as documented by the attending physician in the resident's record or as provided for in 22VAC40-73-580 G.

22VAC40-73-590. Number of meals and availability of snacks.

B. Snacks shall be made available at all times for all residents or in accordance with their physician's or other prescriber's orders.

1. Appropriate adjustments in the provision of snacks to a resident shall be made when orders from the resident's physician or other prescriber in the resident's record limits the receipt or type of snacks.

2. Vending machines shall not be used as the only source for snacks.

22VAC40-73-600. Time interval between meals.

A. Time between the scheduled evening meal and scheduled breakfast the following morning shall not exceed 15 hours.

B. There shall be at least four hours between scheduled breakfast and lunch and at least four hours between scheduled lunch and supper.

C. When multiple seatings are required due to limited dining space, scheduling shall ensure that these time intervals are met for all residents. Schedules shall be made available to residents, legal representatives, staff, volunteers, and any other persons responsible for assisting residents in the dining process.

22VAC40-73-610. Menus for meals and snacks.

A. Food preferences of residents shall be considered when menus are planned.

B. Menus for meals and snacks for the current week shall be dated and posted in an area conspicuous to residents.

1. Any menu substitutions or additions shall be recorded on the posted menu.

2. A record shall be kept of the menus served for two years.

C. Minimum daily menu.

1. Unless otherwise ordered in writing by the resident's physician or other prescriber, the daily menu, including snacks, for each resident shall meet the current guidelines of the U.S. Department of Agriculture's food guidance system or the dietary allowances of the Food and Nutritional Board of the National Academy of Sciences, taking into consideration the age, sex, and activity of the resident.

22VAC40-73-610. Menus for meals and snacks.

2. Other foods may be added.

3. Second servings and snacks shall be available at no additional charge.

4. At least one meal each day shall include a hot main dish.

D. When a diet is prescribed for a resident by his physician or other prescriber, it shall be prepared and served according to the physician's or other prescriber's orders.

E. A copy of a diet manual containing acceptable practices and standards for nutrition shall be kept current and readily available to personnel responsible for food preparation.

F. The facility shall make drinking water readily available to all residents. Direct care staff shall know which residents need help getting water or other fluids and drinking from a cup or glass. Direct care staff shall encourage and assist residents who do not have medical conditions with physician or other prescriber ordered fluid restrictions to drink water or other beverages frequently.

22VAC40-73-620. Oversight of special diets.

A. There shall be oversight at least every six months of special diets by a dietitian or nutritionist for each resident who has such a diet. Special diets may also be referred to using terms such as medical nutrition therapy or diet therapy. The dietitian or nutritionist must meet the requirements of § 54.1-2731 of the Code of Virginia.

B. The oversight specified in subsection A of this section shall be on site and include the following:

1. A review of the physician's or other prescriber's order and the preparation and delivery of the special diet.

2. An evaluation of the adequacy of the resident's special diet and the resident's acceptance of the diet.

3. Certification that the requirements of this subsection were met, including the date of the oversight and identification of the residents for whom the oversight was provided. The administrator shall be advised of the findings of the oversight and any recommendations. All of the requirements of this subdivision shall be (i) in writing, (ii) signed and dated by the dietitian or nutritionist, (iii) provided to the administrator within 10 days of the completion of the oversight, and (iv)

22VAC40-73-620. Oversight of special diets.

maintained in the files at the facility for at least two years, with any specific recommendations regarding a particular resident also maintained in the resident's record.

4. Upon receipt of recommendations noted in subdivision 3 of this subsection, the administrator, dietitian, or nutritionist shall report them to the resident's physician. Documentation of the report shall be maintained in the resident's record.

5. Action taken in response to the recommendations noted in subdivision 3 of this subsection shall be documented in the resident's record.

22VAC40-73-630. Observance of religious dietary practices.

A. The resident's religious dietary practices shall be respected.

B. Religious dietary practices of the administrator or licensee shall not be imposed upon residents unless specifically agreed upon in the admission agreement/acknowledgment between administrator or licensee and resident.

22VAC40-73-640. Medication management plan and reference materials.

A. The facility shall have, keep current, and implement a written plan for medication management. The facility's medication plan shall address procedures for administering medication and shall include:

1. Methods to ensure an understanding of the responsibilities associated with medication management;

2. Standard operating procedures, including the facility's standard dosing schedule and any general restrictions specific to the facility;

3. Methods to prevent the use of outdated, damaged, or contaminated medications;

4. Methods to ensure that each resident's prescription medications and any over-the- counter drugs and supplements ordered for the resident are filled and refilled in a timely manner to avoid missed dosages;

5. Methods for verifying that medication orders have been accurately transcribed to medication administration records (MARs) within 24 hours of receipt of a new order or change in an order;

22VAC40-73-640. Medication management plan and reference materials.

6. Methods for monitoring medication administration and the effective use of the MARs for documentation;

7. Methods to ensure that MARs are maintained as part of the resident's record;

8. Methods to ensure accurate counts of all controlled substances whenever assigned medication administration staff changes;

9. Methods to ensure that staff who are responsible for administering medications meet the qualification requirements of 22VAC40-73-670;

10. Methods to ensure that staff who are responsible for administering medications are adequately supervised, including periodic direct observation of medication administration;

11. A plan for proper disposal of medication;

12. Methods to ensure that residents do not receive medications or dietary supplements to which they have known allergies;

13. Identification of the medication aide or the person licensed to administer drugs responsible for routinely communicating issues or observations related to medication administration to the prescribing physician or other prescriber;

14. Methods to ensure that staff who are responsible for administering medications are trained on the facility's medication management plan; and

15. Procedures for internal monitoring of the facility's conformance to the medication management plan.

B. The facility's written medication management plan requires approval by the department.

C. Subsequent changes shall be reviewed as part of the department's regular inspection process.

D. In addition to the facility's written medication management plan, the facility shall have readily accessible at least one pharmacy reference book, drug guide, or medication handbook for nurses that is no more than two years old as reference materials for staff who administer medications.

22VAC40-73-650. Physician's or other prescriber's order.

A. No medication, dietary supplement, diet, medical procedure, or treatment shall be started, changed, or discontinued by the facility without a valid order from a physician or other prescriber. Medications include prescription, over-the-counter, and sample medications.

B. Physician or other prescriber orders, both written and oral, for administration of all prescription and over-the-counter medications and dietary supplements shall include the name of the resident, the date of the order, the name of the drug, route, dosage, strength, how often medication is to be given, and identify the diagnosis, condition, or specific indications for administering each drug.

C. Physician's or other prescriber's oral orders shall:

1. Be charted by the individual who takes the order. That individual must be one of the following:

   a. A licensed health care professional practicing within the scope of his profession; or

   b. A medication aide.

2. Be reviewed and signed by a physician or other prescriber within 14 days.

D. Medication aides may not transmit an oral order to a pharmacy.

E. The resident's record shall contain the physician's or other prescriber's signed written order or a dated notation of the physician's or other prescriber's oral order. Orders shall be organized chronologically in the resident's record.

F. Whenever a resident is admitted to a hospital for treatment of any condition, the facility shall obtain new orders for all medications and treatments prior to or at the time of the resident's return to the facility. The facility shall ensure that the primary physician is aware of all medication orders and has documented any contact with the physician regarding the new orders.

22VAC40-73-660. Storage of medications.

A. A medicine cabinet, container, or compartment shall be used for storage of medications and dietary supplements prescribed for residents when such medications and dietary supplements are administered by the facility. Medications shall be stored in a manner consistent with current standards of practice.

22VAC40-73-660. Storage of medications.

1. The storage area shall be locked.

2. Schedule II drugs and any other drugs subject to abuse must be kept in a separate locked storage compartment (e.g., a locked cabinet within a locked storage area or a locked container within a locked cabinet or cart).

3. The individual responsible for medication administration shall keep the keys to the storage area on his person.

4. When in use, the storage area shall have adequate illumination in order to read container labels.

5. The storage area shall not be located in the kitchen or bathroom, but in an area free of dampness or abnormal temperatures unless the medication requires refrigeration.

6. When required, medications shall be refrigerated.

    a. It is permissible to store dietary supplements and foods and liquids used for medication administration in a refrigerator that is dedicated to medication storage if the refrigerator is in a locked storage area.

    b. When it is necessary to store medications in a refrigerator that is routinely used for food storage, the medications shall be stored together in a locked container in a clearly defined area.

7. Single-use and dedicated medical supplies and equipment shall be appropriately labeled and stored. Medical equipment suitable for multi-use shall be stored to prevent cross-contamination.

B. A resident may be permitted to keep his own medication in an out-of-sight place in his room if the UAI has indicated that the resident is capable of self-administering medication. The medication and any dietary supplements shall be stored so that they are not accessible to other residents. This does not prohibit the facility from storing or administering all medication and dietary supplements.

EXCEPTION: If the facility has no resident with a serious cognitive impairment or substance abuse problem, the facility may determine that the out-of-sight and inaccessibility safeguards specified in this subsection do not apply. If the facility determines that these safeguards do not apply, the facility shall maintain documentation of such, including the date and the names of residents at the time the determination is made. No such determination shall be valid for longer than six

22VAC40-73-660. Storage of medications.

months. Such determinations may be renewed under the same conditions and with the same documentation requirements.

22VAC40-73-670. Qualifications and supervision of staff administering medications.

When staff administers medications to residents, the following standards shall apply:

1. Each staff person who administers medication shall be authorized by § 54.1-3408 of the Virginia Drug Control Act. All staff responsible for medication administration shall:

    a. Be licensed by the Commonwealth of Virginia to administer medications; or

    b. Be registered with the Virginia Board of Nursing as a medication aide, except as specified in subdivision 2 of this section.

2. Any applicant for registration as a medication aide who has provided to the Virginia Board of Nursing evidence of successful completion of the education or training course required for registration may act as a medication aide on a provisional basis for no more than 120 days before successfully completing any required competency evaluation. However, upon notification of failure to successfully complete the written examination after three attempts, an applicant shall immediately cease acting as a medication aide.

3. Medication aides shall be supervised by one of the following:

    a. An individual employed full time at the facility who is licensed by the Commonwealth of Virginia to administer medications;

    b. The administrator who is licensed by the Commonwealth of Virginia to administer medications or who has successfully completed a training program approved by the Virginia Board of Nursing for the registration of medication aides. The training program for administrators who supervise medication aides, but are not registered medication aides themselves, must include a minimum of 68 hours of student instruction and training but need not include the prerequisite for the program or the written examination for registration. The administrator must also meet the requirements of 22VAC40-73-160 E; or

    c. For a facility licensed for residential living care only, the designated assistant administrator, as specified in 22VAC40-73-150 E, who is licensed by the

22VAC40-73-670. Qualifications and supervision of staff administering medications.

Commonwealth of Virginia to administer medications or who has successfully completed a training program approved by the Virginia Board of Nursing for the registration of medication aides. The training program for designated assistant administrators who supervise medication aides, but are not registered medication aides themselves, must include a minimum of 68 hours of student instruction and training but need not include the prerequisite for the program or the written examination for registration. The designated assistant administrator must also meet the requirements of 22VAC40-73-160 E.

22VAC40-73-680. Administration of medications and related provisions.

A. Staff who are licensed, registered, or acting as medication aides on a provisional basis as specified in 22VAC40-73-670 shall administer drugs to those residents who are dependent on medication administration as documented on the UAI.

B. Medications shall be removed from the pharmacy container, or the container shall be opened, by a staff person licensed, registered, or acting as a medication aide on a provisional basis as specified in 22VAC40-73-670 and administered to the resident by the same staff person. Medications shall remain in the pharmacy issued container, with the prescription label or direction label attached, until administered to the resident.

C. Medications shall be administered not earlier than one hour before and not later than one hour after the facility's standard dosing schedule, except those drugs that are ordered for specific times, such as before, after, or with meals.

D. Medications shall be administered in accordance with the physician's or other prescriber’s instructions and consistent with the standards of practice outlines in the current medication aide curriculum approved by the Virginia Board of Nursing.

E. Medical procedures or treatments ordered by a physician or other prescriber shall be provided according to his instructions and documented. The documentation shall be maintained in the resident's record.

F. Sample medications shall remain in the original packaging, labeled by a physician or other prescriber or pharmacist with the resident's name, the name of the medication, the strength, dosage, and route and frequency of administration, until administered.

G. Over-the-counter medication shall remain in the original container, labeled with the resident's name, or in a pharmacy-issued container, until administered.

22VAC40-73-680. Administration of medications and related provisions.

H. At the time the medication is administered, the facility shall document on a medication administration record (MAR) all medications administered to residents, including over-the- counter medications and dietary supplements.

I. The MAR shall include:

1. Name of the resident;

2. Date prescribed;

3. Drug product name;

4. Strength of the drug;

5. Dosage;

6. Diagnosis, condition, or specific indications for administering the drug or supplement;

7. Route (e.g., by mouth);

8. How often medication is to be taken;

9. Date and time given and initials of direct care staff administering the medication;

10. Dates the medication is discontinued or changed;

11. Any medication errors or omissions;

12. Description of significant adverse effects suffered by the resident;

13. For "as needed" (PRN) medications:

    a. Symptoms for which medication was given;

    b. Exact dosage given; and

    c. Effectiveness; and

14. The name, signature, and initials of all staff administering medications. A master list may be used in lieu of this documentation on individual MARs.

22VAC40-73-680. Administration of medications and related provisions.

J. In the event of an adverse drug reaction or a medication error, the following applies:

1. Action shall be taken as directed by a physician, pharmacist, or a poison control center;

2. The resident's physician of record and family member or other responsible person shall be notified as soon as possible; and

3. Medication administration staff shall document actions taken in the resident's record.

K. The use of PRN medications is prohibited, unless one or more of the following conditions exist:

1. The resident is capable of determining when the medication is needed;

2. Licensed health care professionals administer the PRN medication; or

3. Medication aides administer the PRN medication when the facility has obtained from the resident's physician or other prescriber a detailed medication order. The order shall include symptoms that indicate the use of the medication, exact dosage, the exact time frames the medication is to be given in a 24-hour period, and directions as to what to do if symptoms persist.

L. In order for drugs in a hospice comfort kit to be administered, the requirements specified in subsection K of this section must be met, and each medication in the kit must have a prescription label attached by the pharmacy.

M. Medications ordered for PRN administration shall be available, properly labeled for the specific resident, and properly stored at the facility.

N. Stat-drug boxes may only be used when the following conditions are met:

1. There is an order from the prescriber for any drug removed from the stat-drug box; and

2. The drug is removed from the stat-drug box and administered by a nurse, pharmacist, or prescriber licensed to administer medications. Registered medication aides are not permitted to either remove or administer medications from the stat-drug box.

22VAC40-73-690. Medication review.

A. For each resident assessed for residential living care, except for those who self-administer all of their medications, a licensed health care professional, practicing within the scope of his profession, shall perform an annual review of all the medications of the resident.

B. For each resident assessed for assisted living care, except for those who self-administer all of their medications, a licensed health care professional, practicing within the scope of his profession, shall perform a review every six months of all the medications of the resident.

C. The medication review shall include prescription drugs, over-the-counter medications, and dietary supplements ordered for the resident.

D. If deemed appropriate by the licensed health care professional, the review shall include observation of the resident or interview with the resident or staff.

E. The review shall include the following:

1. All medications that the resident is taking and medications that he could be taking if needed (PRNs).

2. An examination of the dosage, strength, route, how often, prescribed duration, and when the medication is taken.

3. Documentation of actual and consideration of potential interactions of drugs with one another.

4. Documentation of actual and consideration of potential interactions of drugs with foods or drinks.

5. Documentation of actual and consideration of potential negative effects of drugs resulting from a resident's medical condition other than the one the drug is treating.

6. Consideration of whether PRNs, if any, are still needed and if clarification regarding use is necessary.

7. Consideration of a gradual dose reduction of antipsychotic medications for those residents with a diagnosis of dementia and no diagnoses of a primary psychiatric disorder.

8. Consideration of whether the resident needs additional monitoring or testing.

22VAC40-73-690. Medication review.

9. Documentation of actual and consideration of potential adverse effects or unwanted side effects of specific medications.

10. Identification of that which may be questionable, such as (i) similar medications being taken, (ii) different medications being used to treat the same condition, (iii) what seems an excessive number of medications, and (iv) what seems an exceptionally high drug dosage.

11. The health care professional shall notify the resident's attending physician of any concerns or problems and document the notification.

F. The licensed health care professional shall certify that the requirements of subdivisions E 1 through E 11 of this section were met, including the dates of the medication review. The administrator shall be advised of the findings of the medication review and any recommendations. All of the requirements of this subdivision shall be (i) in writing, (ii) signed and dated by the health care professional, (iii) provided to the administrator within 10 days of the completion of the review, and (iv) maintained in the facility files for at least two years, with any specific recommendations regarding a particular resident also maintained in the resident's record.

G. Action taken in response to the recommendations noted in subsection F of this section shall be documented in the resident's record.

22VAC40-73-700. Oxygen therapy.

When oxygen therapy is provided, the following safety precautions shall be met and maintained:

1. The facility shall have a valid physician's or other prescriber's order that includes the following:

   a. The oxygen source, such as compressed gas or concentrators;

   b. The delivery device, such as nasal cannula, reservoir nasal cannulas, or masks; and

   c. The flow rate deemed therapeutic for the resident.

2. The facility shall post "No Smoking-Oxygen in Use" signs and enforce the smoking prohibition in any room of a building where oxygen is in use.

22VAC40-73-700. Oxygen therapy.

3. The facility shall ensure that only oxygen from a portable source shall be used by residents when they are outside their rooms. The use of long plastic tether lines to the source of oxygen outside their rooms is not permitted.

4. The facility shall make available to staff the emergency numbers to contact the resident's physician or other prescriber and the oxygen vendor for emergency service or replacement.

5. The facility shall demonstrate that all direct care staff responsible for assisting residents who use oxygen supplies have had training or instruction in the use and maintenance of resident-specific equipment.

6. The facility shall include in its disaster preparedness plan a checklist of information required to meet the identified needs of those residents who require oxygen therapy including the following:

    a. Whether the facility has on-site, emergency generator capacity sufficient to safely operate oxygen concentrators efficiently.

    b. Whether in the absence of on-site generators the facility has agreements with vendors to provide emergency generators, including whether those generators will support oxygen concentrators.

    c. Where the facility maintains chart copies of each resident's agreement, including emergency preparedness and back-up plans, with his oxygen equipment and supply vendor for ready access in any emergency situation.

    d. How equipment and supplies will be transported in the event that residents must be evacuated to another location.

22VAC40-73-710. Restraints.

A. The use of chemical restraints is prohibited. The use of prone or supine restraints is prohibited. The use of any restraint or restraint technique that restricts a resident's breathing, interferes with a resident's ability to communicate, or applies pressure on a resident's torso is prohibited.

B. Physical restraints shall not be used for purposes of discipline or convenience. Physical restraints may only be used (i) as a medical/orthopedic restraint for support, according to a physician's written order and with the written consent of the resident or his legal representative or (ii) in an emergency situation after less intrusive

22VAC40-73-710. Restraints.

interventions have proven insufficient to prevent imminent threat of death or serious physical injury to the resident or others.

C. If a restraint is used, it must:

1. Be imposed in accordance with a physician's written order that specifies the condition, circumstances, and duration under which the restraint is to be used; and

2. Not be ordered on a standing, blanket, or "as needed" (PRN) basis.

D. Whenever physical restraints are used, the following conditions shall be met:

1. A restraint shall be used only to the minimum extent necessary to protect the resident or others;

2. Restraints shall only be applied by direct care staff who have received training in their use as specified by subdivision 2 of 22VAC40-73-270;

3. The facility shall closely monitor the condition of a resident with a restraint, which includes checking on the resident at least every 30 minutes;

4. The facility shall assist the resident with a restraint as often as necessary, but no less than 10 minutes every hour, for his hydration, safety, comfort, range of motion, exercise, elimination, and other needs;

5. The facility shall release the resident from the restraint as quickly as possible; and

6. Direct care staff shall keep a record of restraint usage, outcomes, checks, and any assistance required in subdivision 4 of this subsection and shall note any unusual occurrences or problems.

E. When restraints are used in nonemergencies, as defined in 22VAC40-73-10, the following conditions shall be met:

1. Restraints shall be used as a last resort and only if the facility, after completing, implementing, and evaluating the resident's comprehensive assessment and service plan, determines and documents that less restrictive means have failed;

22VAC40-73-710. Restraints.

2. Physician orders for medical/orthopedic restraints must be reviewed by the physician at least every three months and renewed if the circumstances warranting the use of the restraint continue to exist;

3. Restraints shall be used in accordance with the resident's service plan, which documents the need for the restraint and includes a schedule or plan of rehabilitation training enabling the progressive removal or the progressive use of less restrictive restraints when appropriate;

4. Before the initial administration of a restraint, the facility shall explain the use of the restraint and potential negative outcomes to the resident or his legal representative and the resident's right to refuse the restraint and shall obtain the written consent of the resident or his legal representative;

5. Restraints shall be applied so as to cause no physical injury and the least possible discomfort; and

6. The facility shall notify the resident's legal representative or designated contact person as soon as practicable, but no later than 24 hours after the initial administration of a nonemergency restraint. The facility shall keep the resident and his legal representative or designated contact person informed about any changes in restraint usage. A notation shall be made in the resident's record of such notice, including the date, time, person notified, method of notification, and staff providing notification.

F. When restraints are used in emergencies, as defined in 22VAC40-73-10 the following conditions shall be met:

1. Restraints may only be used as an emergency intervention of last resort to prevent imminent threat of death or serious physical injury to the resident or others;

2. An oral or written order shall be obtained from a physician within one hour of administration of the emergency restraint and the order shall be documented;

3. In the case of an oral order, a written order shall be obtained from the physician as soon as possible;

4. The resident shall be within sight and sound of direct care staff at all times;

5. If the emergency restraint is necessary for longer than two hours, the resident shall be transferred to a medical or psychiatric inpatient facility or monitored in

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the facility by a mental health crisis team until his condition has stabilized to the point that the attending physician documents that restraints are not necessary;

6. The facility shall notify the resident's legal representative or designated contact person as soon as practicable, but no later than 12 hours after administration of an emergency restraint. A notation shall be made in the resident's record of such notice, including the date, time, caller and person notified; and

7. The facility shall review the resident's individualized service plan within one week of the application of an emergency restraint and document additional interventions to prevent the future use of emergency restraints.

22VAC40-73-720. Do Not Resuscitate Orders.

A. Do Not Resuscitate (DNR) Orders for withholding cardiopulmonary resuscitation from a resident in the event of cardiac or respiratory arrest may only be carried out in a licensed assisted living facility when:

   1. A valid written order has been issued by the resident's attending physician; and

   2. The written order is included in the individualized service plan.

B. The facility shall have a system to ensure that all staff are aware of residents who have a valid DNR Order.

C. The DNR Order shall be readily available to other authorized persons, such as emergency medical technicians (EMTs), when necessary.

D. Durable DNR Orders shall not authorize the assisted living facility or its staff to withhold other medical interventions, such as intravenous fluids, oxygen, or other therapies deemed necessary to provide comfort care or to alleviate pain.

E. Section 63.2-1807 of the Code of Virginia states that the owners or operators of any assisted living facility may provide that their staff who are certified in CPR shall not be required to resuscitate any resident for whom a valid written order not to resuscitate in the event of cardiac or respiratory arrest has been issued by the resident's attending physician and has been included in the resident's individualized service plan.

22VAC40-73-720. Do Not Resuscitate Orders.

F. If the owner or operator of a facility has determined that DNR Orders will not be honored, the facility shall have a policy specifying this and, prior to admission, the resident or his legal guardian shall be notified of the policy and sign an acknowledgment of the notification.

22VAC40-73-730. Advance directives.

A. Upon admission or while residing in the facility, whenever the resident has established advance directives, such as a living will or a durable power of attorney for health care, to the extent available, the facility shall obtain the following:

1. The name of and contact information for the individual or individuals who has the document or documents;

2. The location of the documents;

3. Either the advance directives or the content of the advance directives; and

4. The name of and contact information for any designated agent, as related to the development and modification of the individualized service plan.

B. If the facility is unable to obtain any of the information or documents as noted in subdivisions 1 through 4 of subsection A of this section, the efforts made to do so shall be documented in the resident's record.

C. The information regarding advance directives shall be readily available to other authorized persons, such as emergency medical technicians (EMTs), when necessary.

D. A resident requesting assistance with establishing advance directives shall be referred to his primary health care provider or attorney.

PART VII. RESIDENT ACCOMMODATIONS AND RELATED PROVISIONS

22VAC40-73-740. Personal possessions.

A. Each resident shall be permitted to keep reasonable personal property in his possession at a facility in order to maintain individuality and personal dignity.

22VAC40-73-740. Personal possessions.

B. A facility shall ensure that each resident has his own clothing.

1. The use of a common clothing pool is prohibited.

2. If necessary, resident's clothing shall be inconspicuously marked with his name to avoid getting mixed with others.

3. Residents shall be allowed and encouraged to select their daily clothing and wear clothing to suit their activities and appropriate to weather conditions.

C. Each resident shall have his own personal care items.

D. Each facility shall develop and implement a written policy regarding procedures to be followed when a resident's clothing or other personal possessions, such as jewelry, television, radio, or other durable property, are reported missing. Attempts shall be made to determine the reason for the loss and any reasonable actions shall be taken to recover the item and to prevent or discourage future losses. The results of the investigation shall be reported in writing to the resident. Documentation shall be maintained for at least two years regarding items that were reported missing and resulting actions that were taken.

22VAC40-73-750. Resident rooms.

A. The resident shall be encouraged to furnish or decorate his room as space and safety considerations permit and in accordance with this chapter.

B. Bedrooms shall contain the following items, except as provided for in subsection C of this section:

1. A separate bed with comfortable mattress, springs, and pillow for each resident. Provisions for a double bed for a married couple shall be optional;

2. A table or its equivalent accessible to each bed;

3. An operable bed lamp or bedside light accessible to each resident;

4. A sturdy chair for each resident;

5. Drawer space for clothing and other personal items. If more than one resident occupies a room, ample drawer space shall be assigned to each resident;

6. At least one mirror - if the resident has an individual adjoining bathroom, the mirror may be in the bathroom; and

22VAC40-73-750. Resident rooms.

7. Window coverings for privacy.

C. If a resident specifies in writing that he does not wish to have an item or items listed in subsection B of this section and understands that he may decide otherwise at any time, the resident's bedroom is not required to contain those specified items. The written specification shall be maintained in the resident's record.

D. Adequate and accessible closet or wardrobe space shall be provided for each resident. As of December 28, 2006, in all buildings approved for construction or change in use and occupancy classification, the closet or wardrobe space shall be in the resident's bedroom.

E. The facility shall have sufficient bed and bath linens in good repair so that residents always have clean:

1. Sheets;
2. Pillowcases;
3. Blankets;
4. Bedspreads;
5. Towels;
6. Washcloths; and
7. Waterproof mattress covers when needed.

22VAC40-73-755. Electronic monitoring in resident rooms.

A. In accordance with § 63.2-1808.2 of the Code of Virginia, electronic monitoring shall be permitted only:

1. Upon the informed consent of the resident or resident's legal representative, which shall be obtained prior to the installation or use of any electronic monitoring device. Consent for electronic monitoring shall be kept in the resident's record;
2. When the resident resides:
   a. In a room with no roommates; or
   b. In a room with any roommates and obtains written consent to visual recording from such roommates or, if any roommate has been legally deemed incompetent, such roommate's legal representative. When a resident resides with any roommates, only video electronic monitoring shall be permitted pursuant to this subsection;

22VAC40-73-755. Electronic monitoring in resident rooms.

3. Upon execution of an agreement for the sharing and release of medical data and information protected by the federal Health Insurance Portability and Accountability Act of 1996 (42 USC § 1320d et seq.) signed by the resident or resident's legal representative or, if applicable, any such agreement signed by any roommate or roommate's legal representative shall be kept in all consenting individuals' records; and

4. When the assisted living facility has secured and password-protected wireless Internet access or other means available to operate the electronic monitoring device without modification to the assisted living facility or a change in level or capacity of Internet access.

B. A facility shall allow electronic monitoring when it is conducted in accordance with this section. A facility shall not refuse to admit an individual and shall not discharge or transfer a resident due to a request to conduct authorized electronic monitoring.

C. A written request signed by the resident or their legal guardian shall be on file when a request is made to utilize electronic monitoring in a resident’s room.

D. A facility shall have written policies and procedures for electronic monitoring consistent with this section and § 63.2-1808.2 of the Code of Virginia, to include:

1. Prohibiting assigned staff from refusing to enter a resident’s room solely because of electronic monitoring; and

2. Prohibiting staff from willfully tampering with electronic monitoring devices in violation of this section. Adjusting or disabling an electronic monitoring device during the provision of patient care shall not constitute willful tampering if such adjusting or disabling is done in order to protect the dignity of a resident or at the direction of the resident or resident's legal representative.

E. A facility shall designate one or more staff persons to be the point of contact for electronic monitoring requests and providing information and policies upon request during normal business hours.

F. A facility shall not allow electronic monitoring if the resident or resident's legal representative indicates objection to electronic monitoring.

G. The facility shall conspicuously post and maintain a notice at the entrance to the resident’s room stating that an electronic monitoring device is in operation.

H. The facility shall notify assigned staff for the resident when electronic monitoring is in use in a resident’s room pursuant to this section and § 63.2-1808.2 of the Code of Virginia.

22VAC40-73-755. Electronic monitoring in resident rooms.

I. Should a resident, resident's legal representative or family member choose to install an electronic monitoring device in accordance with this section and § 63.2-1808.2 of the Code of Virginia, the facility shall not be responsible for costs, other than the cost of electricity, associated with the purchase and installation of the electronic monitoring device.

J. The facility shall make reasonable physical accommodations for electronic monitoring devices, including:

1. Providing a reasonable, secure place to mount the device; and
2. Providing reasonable access to power sources if already in proximity to the device.

K. If the facility provides facility-managed electronic monitoring utilizing devices installed and maintained by the facility, then the facility may charge a one-time fee not to exceed $150 for installation and a fee not to exceed $250 as a security deposit for the device. The facility may charge a monthly fee, not to exceed $10, to cover the costs associated with the electronic monitoring device as outlined in § 63.2-1808.2 of the Code of Virginia. The facility shall provide a 45-day notice of an increase in electronic monitoring monthly fees.

L. The resident or resident's legal representative of a room with an electronic monitoring device may describe conditions, verbally or in writing, for the consent to install or use of an electronic monitoring device. If the resident or resident's legal representative or any roommate or roommate's legal representative places conditions on consent, the facility and staff shall ensure that the installation, use, and operation of the electronic monitoring device and any electronic monitoring or other activities conducted in connection to electronic monitoring be in compliance with the conditions. Such conditions on consent may include:

1. The ability of the resident, any roommate, or staff at the request of the resident or any roommate, to turn off or disable the audio or video electronic monitoring device during certain periods of time; or
2. A prohibition on the ability of the assisted living facility to, pursuant to subsection N of this section, choose to assume custodial ownership of any recordings from the electronic monitoring device after the electronic monitoring device has been installed and is operational.

M. An assisted living facility shall require its staff to immediately report any incidents regarding safety or quality of care discovered or reported to staff as a result of viewing a recording from an electronic monitoring device to the administrator of the assisted living facility.

22VAC40-73-755. Electronic monitoring in resident rooms.

N. Ownership of electronic monitoring recordings.

1. Except as provided in subsection L of this section, assisted living facilities may assume custodial ownership of any recordings from electronic monitoring devices from the resident or resident's legal representative. Recordings from electronic monitoring devices shall not be considered part of the resident's record.

2. If an assisted living facility chooses to assume ownership of recordings from electronic monitoring devices pursuant to subdivision 1 of this subsection, the assisted living facility shall not permit viewings of recordings without consent of the resident or resident's legal representative except to the extent that disclosure is required by law or for quality assurance purposes.

3. An assisted living facility shall not be held liable for any breach of data or privacy related to the presence of the electronic monitoring device.

4. An assisted living facility shall have no obligation to seek access to a recording for which it has not assumed custodial ownership or to have knowledge of a recording's content unless (i) the assisted living facility is aware of a recorded incident of suspected abuse or neglect or of an accident or injury based upon a report received by the facility of such incident, accident, or injury or (ii) the resident, the resident's legal representative, or a government agency seeks to use a recording.

5. Unless an assisted living facility chooses to assume ownership of any recordings from an electronic monitoring device, the resident or resident's legal representative shall be responsible for all aspects of the operation of the electronic monitoring device, including the removal and replacement of recordings; adherence to local, state, and federal privacy laws; and use of firewall protections to prevent images that would violate obscenity laws from being inadvertently shown on the Internet.

O. If the placement or position of the electronic monitoring device creates risk to an assisted living facility employee, resident, or any roommate, or if the resident or resident's legal representative or family member violates the assisted living facility's policies and procedures for electronic monitoring, the equipment may be disabled and removed and the resident, resident's legal representative, or family member responsible for the electronic monitoring device shall be notified of the removal.

22VAC40-73-760. Living room or multipurpose room.

A. Sitting rooms or recreation areas or both shall be equipped with:

1. Comfortable chairs (e.g., overstuffed, straight-backed, and rockers);

2. Tables;

22VAC40-73-760. Living room or multipurpose room.

3. Lamps;

4. Television, if not available in other common areas of the facility;

5. Radio, if not available in other common areas of the facility; and

6. Current newspaper, if not available in other common areas of the facility.

B. Space other than sleeping areas shall be provided for residents for sitting, for visiting with one another or with guests, for social and recreational activities, and for dining. These areas may be used interchangeably.

22VAC40-73-770. Dining areas.

Dining areas shall have a sufficient number of sturdy dining tables and chairs to serve all residents, either all at one time or in reasonable shifts.

22VAC40-73-780. Laundry and linens.

A. Residents' clothing shall be kept clean and in good repair.

B. Bed and bath linens shall be changed at least every seven days and more often if needed. In facilities with common bathing areas, bath linens shall be changed after each use.

C. When the facility provides laundry service for residents' clothing or personal linens, the clean items shall be sorted by individual resident.

D. Table coverings and napkins shall be clean at all times.

E. Table and kitchen linens shall be laundered separately from other washable goods.

F. When bed, bath, table, and kitchen linens are washed, the water shall be above 140°F or the dryer shall heat the linens above 140°F as verified by the manufacturer or a sanitizing agent shall be used according to the manufacturer's instructions.

22VAC40-73-790. Transportation.

The resident shall be assisted in making arrangements for transportation as necessary.

22VAC40-73-800. Incoming and outgoing mail.

A. Incoming and outgoing mail shall not be censored.

B. Incoming mail shall be delivered promptly.

C. Mail shall not be opened by staff or volunteers except upon request of the resident and in his presence or written request of the legal representative.

22VAC40-73-810. Telephones.

A. Each building shall have at least one operable, nonpay telephone easily accessible to staff. There shall be additional telephones or extensions as may be needed to summon help in an emergency.

B. The resident shall have reasonable access to a nonpay telephone on the premises.

C. Privacy shall be provided for residents to use a telephone.

22VAC40-73-820. Smoking.

A. Smoking by residents, staff, volunteers, and visitors shall be done only in areas designated by the facility and approved by the State Fire Marshal or local fire official.

B. Smoking shall not be allowed in a kitchen or food preparation areas. A facility may prohibit smoking on its premises.

C. All designated smoking areas shall be provided with suitable ashtrays.

D. Residents shall not be permitted to smoke in or on their beds.

E. All common areas shall have smoke-free areas designated for nonsmokers.

22VAC40-73-830. Resident councils.

A. The facility shall permit and encourage the formation of a resident council by residents and shall assist the residents in its establishment.

B. The purposes of the resident council shall be to:

1. Work with the administration in improving the quality of life for all residents;

2. Discuss the services offered by the facility and make recommendations for resolution of identified problems or concerns; and

3. Perform other functions as determined by the council.

22VAC40-73-830. Resident councils.

C. The resident council shall be composed of residents of the facility and the council may extend membership to family members, advocates, friends, and others. Residents shall be encouraged but shall not be compelled to attend meetings.

D. The facility shall assist residents in maintaining the resident council, including:

1. Scheduling regular meetings;

2. Providing space for meetings;

3. Posting notice for meetings;

4. Providing assistance in attending meetings for those residents who request it; and

5. Preparing written reports of meetings as requested by the council for dissemination to all residents.

E. The facility shall provide a written response to the council prior to the next meeting regarding any recommendations made by the council for resolution of problems or concerns.

F. In order to promote a free exchange of ideas, at least part of each meeting shall be allowed to be conducted without the presence of any facility personnel.

G. If there is no council, the facility shall annually remind residents that they may establish a resident council and that the facility would assist in its formation and maintenance. The general purpose of the council shall also be explained at this time.

22VAC40-73-840. Pets living in the assisted living facility.

A. Each assisted living facility shall develop and implement a written policy regarding pets living on the premises that will ensure the safety and well-being of all residents and staff.

B. If a facility allows pets to live on the premises, the following applies:

1. The policy specified in subsection A of this section shall include:

a. The types of pets that are permitted in the assisted living facility; and

b. The conditions under which pets may be in the assisted living facility.

22VAC40-73-840. Pets living in the assisted living facility.

2. Before being allowed to live on the premises, pets shall have had all recommended or required immunizations and shall be certified by a licensed veterinarian to be free of diseases transmittable to humans.

3. Pets living on the assisted living facility premises:

   a. Shall have regular examinations and immunizations, appropriate for the species, by a licensed veterinarian; and

   b. Shall be restricted from central food preparation areas.

4. Documentation of examinations and immunizations shall be maintained at the facility.

5. Pets shall be well-treated and cared for in compliance with state regulations and local ordinances.

6. Any resident's rights, preferences, and medical needs shall not be compromised by the presence of a pet.

7. Any pet living on the premises shall have a suitable temperament, be healthy, and otherwise pose no significant health or safety risks to residents, staff, volunteers, or visitors.

22VAC40-73-850. Pets visiting the assisted living facility.

If an assisted living facility allows pets to visit the premises, the following shall apply:

1. The facility shall have a written policy regarding such pets;

2. Any pet present at the facility shall be in good health and show no evidence of carrying any disease;

3. Any resident's rights, preferences, and medical needs shall not be compromised by the presence of a pet; and

4. Any pet shall be well-treated while visiting on the premises, have a suitable temperament, and otherwise pose no significant health or safety risks to residents, staff, volunteers, or visitors.

PART VIII BUILDINGS AND GROUNDS

22VAC40-73-860. General requirements.

A. Buildings licensed for ambulatory residents or nonambulatory residents shall be classified by and meet the specifications for the proper use and occupancy classification as required by the Virginia Uniform Statewide Building Code (13VAC5-63).

B. Documentation completed and signed by the building official shall be obtained as evidence of compliance with the applicable edition of the Virginia Uniform Statewide Building Code.

C. Before construction begins or contracts are awarded for any new construction, remodeling, or alterations, plans shall be submitted to the department for review.

D. Doors and windows.

1. All doors shall open and close readily and effectively.

2. Any doorway that is used for ventilation shall be effectively screened.

3. Any operable window (i.e., a window that may be opened) shall be effectively screened.

E. There shall be enclosed walkways between residents' rooms and dining and sitting areas that are adequately lighted, heated, and ventilated.

F. There shall be an ample supply of hot and cold water from an approved source available to the residents at all times.

G. Hot water at taps available to residents shall be maintained within a range of 105°F to 120°F.

H. Where there is an outdoor area accessible to residents, such as a porch or lawn, it shall be equipped with furniture in season.

I. Each facility shall store cleaning supplies and other hazardous materials in a locked area, except as noted in subsection J of this section.

J. A resident may be permitted to keep his own cleaning supplies or other hazardous materials in an out-of-sight place in his room if the resident does not have a serious cognitive impairment. The cleaning supplies or other hazardous materials shall be stored so that they are not accessible to other residents.

22VAC40-73-860. General requirements.

EXCEPTION: When a resident keeps his own cleaning supplies or other hazardous materials in his room and if the facility has no residents with serious cognitive impairments, the facility may determine that the out-of-sight and inaccessibility safeguards specified in this subsection do not apply, unless mandated by the Virginia Uniform Statewide Building Code or Virginia Statewide Fire Prevention Code (13VAC5-51).

K. Each facility shall develop and implement a written policy regarding weapons on the premises of the facility that will ensure the safety and well-being of all residents and staff. Any facility permitting any type of firearm on the premises must include procedures to ensure that ammunitions and firearms are stored separately and in locked locations.

22VAC40-73-870. Maintenance of buildings and grounds.

A. The interior and exterior of all buildings shall be maintained in good repair and kept clean and free of rubbish.

B. All buildings shall be well-ventilated and free from foul, stale, and musty odors.

C. Adequate provisions for the collection and legal disposal of garbage, ashes, and waste material shall be made.

D. Buildings shall be kept free of infestations of insects and vermin. The grounds shall be kept free of their breeding places.

E. All furnishings, fixtures, and equipment, including furniture, window coverings, sinks, toilets, bathtubs, and showers, shall be kept clean and in good repair and condition, except that furnishings and equipment owned by a resident shall be, at a minimum, in safe condition and not soiled in a manner that presents a health hazard.

F. All inside and outside steps, stairways, and ramps shall have nonslip surfaces.

G. Grounds shall be properly maintained to include mowing of grass and removal of snow and ice.

H. Handrails shall be provided on all stairways, ramps, elevators, and at changes of floor level.

I. Elevators, where used, shall be kept in good running condition and shall be inspected at least annually. Elevators shall be inspected in accordance with the Virginia Uniform Statewide Building Code (13VAC5-63). The signed and dated certificate of inspection issued by the local authority shall be evidence of such inspection.

22VAC40-73-880. Heating, ventilation, and cooling.

A. At least one movable thermometer shall be available in each building for measuring temperatures in individual rooms that do not have a fixed thermostat that shows the temperature in the room.

B. Heating.

1. Heat shall be supplied from a central heating plant or an electrical heating system in accordance with the Virginia Uniform Statewide Building Code (13VAC5-63).

2. Provided their installation or operation has been approved by the state or local building or fire authorities, space heaters, such as but not limited to, wood burning stoves, coal burning stoves, and oil heaters, or portable heating units either vented or unvented, may be used only to provide or supplement heat in the event of a power failure or similar emergency. These appliances shall be used in accordance with the manufacturer's instructions.

3. A temperature of at least 72°F shall be maintained in all areas used by residents during hours when residents are normally awake. During night hours, when residents are asleep, a temperature of at least 68°F shall be maintained. This standard applies unless otherwise mandated by federal or state authorities.

EXCEPTION: The facility may allow the temperature in a bedroom in which only one resident resides, which has a thermostat in the room, to be controlled by the resident as long as the temperature does not endanger the health, safety, or welfare of the resident.

C. Cooling.

1. The facility shall provide in all buildings an air conditioning system for all areas used by residents, including residents' bedrooms and common areas. Temperatures in all areas used by residents shall not exceed 80°F.

EXCEPTION: The facility may allow the temperature in a bedroom in which only one resident resides, which has a thermostat in the room, to be controlled by the resident as long as the temperature does not endanger the health, safety, or welfare of the resident.

2. Any electric fans shall be screened and placed for the protection of the residents.

D. The facility shall develop and implement a plan to protect residents from heat-related and cold-related illnesses in the event of loss of air-conditioning or heat due to emergency situations or malfunctioning or broken equipment.

22VAC40-73-890. Lighting and fixtures.

A. Artificial lighting shall be by electricity.

B. All interior and exterior areas shall be adequately lighted for the safety and comfort of residents and staff.

C. Glare shall be kept at a minimum in rooms used by residents. When necessary to reduce glare, coverings shall be used for windows and lights.

D. If used, fluorescent lights shall be replaced if they flicker or make noise.

22VAC40-73-900. Sleeping areas.

Resident sleeping quarters shall provide:

1. For not less than 450 cubic feet of air space per resident;

2. For square footage as provided in this subdivision:

   a. As of February 1, 1996, all buildings approved for construction or change in use and occupancy classification, as referenced in the Virginia Uniform Statewide Building Code (13VAC5-63), shall have not less than 100 square feet of floor area in bedrooms accommodating one resident; otherwise not less than 80 square feet of floor area in bedrooms accommodating one resident shall be required.

   b. As of February 1, 1996, all buildings approved for construction or change in use and occupancy classification, as referenced in the Virginia Uniform Statewide Building Code, shall have not less than 80 square feet of floor area per person in bedrooms accommodating two or more residents; otherwise not less than 60 square feet of floor area per person in bedrooms accommodating two or more persons shall be required;

3. For ceilings at least 7-1/2 feet in height;

4. For window areas as provided in this subdivision:

   a. There shall be at least eight square feet of glazed window area in a room housing one person; and

   b. There shall be at least six square feet of glazed window area per person in rooms occupied by two or more persons;

22VAC40-73-900. Sleeping areas.

5. For occupancy as provided in this subdivision:

    a. As of December 28, 2006, in all buildings approved for construction or change in use and occupancy classification, as referenced in the Virginia Uniform Statewide Building Code (13VAC5-63), there shall be no more than two residents residing in a bedroom.

    b. As of February 1, 2018, when there is a new facility licensee, there shall be no more than two residents residing in a bedroom.

    c. Unless the provisions of subdivisions 5 a and 5 b of this section apply, there shall be no more than four residents residing in a bedroom;

6. For at least three feet of space between sides and ends of beds that are placed in the same room;

7. That no bedroom shall be used as a corridor to any other room;

8. That all beds shall be placed only in bedrooms; and

9. That household members and staff shall not share bedrooms with residents.

22VAC40-73-910. Common rooms.

As of October 9, 2001, buildings approved for construction or change in use and occupancy classification, as referenced in the Virginia Uniform Statewide Building Code (13VAC5-63), shall have a glazed window area above ground level in at least one of the common rooms (e.g., living room, multipurpose room, or dining room). The square footage of the glazed window area shall be at least 8.0% of the square footage of the floor area of the common room.

22VAC40-73-920. Toilet, face/hand washing and bathing facilities.

A. In determining the number of toilets, face/hand washing sinks, bathtubs, or showers required, the total number of persons residing on the premises shall be considered. Unless there are separate facilities for household members or staff, they shall be counted in determining the required number of fixtures, except that for bathtubs or showers, the staff count shall include only live-in staff.

    1. As of December 28, 2006, in all buildings approved for construction or change in use and occupancy classification, as referenced in the Virginia Uniform Statewide Building Code (13VAC5-63), on each floor where there are residents' bedrooms, there shall be:

22VAC40-73-920. Toilet, face/hand washing and bathing facilities

a. At least one toilet for each four persons, or portion thereof;

b. At least one face/hand washing sink for each four persons, or portion thereof;

c. At least one bathtub or shower for each seven persons, or portion thereof; and

d. Toilets, face/hand washing sinks and bathtubs or showers in separate rooms for men and women where more than four persons live on a floor. Bathrooms equipped to accommodate more than one person at a time shall be labeled by gender. Gender designation of bathrooms shall remain constant during the course of a day.

2. Unless the provisions of subdivision 1 of this subsection apply, on each floor where there are residents' bedrooms, there shall be:

a. At least one toilet for each seven persons, or portion thereof;

b. At least one face/hand washing sink for each seven persons, or portion thereof;

c. At least one bathtub or shower for each 10 persons, or portion thereof; and

d. Toilets, face/hand washing sinks and bathtubs or showers in separate rooms for men and women where more than seven persons live on a floor. Bathrooms equipped to accommodate more than one person at a time shall be labeled by gender. Gender designation of bathrooms shall remain constant during the course of a day.

3. As of December 28, 2006, in all buildings approved for construction or change in use and occupancy classification, as referenced in the Virginia Uniform Statewide Building Code, when residents' rooms are located on the same floor as the main living or dining area, in addition to the requirements of subdivision 1 of this subsection, there shall be at least one more toilet and face/hand washing sink, which is available for common use. The provisions of subdivision 4 c of this subsection shall also apply.

4. On floors used by residents where there are no residents' bedrooms, there shall be:

a. At least one toilet;

b. At least one face/hand washing sink; and

22VAC40-73-920. Toilet, face/hand washing and bathing facilities

c. Toilets and face/hand washing sinks in separate rooms for men and women in facilities where there are 10 or more residents. Bathrooms equipped to accommodate more than one person at a time shall be designated by gender. Gender designation of bathrooms must remain constant during the course of a day.

B. Bathrooms shall provide for privacy for such activities as bathing, toileting, and dressing.

C. There shall be ventilation to the outside in order to eliminate foul odors.

D. The following sturdy safeguards shall be provided, with installation in compliance with the Virginia Uniform Statewide Building Code:

1. Handrails by bathtubs;

2. Grab bars by toilets; and

3. Handrails inside and stools available to stall showers.

EXCEPTION: These safeguards shall be optional for residents with independent living status.

E. Bathtubs and showers shall have nonskid surfacing or strips.

F. The face/hand washing sink shall be in the same room as the toilet or in an adjacent private area that is not part of a common use area of the assisted living facility.

G. The assisted living facility shall provide private or common use toilet, face/hand washing, and bathing facilities to meet the needs of each resident.

22VAC40-73-925. Toilet, face/hand washing and bathing supplies.

A. The facility shall have an adequate supply of toilet tissue and soap. Toilet tissue shall be accessible to each commode and soap shall be accessible to each face/hand washing sink and each bathtub or shower.

B. Common face/hand washing sinks shall have paper towels or an air dryer and liquid soap for hand washing.

22VAC40-73-925. Toilet, face/hand washing and bathing supplies.

C. Residents may not share bar soap.

D. The facility may not charge an additional amount for toilet paper, soap, paper towels, or use of an air dryer at common sinks and commodes.

22VAC40-73-930. Provisions for signaling and call systems.

A. All assisted living facilities shall have a signaling device that is easily accessible to the resident in his bedroom or in a connecting bathroom that alerts the direct care staff that the resident needs assistance.

B. In buildings licensed to care for 20 or more residents under one roof, there shall be a signaling device that terminates at a central location that is continuously staffed and permits staff to determine the origin of the signal or is audible and visible in a manner that permits staff to determine the origin of the signal.

C. In buildings licensed to care for 19 or fewer residents under one roof, if the signaling device does not permit staff to determine the origin of the signal as specified in subsection B of this section, direct care staff shall make rounds at least once each hour to monitor for emergencies or other unanticipated resident needs. These rounds shall begin when the majority of the residents have gone to bed each evening and shall terminate when the majority of the residents have arisen each morning, and shall be documented as follows:

1. A written log shall be maintained showing the date and time rounds were made and the signature of the direct care staff member who made rounds.

2. Logs for the past two years shall be retained.

EXCEPTION: Rounds may be made on a different frequency if requested by the resident and agreed to by the facility. Any agreement for a different frequency must be in writing, specify the frequency, be signed and dated by the resident and the facility, and be retained in the resident's record. The written log required in subdivision 1 of the subsection shall indicate the name of such resident. If there is a change in the resident's condition or care needs, the agreement shall be reviewed and if necessary, the frequency of rounds shall be adjusted. If an adjustment is made, the former agreement shall be replaced with a new agreement or with compliance with the frequency specified in this subsection.

22VAC40-73-930. Provisions for signaling and call systems.

D. For each resident with an inability to use the signaling device, in addition to any other services, the following shall be met:

1. This inability shall be included in the resident's individualized service plan.

2. The plan shall specify a minimal frequency of daily rounds to be made by direct care staff to monitor for emergencies or other unanticipated resident needs.

3. Unless subsection C of this section is applicable, once the resident has gone to bed each evening until the resident has arisen each morning, at a minimum, direct care staff shall make rounds no less often than every two hours, except that rounds may be made on a different frequency if requested by the resident and agreed to by the facility. Any agreement for a different frequency must be in writing, specify the frequency, be signed and dated by the resident and the facility, and be retained in the resident's record. If there is a change in the resident's condition or care needs, the agreement shall be reviewed and if necessary, the frequency of rounds shall be adjusted. If an adjustment is made, the former agreement shall be replaced with a new agreement or with compliance with the frequency specified in this subdivision.

4. The facility shall document the rounds that were made, which shall include the name of the resident, the date and time of the rounds, and the staff member who made the rounds. The documentation shall be retained for two years.

22VAC40-73-940. Fire safety: compliance with state regulations and local fire ordinances.

A. An assisted living facility shall comply with the Virginia Statewide Fire Prevention Code (13VAC5-51) as determined by at least an annual inspection by the appropriate fire official. Reports of the inspections shall be retained at the facility for at least two years.

B. An assisted living facility shall comply with any local fire ordinance.

PART IX EMERGENCY PREPAREDNESS

22VAC40-73-950. Emergency preparedness and response plan.

A. The facility shall develop a written emergency preparedness and response plan that shall address:

1. Documentation of initial and annual contact with the local emergency coordinator to determine (i) local disaster risks, (ii) communitywide plans to address different disasters and emergency situations, and (iii) assistance, if any, that the local emergency management office will provide to the facility in an emergency.

2. Analysis of the facility's potential hazards, including severe weather, biohazard events, fire, loss of utilities, flooding, work place violence or terrorism, severe injuries, or other emergencies that would disrupt normal operation of the facility.

3. Written emergency management policies and procedures for provision of:

   a. Administrative direction and management of response activities;

   b. Coordination of logistics during the emergency;

   c. Communications;

   d. Life safety of residents, staff, volunteers, and visitors;

   e. Property protection;

   f. Continued services to residents;

   g. Community resource accessibility; and

   h. Recovery and restoration.

4. Written emergency response procedures for assessing the situation; protecting residents, staff, volunteers, visitors, equipment, medications, and vital records; and restoring services. Emergency procedures shall address:

   a. Alerting emergency personnel and facility staff;

22VAC40-73-950. Emergency preparedness and response plan.

b. Warning and notification of residents, including sounding of alarms when appropriate;

c. Providing emergency access to secure areas and opening locked doors;

d. Conducting evacuations and sheltering in place, as appropriate, and accounting for all residents;

e. Locating and shutting off utilities when necessary;

f. Maintaining and operating emergency equipment effectively and safely;

g. Communicating with staff and community emergency responders during the emergency; and

h. Conducting relocations to emergency shelters or alternative sites when necessary and accounting for all residents.

5. Supporting documents that would be needed in an emergency, including emergency call lists, building and site maps necessary to shut off utilities, memoranda of understanding with relocation sites, and list of major resources such as suppliers of emergency equipment.

B. By December 1, 2020, an assisted living facility that is equipped with an on-site emergency generator shall include in its emergency preparedness and response plan a description of the generator's capacity to provide sufficient power for the operation of lighting, ventilation, temperature control, supplied oxygen, and refrigeration.

C. By December 1, 2020, an assisted living facility that is not equipped with an onsite emergency generator shall:

1. Enter into an agreement with a vendor capable of providing the facility with an emergency generator for the provision of electricity during an interruption of the normal electric power supply; and

2. Enter into at least one agreement with a separate vendor capable of providing an emergency generator in the event that the primary vendor is unable to comply with its agreement with the facility during an emergency.

22VAC40-73-950. Emergency preparedness and response plan.

D. Staff and volunteers shall be knowledgeable in and prepared to implement the emergency preparedness plan in the event of an emergency.

E. The facility shall develop and implement an orientation and semi-annual review on the emergency preparedness and response plan for all staff, residents, and volunteers, with emphasis placed on an individual's respective responsibilities. The review shall be documented by signing and dating. The orientation and review shall cover responsibilities for:

1. Alerting emergency personnel and sounding alarms;

2. Implementing evacuation, shelter in place, and relocation procedures;

3. Using, maintaining, and operating emergency equipment;

4. Accessing emergency medical information, equipment, and medications for residents;

5. Locating and shutting off utilities; and

6. Utilizing community support services.

F. The facility shall review the emergency preparedness plan annually or more often as needed, document the review by signing and dating the plan, and make necessary plan revisions. Such revisions shall be communicated to staff, residents, and volunteers and incorporated into the orientation and semi-annual review for staff, residents, and volunteers.

G. In the event of a disaster, fire, emergency, or any other condition that may jeopardize the health, safety, and welfare of residents, the facility shall take appropriate action to protect the health, safety, and welfare of the residents and take appropriate actions to remedy the conditions as soon as possible.

H. After the disaster or emergency is stabilized, the facility shall:

1. Notify family members and legal representatives; and

22VAC40-73-950. Emergency preparedness and response plan.

2. Report the disaster or emergency to the regional licensing office by the next day as specified in 22VAC40-73-70.

22VAC40-73-960. Fire and emergency evacuation plan.

A. Assisted living facilities shall have a written plan for fire and emergency evacuation that is to be followed in the event of a fire or other emergency. The plan shall be approved by the appropriate fire official.

B. A fire and emergency evacuation drawing shall be posted in a conspicuous place on each floor of each building used by residents. The drawing shall show primary and secondary escape routes, areas of refuge, assembly areas, telephones, fire alarm boxes, and fire extinguishers, as appropriate.

C. The telephone numbers for the fire department, rescue squad or ambulance, police, and Poison Control Center shall be posted by each telephone shown on the fire and emergency evacuation plan.

D. In assisted living facilities where all outgoing telephone calls must be placed through a central switchboard located on the premises, the information required in subsection C of this section may be posted by the switchboard rather than by each telephone, provided this switchboard is staffed 24 hours each day.

E. Staff and volunteers shall be fully informed of the approved fire and emergency evacuation plan, including their duties, and the location and operation of fire extinguishers, fire alarm boxes, and any other available emergency equipment.

22VAC40-73-970. Fire and emergency evacuation drills.

A. Fire and emergency evacuation drill frequency and participation shall be in accordance with the current edition of the Virginia Statewide Fire Prevention Code (13VAC5-51). The drills required for each shift in a quarter shall not be conducted in the same month.

B. Additional fire and emergency evacuation drills may be held at the discretion of the administrator or licensing inspector and must be held when there is any reason to question whether the requirements of the approved fire and emergency evacuation plan can be met.

22VAC40-73-970. Fire and emergency evacuation drills.

C. Each required fire and emergency evacuation drill shall be unannounced.

D. Immediately following each required fire and emergency evacuation drill, there shall be an evaluation of the drill by the staff in order to determine the effectiveness of the drill. The licensee or administrator shall immediately correct any problems identified in the evaluation and document the corrective action taken.

E. A record of the required fire and emergency evacuation drills shall be kept in the facility for two years. Such record shall include:

1. Identity of the person conducting the drill;

2. The date and time of the drill;

3. The method used for notification of the drill;

4. The number of staff participating;

5. The number of residents participating;

6. Any special conditions simulated;

7. The time it took to complete the drill;

8. Weather conditions; and

9. Problems encountered, if any.

22VAC40-73-980. Emergency equipment and supplies.

A. A complete first aid kit shall be on hand in each building at the facility, located in a designated place that is easily accessible to staff but not to residents. Items with expiration dates must not have dates that have already passed. The kit shall include the following items:

1. Adhesive tape;

2. Antiseptic wipes or ointment;

3. Band-aids, in assorted sizes;

22VAC40-73-980. Emergency equipment and supplies.

4. Blankets, either disposable or other;

5. Disposable single-use breathing barriers or shields for use with rescue breathing or CPR (e.g., CPR mask or other type);

6. Cold pack;

7. Disposable single-use waterproof gloves;

8. Gauze pads and roller gauze, in assorted sizes;

9. Hand cleaner (e.g., waterless hand sanitizer or antiseptic towelettes);

10. Plastic bags;

11. Scissors;

12. Small flashlight and extra batteries;

13. Thermometer;

14. Triangular bandages;

15. Tweezers; and

16. The first aid instructional manual.

B. In facilities that have a motor vehicle that is used to transport residents and in a motor vehicle used for a field trip, there shall be a first aid kit on the vehicle, located in a designated place that is accessible to staff but not residents that includes items as specified in subsection A of this section.

C. First aid kits shall be checked at least monthly to ensure that all items are present and items with expiration dates are not past their expiration date.

D. Each facility with six or more residents shall be equipped with a permanent connection able to connect to a temporary emergency electrical power source for the provision of electricity during an interruption of the normal electric power supply. The connection shall be of the size that is capable of providing power to required circuits when connected and that is sufficient to implement the emergency preparedness and response plan. The installation of a connection for temporary electric power

22VAC40-73-980. Emergency equipment and supplies.

shall be in compliance with the Virginia Uniform Statewide Building Code (13VAC5-63) and approved by the local building official. Permanent installations of emergency power systems shall be acceptable when installed in accordance with the Uniform Statewide Building Code and approved by the local building official.

E. By December 1, 2020, the following provisions shall be met:

1. A facility that is equipped with an on-site emergency generator shall test the generator monthly and maintain records of the tests.

2. A facility that is not equipped with an on-site emergency generator shall have a temporary emergency electrical power source connection, which is tested at the time of installation and every two years thereafter by a contracted vendor, and maintain records of the tests.

F. The following emergency lighting shall be available:

1. Flashlights or battery lanterns for general use.

2. One flashlight or battery lantern for each employee directly responsible for resident care who is on duty between 5 p.m. and 7 a.m.

3. One flashlight or battery lantern for each bedroom used by residents and for the living and dining area unless there is a provision for emergency lighting in the adjoining hallways.

4. The use of open flame lighting is prohibited.

G. There shall be two forms of communication for use in an emergency.

H. The facility shall ensure the availability of a 96-hour supply of emergency food and drinking water. At least 48 hours of the supply must be on site at any given time, of which the facility's rotating stock may be used.

22VAC40-73-990. Plan for resident emergencies and practice exercise.

A. Assisted living facilities shall have a written plan for resident emergencies that includes:

1. Procedures for handling medical emergencies, including identifying the staff person responsible for (i) calling the rescue squad, ambulance service, resident's

22VAC40-73-990. Plan for resident emergencies and practice exercise.

physician, or Poison Control Center; and (ii) providing first aid, CPR, and the use of an AED when indicated.

2. Procedures for handling mental health emergencies such as, but not limited to, catastrophic reaction or the need for a temporary detention order.

3. Procedures for making pertinent medical information and history available to the rescue squad and hospital, including a copy of the current medication administration record and advance directives.

4. Procedures to be followed in the event that a resident is missing, including (i) involvement of facility staff, appropriate law-enforcement agency, and others as needed; (ii) areas to be searched; (iii) expectations upon locating the resident; and(iv) documentation of the event.

5. Procedures for notifying the resident's family, legal representative, designated contact person, and any responsible social agency.

6. Procedures for notifying the regional licensing office as specified in 22VAC40-73-70.

B. The procedures in the plan for resident emergencies required in subsection A of this section shall be reviewed by the facility at least every six months with all staff. Documentation of the review shall be signed and dated by each staff person.

C. At least once every six months, all staff currently on duty on each shift shall participate in an exercise in which the procedures for resident emergencies are practiced. Documentation of each exercise shall be maintained in the facility for at least two years.

D. The plan for resident emergencies shall be readily available to all staff, residents' families, and legal representatives.

PART X: ADDITIONAL REQUIREMENTS FOR FACILITIES THAT CARE FOR ADULTS WITH SERIOUS COGNITIVE IMPAIRMENTS

Article 1
Subjectivity

22VAC40-73-1000. Subjectivity.

All facilities that care for residents with serious cognitive impairments due to a primary psychiatric diagnosis of dementia who cannot recognize danger or protect their own safety and welfare shall be subject to either Article 2 (22VAC40-73-1010 et seq.) or Article 3 (22VAC40-73-1080 et seq.) of this part. All facilities that care for residents with serious cognitive impairments due to any other diagnosis who cannot recognize danger or protect their own safety and welfare shall be subject to Article 2 of this part.

Article 2
Mixed Population

22VAC40-73-1010. Applicability.

The requirements in this article apply when there is a mixed population consisting of any combination of (i) residents who have serious cognitive impairments due to a primary psychiatric diagnosis of dementia who are unable to recognize danger or protect their own safety and welfare and who are not in a special care unit as provided for in Article 3 (22VAC40-73-1080 et seq.) of this part; (ii) residents who have serious cognitive impairments due to any other diagnosis who cannot recognize danger or protect their own safety and welfare; and (iii) other residents. The requirements in this article also apply when all the residents have serious cognitive impairments due to any diagnosis other than a primary psychiatric diagnosis of dementia and cannot recognize danger or protect their own safety and welfare. Except for special care units covered by Article 3 of this part, these requirements apply to the entire facility unless specified otherwise.

22VAC40-73-1020. Staffing.

A. When residents are present, there shall be at least two direct care staff members awake and on duty at all times in each building who shall be responsible for the care and supervision of the residents.

22VAC40-73-1020. Staffing.

B. The requirements of subsection A of this section do not apply to assisted living facilities that are licensed for 10 or fewer residents if not more than three of the residents have serious cognitive impairments. The staffing provisions of 22VAC40-73-280 D apply.

C. During trips away from the facility, there shall be sufficient direct care staff to provide sight and sound supervision to all residents who cannot recognize danger or protect their own safety and welfare.

22VAC40-73-1030. Staff training.

A. Within three months of the starting date of employment, the administrator shall attend 12 hours of training in working with individuals who have a cognitive impairment, and the training shall meet the requirements of subsection C of this section.

1. Training in cognitive impairment that meets the requirements of subsection C of this section and was completed in the year prior to employment is transferable and counts toward the required 12 hours if there is documentation of the training.

2. Whether the training counts toward continuing education for administrator licensure and for what period of time depends upon the licensure requirements of the Virginia Board of Long-Term Care Administrators.

B. Within four months of the starting date of employment, direct care staff shall attend six hours of training in working with individuals who have a cognitive impairment, and the training shall meet the requirements of subsection C of this section.

1. The six-hour training received within the first four months of employment is counted toward the annual training requirement for the first year.

2. Training in cognitive impairment that meets the requirements of subsection C of this section and was completed in the year prior to employment is transferable if there is documentation of the training.

3. The documented previous cognitive impairment training referenced in subdivision 2 of this subsection is counted toward the required six hours but not toward the annual training requirement.

22VAC40-73-1030. Staff training.

C. Curriculum for the training in cognitive impairment for direct care staff and administrators shall be developed by a qualified health professional or by a licensed social worker, shall be relevant to the population in care, shall maximize the level of a resident's functional ability, and shall include:

1. Information about cognitive impairment, including areas such as cause, progression, behaviors, and management of the condition;

2. Communicating with the resident;

3. Resident care techniques for residents with physical, cognitive, behavioral, and social disabilities;

4. Managing dysfunctional behavior;

5. Creating a therapeutic environment;

6. Planning and facilitating activities appropriate for each resident; and

7. Identifying and alleviating safety risks to residents with cognitive impairment.

D. Within the first month of employment, staff, other than the administrator and direct care staff, shall complete two hours of training on the nature and needs of residents with cognitive impairments relevant to the population in care.

22VAC40-73-1040. Doors and windows.

A. Doors leading to the outside shall have a system of security monitoring of residents with serious cognitive impairments, such as door alarms, cameras, constant staff oversight, security bracelets that are part of an alarm system, or delayed egress mechanisms. Residents with serious cognitive impairments may be limited but not prohibited from exiting the facility or any part thereof. Before limiting any resident from freely leaving the facility, the resident's record shall reflect the behavioral observations or other bases for determining that the resident has a serious cognitive impairment and cannot recognize danger or protect his own safety and welfare.

B. There shall be protective devices on the bedroom and the bathroom windows of residents with serious cognitive impairments and on windows in common areas accessible to these residents to prevent the windows from being opened wide

22VAC40-73-1040. Doors and windows.

enough for a resident to crawl through. The protective devices on the windows shall be in conformance with the Virginia Uniform Statewide Building Code (13VAC5-63).

22VAC40-73-1050. Outdoor access.

A. The facility shall have a secured outdoor area for the residents' use or provide direct care staff supervision while residents with serious cognitive impairments are outside.

B. Weather permitting, residents with serious cognitive impairments shall be reminded of the opportunity to be outdoors on a daily basis.

22VAC40-73-1060. Indoor walking area.

The facility shall provide to residents free access to an indoor walking corridor or other indoor area that may be used for walking.

22VAC40-73-1070. Environmental precautions.

A. Special environmental precautions shall be taken by the facility to eliminate hazards to the safety and well-being of residents with serious cognitive impairments. Examples of environmental precautions include signs, carpet patterns and arrows that point the way, and reduction of background noise.

B. When there are indications that ordinary materials or objects may be harmful to a resident with a serious cognitive impairment, these materials or objects shall be inaccessible to the resident except under staff supervision.

Article 3: Safe, Secure Environment

22VAC40-73-1080. Applicability.

A. In order to be admitted or retained in a safe, secure environment as defined in 22VAC40- 73-10, except as provided in subsection B of this section, a resident must have a serious cognitive impairment due to a primary psychiatric diagnosis of dementia and be unable to recognize danger or protect his own safety and welfare.

22VAC40-73-1080. Applicability.

The requirements in this article apply when such residents reside in a safe, secure environment. These requirements apply only to the safe, secure environment.

B. A resident's spouse, parent, adult sibling, or adult child who otherwise would not meet the criteria to reside in a safe, secure environment may reside in the special care unit if the spouse, parent, sibling, or child so requests in writing, the facility agrees in writing, and the resident, if capable of making the decision, agrees in writing. The written request and agreements must be maintained in the resident's file. The spouse, parent, sibling, or child is considered a resident of the facility and as such this chapter applies. The requirements of this article do not apply for the spouse, parent, adult sibling, or adult child because the individual does not have a serious cognitive impairment due to a primary psychiatric diagnosis of dementia with an inability to recognize danger or protect his own safety and welfare.

22VAC40-73-1090. Assessment.

A. Prior to his admission to a safe, secure environment, the resident shall have been assessed by an independent clinical psychologist licensed to practice in the Commonwealth or by an independent physician as having a serious cognitive impairment due to a primary psychiatric diagnosis of dementia with an inability to recognize danger or protect his own safety and welfare. The physician shall be board certified or board eligible in a specialty or subspecialty relevant to the diagnosis and treatment of serious cognitive impairments (e.g., family practice, geriatrics, internal medicine, neurology, neurosurgery, or psychiatry). The assessment shall be in writing and shall include the following areas:

1. Cognitive functions (e.g., orientation, comprehension, problem-solving, attention and concentration, memory, intelligence, abstract reasoning, judgment, and insight);

2. Thought and perception (e.g., process and content);

3. Mood/affect;

4. Behavior/psychomotor;

5. Speech/language; and

6. Appearance.

B. The assessment required in subsection A of this section shall be maintained in the resident's record.

22VAC40-73-1100. Approval.

A. Prior to placing a resident with a serious cognitive impairment due to a primary psychiatric diagnosis of dementia in a safe, secure environment, the facility shall obtain the written approval of one of the following persons, in the following order of priority:

1. The resident, if capable of making an informed decision;

2. A guardian or other legal representative for the resident if one has been appointed;

3. A relative who is willing and able to take responsibility to act as the resident's representative, in the following specified order: (i) spouse, (ii) adult child, (iii) parent, (iv) adult sibling, (v) adult grandchild, (vi) adult niece or nephew, (vii) aunt or uncle; or

4. If the resident is not capable of making an informed decision and a guardian, legal representative, or relative is unavailable, an independent physician who is skilled and knowledgeable in the diagnosis and treatment of dementia.

B. The obtained written approval shall be retained in the resident's file.

C. The facility shall document that the order of priority specified in subsection A of this section was followed, and the documentation shall be retained in the resident's file.

D. As soon as one of the persons in the order as prioritized in subsection A of this section disapproves of placement or retention in the safe, secure environment, then the assisted living facility shall not place or retain the resident or prospective resident in the special care unit.

22VAC40-73-1110. Appropriateness of placement and continued residence.

A. Prior to admitting a resident with a serious cognitive impairment due to a primary psychiatric diagnosis of dementia to a safe, secure environment, the licensee, administrator, or designee shall determine whether placement in the special care unit is appropriate. The determination and justification for the decision shall be in writing and shall be retained in the resident's file.

22VAC40-73-1110. Appropriateness of placement and continued residence.

B. Six months after placement of the resident in the safe, secure environment and annually thereafter, the licensee, administrator, or designee shall perform a review of the appropriateness of each resident's continued residence in the special care unit.

C. Whenever warranted by a change in a resident's condition, the licensee, administrator, or designee shall also perform a review of the appropriateness of continued residence in the unit.

D. The reviews specified in subsections B and C of this section shall be performed in consultation with the following persons, as appropriate:

1. The resident;

2. A responsible family member;

3. A guardian or other legal representative;

4. A designated contact person;

5. Direct care staff who provide care and supervision to the resident;

6. The resident's mental health provider;

7. The licensed health care professional required in 22VAC40-73-490;

8. The resident's physician; and

9. Any other professional involved with the resident.

E. The licensee, administrator, or designee shall make a determination as to whether continued residence in the special care unit is appropriate at the time of each review required by subsections B and C of this section. The determination and justification for the decision shall be in writing and shall be retained in the resident's file.

22VAC40-73-1120. Activities.

A. In addition to the requirements of this section, all the requirements of 22VAC40-73-520 apply to safe, secure environments, except for 22VAC40-73-520 C and E.

22VAC40-73-1120. Activities.

B. There shall be at least 21 hours of scheduled activities available to the residents each week for no less than two hours each day.

C. If appropriate to meet the needs of the resident with a short attention span, there shall be multiple short activities.

D. Staff shall regularly encourage residents to participate in activities and provide guidance and assistance, as needed.

E. As appropriate, residents shall be encouraged to participate in supervised activities or programs outside the special care unit.

F. There shall be a designated staff person responsible for managing or coordinating the structured activities program. This staff person shall be on site in the special care unit at least 20 hours a week, shall maintain personal interaction with the residents and familiarity with their needs and interests, and shall meet at least one of the following qualifications:

1. Be a qualified therapeutic recreation specialist or an activities professional;

2. Be eligible for certification as a therapeutic recreation specialist or an activities professional by a recognized accrediting body;

3. Have one year full-time work experience within the last five years in an activities program in an adult care setting;

4. Be a qualified occupational therapist or an occupational therapy assistant; or

5. Prior to or within six months of employment, have successfully completed 40 hours of department-approved training in adult group activities and in recognizing and assessing the activity needs of residents.

The required 20 hours on site does not have to be devoted solely to managing or coordinating activities; neither is it required that the person responsible for managing or coordinating the activities program conduct the activities.

22VAC40-73-1130. Staffing.

A. Except during night hours, when 20 or fewer residents are present, at least two direct care staff members shall be awake and on duty at all times in each special care unit who shall be responsible for the care and supervision of the residents. For every additional 10 residents, or portion thereof, at least one more direct care staff member shall be awake and on duty in the unit.

B. Except during night hours, only one direct care staff member has to be awake and on duty in the unit if sufficient to meet the needs of the residents, if (i) there are no more than five residents present in the unit and (ii) there are at least two other direct care staff members in the building, one of whom is readily available to assist with emergencies in the special care unit, provided that supervision necessary to ensure the health, safety, and welfare of residents throughout the building is not compromised.

C. During night hours, the following number of direct care staff members shall be awake and on duty at all times in each special care unit and shall be responsible for the care and supervision of the residents:

1. When 22 or fewer residents are present, at least two direct care staff members;

2. When 23 to 32 residents are present, at least three direct care staff members;

3. When 33 to 40 residents are present, at least four direct care staff members; and

4. When more than 40 residents are present, at least four direct care staff members plus at least one more direct care staff member for every additional 10 residents, or portion thereof.

The requirements in subsections A, B and C of this section are independent of 22VAC40- 73-280 D and 22VAC40-73-1020 A and B.

D. During trips away from the facility, there shall be sufficient direct care staff to provide sight and sound supervision to residents.

22VAC40-73-1140. Staff training.

A. Within three months of the starting date of employment, the administrator shall attend at least 12 hours of training in cognitive impairment that meets the requirements of subsection C of this section.

22VAC40-73-1140. Staff training.

1. Training in cognitive impairment that meets the requirements of subsection C of this section and was completed in the year prior to employment is transferable and counts toward the required 12 hours if there is documentation of the training.

2. Whether the training counts toward continuing education for administrator licensure and for what period of time depends upon the licensure requirements of the Virginia Board of Long-Term Care Administrators.

B. Within four months of the starting date of employment in the safe, secure environment, direct care staff shall attend at least 10 hours of training in cognitive impairment that meets the requirements of subsection C of this section.

1. The training is counted toward the annual training requirement for the first year.

2. Training in cognitive impairment that meets the requirements of subsection C of this section and was completed in the year prior to employment is transferable if there is documentation of the training.

3. The documented previous cognitive impairment training referenced in subdivision 2 of this subsection is counted toward the required 10 hours but not toward the annual training requirement.

C. The training in cognitive impairment required by subsections A and B of this section shall be relevant to the population in care, shall maximize the level of a resident's functional ability, and shall include the following topics:

1. Information about cognitive impairment, including areas such as cause, progression, behaviors, and management of the condition;

2. Communicating with the resident;

3. Resident care techniques for persons with physical, cognitive, behavioral, and social disabilities;

4. Managing dysfunctional behavior;

5. Creating a therapeutic environment;

6. Planning and facilitating activities appropriate for each resident; and

7. Identifying and alleviating safety risks to residents with cognitive impairment.

22VAC40-73-1140. Staff training.

D. The training specified in subsection C of this section shall be developed and provided by:

1. A licensed health care professional practicing within the scope of his profession who has at least 12 hours of training in the care of individuals with cognitive impairments due to dementia; or

2. A person who has been approved by the department to develop or provide the training.

E. Within the first month of employment, staff, other than the administrator and direct care staff, who will have contact with residents in the special care unit shall complete two hours of training on the nature and needs of residents with cognitive impairments due to dementia.

22VAC40-73-1150. Doors and windows.

A. Doors that lead to unprotected areas shall be monitored or secured through devices that conform to applicable building and fire codes, including door alarms, cameras, constant staff oversight, security bracelets that are part of an alarm system, pressure pads at doorways, delayed egress mechanisms, locking devices, or perimeter fence gates. Residents who reside in safe, secure environments may be prohibited from exiting the facility or the special care unit if applicable building and fire codes are met.

B. There shall be protective devices on the bedroom and bathroom windows of residents and on windows in common areas accessible to residents to prevent the windows from being opened wide enough for a resident to crawl through. The protective devices on the windows shall be in conformance with the Virginia Uniform Statewide Building Code (13VAC5-63).

22VAC40-73-1160. Outdoor access.

A. The facility shall have a secured outdoor area for the residents' use or provide direct care staff supervision while residents are outside.

B. Residents shall be given the opportunity to be outdoors on a daily basis, weather permitting.

22VAC40-73-1170. Indoor walking area.

The facility shall provide to residents free access to an indoor walking corridor or other indoor area that may be used for walking.

22VAC40-73-1180. Environmental precautions.

A. Special environmental precautions shall be taken by the facility to eliminate hazards to the safety and well-being of residents. Examples of environmental precautions include signs, carpet patterns and arrows that point the way, high visual contrast between floors and walls, and reduction of background noise.

B. When there are indications that ordinary materials or objects may be harmful to a resident, these materials or objects shall be inaccessible to the resident except under staff supervision.

C. Special environmental enhancements, tailored to the population in care, shall be provided by the facility to enable residents to maximize their independence and to promote their dignity in comfortable surroundings. Examples of environmental enhancements include memory boxes, activity centers, rocking chairs, and visual contrast between plates and eating utensils and the table.

RIGHTS AND RESPONSIBILITIES OF RESIDENTS OF ASSISTED LIVING FACILITIES

§ 63.2-1808. Rights and responsibilities of residents of assisted living facilities; certification of licensure.

A. Any resident of an assisted living facility has the rights and responsibilities enumerated in this section. The operator or administrator of an assisted living facility shall establish written policies and procedures to ensure that, at the minimum, each person who becomes a resident of the assisted living facility:

1. Is fully informed, prior to or at the time of admission and during the resident's stay, of his rights and of all rules and expectations governing the resident's conduct, responsibilities, and the terms of the admission agreement; evidence of this shall be the resident's written acknowledgment of having been so informed, which shall be filed in his record;

2. Is fully informed, prior to or at the time of admission and during the resident's stay, of services available in the facility and of any related charges; this shall be reflected by the resident's signature on a current resident's agreement retained in the resident's file;

3. Unless a committee or conservator has been appointed, is free to manage his personal finances and funds regardless of source; is entitled to access to personal account statements reflecting financial transactions made on his behalf by the facility; and is given at least a quarterly accounting of financial transactions made on his behalf when a written delegation of responsibility to manage his financial affairs is made to the facility for any period of time in conformance with state law;

4. Is afforded confidential treatment of his personal affairs and records and may approve or refuse their release to any individual outside the facility except as otherwise provided in law and except in case of his transfer to another care-giving facility;

5. Is transferred or discharged only when provided with a statement of reasons, or for nonpayment for his stay, and is given reasonable advance notice; upon notice of discharge or upon giving reasonable advance notice of his desire to move, shall be afforded reasonable assistance to ensure an orderly transfer or discharge; such actions shall be documented in his record;

6. In the event a medical condition should arise while he is residing in the facility, is afforded the opportunity to participate in the planning of his program of care and medical treatment at the facility and the right to refuse treatment;

7. Is not required to perform services for the facility except as voluntarily contracted pursuant to a voluntary agreement for services that states the terms of consideration or remuneration and is documented in writing and retained in his record;

8. Is free to select health care services from reasonably available resources;

9. Is free to refuse to participate in human subject experimentation or to be party to research in which his identity may be ascertained;

10. Is free from mental, emotional, physical, sexual, and economic abuse or exploitation; is free from forced isolation, threats or other degrading or demeaning acts against him; and his known needs are not neglected or ignored by personnel of the facility;

11. Is treated with courtesy, respect, and consideration as a person of worth, sensitivity, and dignity;

12. Is encouraged, and informed of appropriate means as necessary, throughout the period of stay to exercise his rights as a resident and as a citizen; to this end, he is free to voice grievances and recommend changes in policies and services, free of coercion, discrimination, threats or reprisal;

13. Is permitted to retain and use his personal clothing and possessions as space permits unless to do so would infringe upon rights of other residents;

14. Is encouraged to function at his highest mental, emotional, physical and social potential;

15. Is free of physical or mechanical restraint except in the following situations and with appropriate safeguards:

    a. As necessary for the facility to respond to unmanageable behavior in an emergency situation, which threatens the immediate safety of the resident or others;

    b. As medically necessary, as authorized in writing by a physician, to provide physical support to a weakened resident;

16. Is free of prescription drugs except where medically necessary, specifically prescribed, and supervised by the attending physician, physician assistant, or nurse practitioner;

17. Is accorded respect for ordinary privacy in every aspect of daily living, including but not limited to the following:

    a. In the care of his personal needs except as assistance maybe needed;

    b. In any medical examination or health-related consultations the resident may have at the facility;

    c. In communications, in writing or by telephone;

    d. During visitations with other persons;

    e. In the resident's room or portion thereof; residents shall be permitted to have guests or other residents in their rooms unless to do so would infringe upon the rights of other residents; staff may not enter a resident's room without making their presence known except in an emergency or in accordance with safety oversight requirements included in regulations of the Board;

    f. In visits with his spouse; if both are residents of the facility they are permitted but not required to share a room unless otherwise provided in the residents' agreements;

18. Is permitted to meet with and participate in activities of social, religious, and community groups at his discretion unless medically contraindicated as documented by his physician, physician assistant, or nurse practitioner in his medical record;

19. Is fully informed, as evidenced by the written acknowledgment of the resident or his legal representative, prior to or at the time of admission and during his stay, that he should exercise whatever due diligence he deems necessary with respect to information on any sex offenders registered pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, including how to obtain such information. Upon request, the assisted living facility shall assist the resident, prospective resident, or the legal representative of the resident or prospective resident in accessing this information and provide the resident, prospective resident, or the legal representative of the resident or prospective resident with printed copies of the requested information; and

20. Is informed, in writing and upon request, of whether the assisted living facility maintains the minimum liability coverage, as established by the Board pursuant to subdivision A 10 of § 63.2-1805.

B. If the resident is unable to fully understand and exercise the rights and responsibilities contained in this section, the facility shall require that a responsible individual, of the resident's choice when possible, designated in writing in the resident's record, be made aware of each item in this section and the decisions that affect the resident or relate to specific items in this section; a resident shall be assumed capable of understanding and exercising these rights unless a physician determines otherwise and documents the reasons for such determination in the resident's record.

C. The rights and responsibilities of residents shall be printed in at least 12-point type and posted conspicuously in a public place in all assisted living facilities. The facility shall also post the name and telephone number of the regional licensing supervisor of the Department, the Adult Protective Services' toll-free telephone number, as well as the toll-free telephone number for the Virginia Long-Term Care Ombudsman Program, any sub-state ombudsman program serving the area, and the toll-free number of the Commonwealth's designated protection and advocacy system.

D. The facility shall make its policies and procedures for implementing this section available and accessible to residents, relatives, agencies, and the general public.

E. The provisions of this section shall not be construed to restrict or abridge any right that any resident has under law.

F. Each facility shall provide appropriate staff training to implement each resident's rights included in this section.

G. The Board shall adopt regulations as necessary to carry out the full intent of this section.

H. It shall be the responsibility of the Commissioner to ensure that the provisions of this section are observed and implemented by assisted living facilities as a condition to the issuance, renewal, or continuation of the license required by this article.

History.
1984, c. 677, § 63.1-182.1; 1989, c. 271; 1990, c. 458; 1992, c. 356; 1993, cc. 957, 993; 1997, c. 801; 2000, c. 177; 2002, cc. 45, 572, 747; 2004, c. 855; 2006, c. 396; 2007, cc. 120, 163; 2013, cc. 320, 571.