**ACTION ITEM 5**

# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF SOCIAL SERVICES

*Office of the Commissioner*

S. Duke Storen
Commissioner

July 27, 2026

**MEMORANDUM**

**TO:** Members, State Board of Social Services

**FROM:** Duke Storen

**REGULATION:** 22VAC40-73, Standards for Licensed Assisted Living Facilities
*2026 Legislative Changes for Assisted Living Facilities*

**ACTION:** Exempt Regulation

This action will align the regulation with statutory changes made by the 2026 session of the Virginia General Assembly, regarding automated external defibrillators. I request that you approve the exempt regulation for publication in the *Virginia Register*, subject to approval by the Governor.

If you have questions concerning this requested regulatory action, please contact our Regulatory Coordinator, Karin Clark, at (804) 726-7017 or karin.clark@dss.virginia.gov.

DS:kc
Attachments

townhall.virginia.gov

# Exempt Action: Final Regulation
# Agency Background Document

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|---|---|
| **Agency name** | State Board of Social Services |
| **Virginia Administrative Code (VAC) Chapter citation(s)** | 22VAC40-73 |
| **VAC Chapter title(s)** | *Standards for Licensed Assisted Living Facilities* |
| **Action title** | 2026 Legislative changes for ALF |
| **Final agency action date** | August 17, 2026 |
| **Date this document prepared** | August 17, 2026 |

This information is required for executive branch review pursuant to Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code.*

## Brief Summary

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

This action will implement the provisions of Chapter 323 and 496 of the 2026 Acts of Assembly.

Chapter 323 of the 2026 Acts of Assembly amended § 63.2-1701 of the Code of Virginia to require all assisted living facilities to have and maintain an automated external defibrillator (AED) and staff trained to use the device, prior to the issuance of an initial or renewal of a license to operate. The amendments in this action add the AED requirements to Section 260 which currently outlines requirements for first aid and cardiopulmonary resuscitation (CPR). The amendments in this action add requirements in sections 210 and 990 to ensure staff are trained to use the device.

Chapter 496 of the 2026 Acts of Assembly permits residents of assisted living facilities to have electronic monitoring devices placed in their rooms. This legislation contains provisions establishing the requirements for the placement, utilization, and associated costs of any such electronic monitoring device

in any resident's room. A new section 755 is added to capture the provisions from the legislation. Amendments to section 390 ensure that the required policies and procedures regarding electronic monitoring are outlined for residents or their legal representatives in the resident agreement.

## Mandate and Impetus

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

This regulatory action is required to implement the provisions of Chapter 323 and 496 of the 2026 Acts of Assembly.

This action is exempt from the provisions of the Virginia Administrative Process Act (§ 2.2-4000 *et. seq*, of the Code of Virginia) pursuant to § 2.2-4006 (A) (4) (a) which specifies the exemption of regulations that are "necessary to conform to changes in Virginia statuary law or the appropriation act where no agency discretion is involved. However, such regulations shall be filed with the Registrar within 90 days of the law's effective date."

## Statement of Final Agency Action

*Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) that the agency has "adopted final amendments" to the regulation; 3) the name of the agency taking the action; and 4) the title of the regulation. A suggested statement is, "On [insert date] the Board/Department of [insert name] adopted final amendments to the [title of regulation(s)]."*

On XXX the Board of Social Services adopted final amendments to the *Standards for Licensed Assisted Living Facilities.*

# COMMONWEALTH *of* VIRGINIA

*Office of the Attorney General*

**Jay Jones**
**Attorney General**

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Virginia Relay Services
800-828-1120

**TO:** **DUKE STOREN, Commissioner,** Virginia Department of Social Services

**FROM:** **ELLEN R. FULMER,** Senior Assistant Attorney General

**DATE:** **July 10, 2026**

**SUBJECT:** **Final Exempt Regulation – 22VAC40-73 (Standards for Licensed Assisted Living Facilities)**

I am in receipt of the attached regulation. You have asked the Office of the Attorney General to review and determine if the State Board of the Virginia Department of Social Services has the statutory authority to promulgate the proposed regulation and if the proposed amendments to the regulation comport with the applicable state and federal laws.

This regulatory action requires all assisted living facilities to have and maintain an automated external defibrillator (AED) and staff trained to use the device, prior to the issuance or an initial or renewal of a license to operate. Additionally, this regulatory action permits residents of assisted living facilities to have electronic monitoring devices placed in their rooms. The amendments provide provisions establishing the requirements for the placement, utilization, and associated costs of any such electronic monitoring device in any resident's room; and they ensure that the required policies and procedures regarding electronic monitoring are outlined for residents or their legal representatives in the resident agreement.

It is my opinion that the State Board of DSS has the authority to promulgate this regulation, and that in so doing the State Board does not exceed its authority. Further, it is my view that this regulation is appropriate for the exempt rule making process under Article 2 of the APA. If you have any questions or need additional information about these regulations, please contact me at 786-4856.

cc: Kim F. Piner, Esquire

Attachment

**Department of Social Services**

**2026 Legislative changes for ALF**

**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.

"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 ~~the ages of~~ 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 63.2 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, ~~by~~ the U.S. Department of Agriculture, or ~~by~~ 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.

"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.

~~"Chapter" or "this chapter" means these regulations, that is, Standards for Licensed Assisted Living Facilities, 22VAC40-73, unless noted otherwise.~~

"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 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, which 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 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.

"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.

"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 ~~the residents'~~ 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 ~~the age of~~ 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 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 the uniform assessment instrument. An individual who can participate in any way with performance of the activity is not considered to be totally dependent.

"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, which restricts freedom of movement or access to the resident's body.

"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.

"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~~:~~, which 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~~:~~, which 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 ~~the resident's capabilities~~ 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.

"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.

"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.

"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.

**22VAC40-73-210. 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.

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.

~~Exception: Direct care staff who are licensed health care professionals or certified nurse aides shall attend at least 12 hours of annual training.~~

**22VAC40-73-260. First aid ~~and~~, CPR ~~certification~~, 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. ~~Each~~ 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.

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 been trained in the use of an AED, in conformance with ~~subsections A and B of~~ this section, shall be posted in the facility so that the information is readily available to all staff at all times. The listing ~~must~~

~~indicate by staff person whether the~~ shall identify certification ~~is~~ in first aid ~~or~~, CPR, or ~~both~~ training in the use of an AED and must be kept up to date.

~~D.~~ 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.

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

A. At or prior to the time of admission, there shall be a written ~~agreement/acknowledgment~~ agreement or acknowledgement 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.

4. Specific acknowledgments that:

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

b. The resident or ~~his~~ 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 ~~his~~ 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 ~~to him~~;

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

g. The resident or the 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 ~~and had explained to him~~ that ~~he~~ the resident may refuse release of information regarding ~~his~~ the resident's personal affairs and records to any individual outside the facility, except as otherwise provided in law and except in case of ~~his~~ the resident's transfer to another caregiving facility, notwithstanding any requirements of this chapter;

~~h.~~ 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);

~~i.~~ 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);

~~j.~~ 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);

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

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

~~m.~~ n. The resident has been notified in writing whether or not the facility maintains liability insurance that provides at least the minimum amount of coverage established by the board for disclosure purposes set forth in 22VAC40-73-45 to compensate residents or other individuals for injuries and losses from negligent acts of the facility. The facility shall state in the notification the minimum amount of coverage established by the board in 22VAC40-73-45. The written notification must be on a form developed by the department; and

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

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

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

**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;

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.

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 45 days 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 O, 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.

N. Ownership of electronic monitoring recordings.

1. Except as provided in subsection L, 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 subsection N, subdivision 1, 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.

**22VAC40-73-990. 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 physician, or Poison Control Center; and (ii) providing first aid ~~and,~~ 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.