ACTION ITEM 3

COMMONWEALTH of VIRGINIA

DEPARTMENT OF SOCIAL SERVICES

Office of the Commissioner

S. Duke Storen
Commissioner

August 3, 2026

MEMORANDUM

TO: Members, State Board of Social Services

FROM: Duke Storen

REGULATION: 22VAC40-73, Standards for Licensed Assisted Living Facilities

ACTION: *Update Standards to Add Appeal Process for Discharges*

Final Regulation

Legislation enacted by the 2022 Virginia General Assembly required the agency to adopt regulations regarding involuntary discharges of assisted living facility residents. The State Board of Social Services approved a proposed regulation on February 19, 2025 and public comment on the proposed regulation ended August 15, 2025.

I request that you approve the final regulation for publication in the *Virginia Register*, subject to approval by the Governor. If you have questions concerning this action, please contact Karin Clark at (804) 840-3679 or karin.clark@dss.virginia.gov.

DS:kc
Attachments

townhall.virginia.gov

Final Regulation
Agency Background Document

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	Update Regulations to Add Appeal Process for Discharges
Date this document prepared	July 8, 2026

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), 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, 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.

Standards for Licensed Assisted Living Facilities, 22VAC40-73, provide regulations for the Department of Social Services (DSS) to license, inspect and monitor assisted living facilities (ALF). This action will amend this regulation as required by Chapter 706 of the 2022 Acts of Assembly, which amended § 63.2-1805 of the Code of Virginia and requires DSS to adopt regulations regarding involuntary discharge of residents. The amendments in this action add definitions of emergency discharge and involuntary discharge, update the existing definition of discharge, establish the terms and conditions for an emergency or involuntary discharge, and describe the appeal process for ALF residents to appeal certain discharge decisions.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

DSS – Department of Social Services
VAC – Virginia Administrative Code
ALF – Assisted Living Facility
DARS – Department of Aging and Rehabilitative Services
CSB – Community Services Board

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 TBD, the State Board of Social Services adopted final amendments to the *Standards for Licensed Assisted Living Facilities,* 22VAC40-73.

Mandate and Impetus

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.

Pursuant to Chapter 706 of the 2022 Acts of Assembly, which amended § 63.2-1805 of the Code of Virginia, DSS is required to adopt regulations regarding involuntary discharge of residents in assisted living facilities. This action provides ALF and residents requirements for involuntary discharge situations and creates a discharge appeal process to follow should one be needed.

This final regulatory action clarifies the existing definition of *discharge* to improve understanding. The regulations have been reorganized to clearly outline the requirements for all three types of discharge. Clarification has been added regarding the responsibilities of ALF following a final case decision in the appeals process under specific circumstances.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The State Board of Social Services has the legal authority to adopt regulations and requirements for licensing ALF in accordance with §§ 63.2-217, 63.2-217.1, 63.2-1732, 63.2-1805, and 63.2-1808. The Code mandates promulgation of regulations to address involuntary discharge of ALF residents, including time frames, notification requirements, conditions, and the process for appeal. This regulatory action will provide direction for involuntary discharge, pursuant to § 63.2-1805.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety, or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

This action amends this regulation as required by Chapter 706 of the 2022 Acts of Assembly, which amended § 63.2-1805 of the Code of Virginia and requires DSS to adopt regulations regarding involuntary discharge of residents. The amendments define "emergency discharge" and "involuntary discharge," clarify the term "discharge," establish conditions under which an involuntary discharge may occur, outline the resident's right to appeal certain discharge decisions and the ALFs notification responsibility of these processes. These changes are necessary to safeguard the health, safety, and welfare of ALF residents by ensuring discharges are conducted appropriately and that residents have access to a formal appeal process.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

This amendment will clarify the three types of discharge from an ALF. 'Emergency discharge' and 'involuntary discharge' are defined, and the definition of discharge was revised. Amendments add the terms and conditions for when and how these types of discharges are permitted, including time frames and the process for a resident to appeal the facility's decision to discharge. A new section was added to the chapter describing the appeals process and requirements when an appeal is filed.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

The primary advantage of this action for the public is allowing residents in ALF to appeal an involuntary discharge, which has not previously been permitted. There are no disadvantages to the public from this action. There are no advantages or disadvantages to the agency or Commonwealth, as this action is required by § 63.2-1805 of the Code of Virginia. There could be disadvantages to the regulated programs (ALFs) if the programs do not follow requirements when involuntarily discharging residents, as the residents can now appeal the discharge, and there is a legal remedy for residents that previously did not exist.

Requirements More Restrictive than Federal

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than

applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.

There are no applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.

Other State Agencies Particularly Affected

There is currently one ALF operated by another state agency, the Department of Veteran's Services. The impact to this state agency could be additional costs for attorney fees if a resident appeals an involuntary discharge and maintaining the resident's health and safety during the appeal, or additional costs for relocation assistance, if needed by the resident. There is no change to the information previously reported for this action.

Localities Particularly Affected

There are currently two ALF operated by Chesterfield and Orange counties. The impact to these localities could be additional costs for attorney fees if a resident appeals an involuntary discharge and to maintain the resident's health and safety during the appeal or additional costs for relocation assistance, if needed by the resident. There is no change to the information previously reported for this action.

Other Entities Particularly Affected

There are currently six ALF operated by other entities: the Fairfax County Redevelopment and Housing Authority operates 2 ALF, Mount Rogers CSB, New River Valley CSB, Region Ten CSB, and Western Tidewater CSB. The impact to these other entities could be additional costs for attorney fees if a resident appeals an involuntary discharge and to maintain the resident's health and safety during the appeal or additional costs for relocation assistance if needed by the resident. There is no change to the information previously reported for this action.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency's response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

Commenter	Comment	Agency response
Lucy Beadnell The Arc of Northern Virginia	"On behalf of The Arc of Northern Virginia, a nonprofit organization that serves individuals with developmental disabilities (DD) and their families across the lifespan, we write in strong support of the proposed regulatory change requiring Assisted Living Facilities (ALFs) to provide	The comment supports the regulatory text.

	discharge notices to the Virginia Department of Social Services." The comment went on to address the importance of what this regulation could accomplish in supporting the vulnerable members of the community. There was hope outlined for data that could be collected regarding discharges to further accountability for ALF. The comment addressed the consequences of improper discharges and how this regulation supports transparency in discharge practices to support residents and their families. The commenter feels this regulation aligns with the values of person-centered care, respect and community integration, holding ALFs to a higher standard of care for vulnerable adults.	
Judy Hackler Virginia Assisted Living Association (VALA)	The Virginia Assisted Living Association (VALA) has worked with licensed assisted living providers to review the proposed changes to 22VAC40-73 regarding involuntary discharges within assisted living facilities. Listed below are some recommendations, marked in red and highlighted, to improve the proposed regulations in the best interest of the residents and the continued operation of the assisted living facility. **22VAC40-73-10. Definitions** "Involuntary discharge" means the *permanent* movement of a resident out of the assisted living facility that is initiated by the facility. • Without including the word "permanent," then a temporary transfer to a hospital or rehab center could technically be considered an "involuntary discharge." **22VAC40-73-430. Discharge of Residents** E. 3. The resident's failure to substantially comply with the terms and conditions ~~relating to the basis for discharge~~, as allowed by this chapter, of the resident agreement between the resident and the assisted living facility, provided that the	This change was not made as acceptance back into the facility for instances of temporary detention orders is addressed in 22VAC40-73-420. As stated in subsection 420 B, a facility can have a bed hold policy when a resident is hospitalized.

	resident and the resident's legal representative or designated contact person, if any, has been given written notice and at least 30 days to cure the basis for discharge. • The stricken language is irrelevant, as E states "Involuntary discharge of residents may only occur under the following circumstances…"; therefore, 3 is only applicable to the basis for discharge. I. The facility shall *offer to* provide relocation assistance for residents who are being involuntarily or emergency discharged, which shall include: 1. Assisting the resident and the resident's legal representative or designated contact person, if any, in the discharge or transfer process; 2. Providing t*he website address to search VDSS records of licensed assisted living facilities and the CMS Care Compare website for different types of Medicare providers* ~~a list of facilities that may be able to meet the resident's needs or arranging an appointment with~~ to the resident and the resident's legal representative or designated contact person, if any, and, *if requested*, a case manager who can provide such information; • The Virginia Department of Social Services and CMS maintains current listings of licensed providers and should be a source for helping to find appropriate housing and services. ~~3. If needed, providing assistance with packing the resident's possessions or paying for a third party to do so, less any insurance, government, or other comparable assistance that the resident is entitled to receive; and~~ ~~4. If needed, providing assistance with moving and transportation to the resident's new location or paying for a third party to provide such moving and transportation, less any insurance, government, or other comparable assistance that the resident is entitled to receive.~~	This change was not made as this language clarifies that the specific terms and conditions, relating to the basis of discharge, are named and the resident is given 30 days to cure those behaviors. § 63.2-1805 uses the language "shall provide" which is the language in the final text. Leaving the text as drafted in the proposed regulation as it allows the ALF the flexibility to determine the best way to provide a list of facilities.

	~~J. No facility shall be required to pay more for relocation assistance as described in subsection I of this section than the monthly charges for accommodations, services, and care as described in the resident agreement (22VAC40-73-390 A), and no facility shall be required to move and transport a resident's belongings outside the state unless such assistance is for a location outside the state within 50 miles of the facility.~~ ~~K. If the facility employs a third party to pack, move, or transport the resident's belongings as described in subdivisions I 3 and I 4 of this section, no costs shall be billed to the resident.~~ • Requiring the assisted living facility to financially cover the discharge process of the resident was not directed by §63.2-1805 and could cause a significant burden on the facility. Requiring financial obligations such as with staff time and materials to pack belongings and to provide moving and transportation assistance to the new location is also in excess of what the federal government requires of skilled nursing facilities in discharges. **22VAC40-73-435. Involuntary and emergency discharge appeals** D. 1. Allow the resident to continue to reside in the facility, free from retaliation, *until the lesser date of 1. the* appeal has a final department case decision, as defined in § 2.2-4001 of the Code of Virginia, *or 2. 30 days after confirmation of receipt of the discharge appeal hearing request form by the Division of Appeals and Fair Hearings* unless the discharge is an emergency discharge or the resident has developed a condition or care need that is prohibited by 22VAC40-73-310 H in accordance with § 63.2-1805 D of the Code of Virginia, *and the resident is no more than 30 days in arrears in monthly charges;* • Requiring the facility to retain a resident that has already potentially been in non-compliance of contractual agreements for extended periods of time after the initial notification periods can create significant burdens on the	Pursuant to § 63.2-1805 A 5 of the Code of Virginia, the Board is authorized to promulgate regulations for providing relocation assistance for residents subject to involuntary discharge. No changes were made to these provisions, as they reflect the Board's recommended requirements.

	continued operation of the facility and the well-being of other residents. We recommend having defined timeframes for the continued residency during the appeal is needed. The resident should be required to be in compliance with the contracted payments to continue to reside at the facility during an appeal, or this will continue to exacerbate the financial burden on the community, which could impact services to other residents that are in compliance with their resident agreements.	Pursuant to § 63.2-1805 A 5 of the Code of Virginia residents have the right to reside in the facility, free from retaliation during the appeal process. No changes were made to this language.
	D. 2. Assist the resident and the resident's legal representative or designated contact person, if any, with filing the appeal *by providing the required information in § 63.2-1805 of the Code of Virginia and this chapter*; and • Adding this statement creates a clear understanding of how the facility is to assist with the appeal. • While facilities are required to inform residents of their right to appeal an involuntary discharge, providing direct assistance in completing or submitting the appeal paperwork may create a legal and ethical conflict of interest. Because the facility is the initiating party in the proposed discharge, its interests are inherently adverse to the resident's in the appeal process. Any involvement in drafting or influencing the appeal could undermine the resident's autonomy, compromise the fairness of the proceeding, and expose the facility to allegations of coercion, manipulation, or obstruction of due process. To preserve the integrity of the appeal and ensure the resident's rights are protected, facilities should refer residents to independent advocates, such as the Long-Term Care Ombudsman Program, legal aid, or other neutral third parties who can assist without bias or conflicting interests.	According to § 63.2-1805 of the Code of Virginia, the facility is obligated "to assist the resident in filing an appeal and provide, upon request, a postage prepaid envelope addressed to the Department." This support does not constitute a conflict of interest. No changes were made to this regulation.
	E. 2. The Division of Appeals and Fair Hearings will provide written confirmation of receipt of the discharge appeal hearing request form to the resident and the resident's legal representative or designated contact person, if any, and the	

	facility within ~~10~~ 5 days of receipt of the discharge appeal hearing request form. E. 3. The hearing officer will conduct an appeal hearing within ~~30~~ 15 days following the date of confirmation, unless a different timeframe is agreed upon by the parties and the hearing officer. E. 4. The burden of proof shall be upon the facility to present evidence to support that the discharge was in compliance with § 63.2-1805 of the Code of Virginia and this chapter. 5. A final written department case decision, as defined in § 2.2-4001 of the Code of Virginia, will be sent by mail and electronic mail to the resident and the resident's legal representative or designated contact person, if any, and the facility within ~~20~~ 15 days of the hearing, unless the case record is held open by the hearing officer to receive additional evidence. • Since the involuntary discharge is not initiated without an original 30-day window of noncompliance, the set timelines for the subsequent steps need to be narrowed to minimize the financial burden on the community, which could impact services to other residents that are in compliance with their resident agreements.	To ensure adequate time for all parties to prepare for the appeal, conduct the hearing and a final case decision to be issued, the established timeframes will remain the same as in the proposed action.
William Way Chair of the Arlington County Commission on Aging	"On behalf of the Arlington Commission on Aging, we write in strong support of the proposed regulatory changes concerning involuntary discharge of residents. The Commission on Aging serves as a key advisory body to the County Board of Arlington County with a mission to promote the quality of life for all older persons and to ensure their needs are included in all planning and activities." The comment expressed that currently nursing home residents have access to discharge hearings and tenants have protections, leaving ALF residents without any protections. Concern was expressed for the increase of homelessness for older adults in Arlington. Without the discharge protections in place as described this regulation unplanned discharges could result in homelessness.	The comment supports the regulatory text.

	The comment expressed that the requirement to have ALF send involuntary and emergency discharges to the Ombudsman office will increase data available for discharge reasons. With this additional data the commenter hopes the Long-Term Care Ombudsman's office can look at trends and patterns to improve trainings and support.	
Colleen Miller DisAbility Law Center of Virginia	dLCV supports the proposed regulation by the Virginia Department of Social Services (DSS) for establishing an appeals process for involuntary discharges from Assisted Living Facilities (ALFs), especially for vulnerable residents. **Points of Support:** 1. **Protection for SSA/SSI Beneficiaries:** Residents may face delays in receiving benefits due to application processing or changes in representative payees. The appeals process allows residents to explain nonpayment and avoid unjust discharges. 2. **Safeguard Against Financial Exploitation:** Residents with third-party payors (e.g., conservators, representative payees) have a risk of financial mismanagement. The regulation ensures discharge notices are shared with the Long-Term Care Ombudsman, creating oversight and protection. 3. **Prohibition on Charging for Moving Costs:** Residents on Auxiliary Grants have extremely limited funds. The regulation prevents additional financial burden during involuntary or emergency discharges. 4. **Tracking Problematic Providers:** Requiring discharge notices to be sent to DSS Licensing helps identify facilities with frequent discharges. This data can be used to monitor trends and intervene with problematic providers. **Recommendations:**	The comments support the regulatory text.

	1. **Training for LTC Ombudsman:** Train the Ombudsman offices to report misuse by third-party payors to Social Security and Adult Protective Services. Encourage referrals to dLCV for complaints against organizational payees. 2. **Resident Education:** Place fact sheets about involuntary discharge appeals in common areas of all licensed ALFs to inform residents of their rights. 3. **Administrator Training and Resources:** DSS should conduct mandatory training for ALF administrators. Provide manuals with regulatory guidance, sample discharge notices, and materials for resident education.	All memos and training information related to this action will be available on the DSS website. Residents are required to receive information from ALF regarding the criteria for discharge per 22VAC40-73-50 A subdivision 4 h. Memos with training information about this action will be available on the DSS website.
Joani Latimer Office of the State Long-Term Care Ombudsman (OSLTCO)	OSLTCO fully supports the proposed regulations and urges prompt implementation to protect vulnerable assisted living facility (ALF) residents. The comment commends DSS, the Board, and stakeholders for their collaborative efforts in developing these long-overdue protections. Below is a summary of the support from OSLTCO: **Closing a Longstanding Protection Gap** ALF residents have historically lacked both landlord-tenant eviction protections and a formal discharge appeal process. The proposed regulations address this critical due process gap, offering residents a meaningful way to challenge improper or arbitrary discharges. **High Frequency and Impact of Involuntary Discharges** Involuntary discharge is consistently among the top five complaints received by the Long-Term Care Ombudsman Program. These discharges often affect the most vulnerable residents-those with limited income, physical or mental health challenges, and no support system-leading to traumatic outcomes such as homelessness or hospitalization.	The comment supports the regulatory text.

	Importance of Data Collection and Oversight The regulation's requirement for automatic notice of discharges to DSS and the Ombudsman Program is essential. This will enable systematic tracking of discharge incidents, improve oversight, and support timely advocacy for affected residents. **Need for Clear Discharge Criteria** The absence of clear standards has made it difficult for the Ombudsman Program to advocate effectively against inappropriate discharges. The proposed regulations provide much-needed clarity and encourage providers to pursue alternatives to discharge when possible. **Support for Especially Vulnerable Residents** The regulations emphasize the importance of protecting residents who lack advocates. The required notice to the Ombudsman Program ensures these residents receive support during discharge proceedings. **Trauma and Disruption from Discharges** Discharges can be deeply destabilizing, especially for residents who view the ALF as their home. The appeal process offers a safeguard against unnecessary upheaval and promotes stability for residents facing complex challenges.	
Megann Phelps The Laurels RAL	Questions were asked about the following scenarios during involuntary discharges: **Safety Risks During Appeals:** If a resident is being discharged for violent or dangerous behavior (e.g., physical aggression, fire-starting), the facility may still be required to house them during the appeal process. This could pose serious safety risks to other residents and staff while waiting for a decision. **Challenges with Non-Ambulatory Residents:** If a resident becomes physically or mentally non-ambulatory and the facility	The resident agreement remains in effect during the appeal process. The facility would continue to be responsible for updating and implementing the Individualized Service Plan, working with the resident to meet their needs during this time. This action defines "emergency discharge" and residents discharged under this provision are not permitted to remain at the facility during the appeal process.

	can no longer meet their needs, the appeal process may delay necessary discharges. This could interfere with the facility's ability to ensure appropriate care levels. **Complications with Rehab Returns** Noted concern if a resident develops a new condition while in rehab that is a prohibited condition. Support for this action was expressed to help prevent facilities from discharging residents for vague or unjustified reasons. Lastly a concern was noted about the burden of moving responsibilities: The regulation appears to place the responsibility for packing and moving on the facility. Traditionally, families handle these tasks with facility support as needed; shifting full responsibility to the facility could be burdensome and unclear.	§ 63.2-1805 D of the Code of Virginia outlines prohibited conditions. This did not change during this regulatory action. § 63.2-1805 D outlines prohibited conditions. This did not change during this regulatory action. The comment supports the action. As noted in 22VAC40-73-430 the new subsection I subdivision 4, the moving assistance is to be provided, if needed.
Anne McCray Sunrise of Springfield	I am writing to submit my commentary on the proposed action for section 435 regarding the appeals process. I believe that this regulation will be detrimental to the assisted living environment in our commonwealth. There is no insurance policy that will pay a community for the back time owed during this appeal process. Having a potential 120 day period of non-payment has the potential to cause low-income communities to outright close as well as cause residents who could have benefited for a short time to potentially face a more stringent screening process. Additionally, if a resident is being discharged for behaviors, 120 days is a long time to put other residents in a facility in potential danger if this cannot be managed by the community. That long of a window will also impact financially as other residents will be unlikely to want to continue to live in an environment where the behavior is seemingly not being addressed. I implore that this regulation be properly reviewed and rejected to avoid placing an undue burden on the communities and the other residents.	Pursuant to § 63.2-1805 of the Code of Virginia, the ALF is required to allow the resident 30 days to cure payment delinquency. The board promulgated regulations in consideration of this timeframe and compliance with the Code, including the Administrative Process Act. § 63.2-1805 D of the Code of Virginia outlines prohibited conditions. The resident agreement remains in place while the resident resides at the facility. This action defines "emergency discharge" and residents discharged under this provision are not permitted to remain at the facility during the appeal process. This did not change during this regulatory action.

Dana Parsons Leading Age Virginia	Thank you for the opportunity to comment on the proposed appeal process for assisted living discharges. LeadingAge Virginia reviewed the proposal and offers the following recommendations: **22VAC40-73-430 Discharge of residents** **Proposed:** K. If the facility employs a third party to pack, move, or transport the resident's belongings as described in subdivisions I 3 and I 4 of this section, no costs shall be billed to the resident. **Recommendation:** The proposed language would require the assisted living to absorb the costs of packing, moving, or transporting a resident's belongings when using a third party. These costs should instead be billed to the resident because they are directly tied to the resident's personal property and relocation, not to the assisted living operations or provision of care. **22VAC40-73-435 Involuntary and emergency discharge appeals** **Proposed:** D. When a resident appeals a discharge, the facility shall: 1. Allow the resident to continue to reside in the facility, free from retaliation, until the appeal has a final department case decision, as defined in § 2.2-4001 of the Code of Virginia, unless the discharge is an emergency discharge or the resident has developed a condition or care need that is prohibited by 22VAC40-73-310 H in accordance with § 63.2-1805 D of the Code of Virginia; **Recommendation:** We recommend developing a statement of condition that clarifies the circumstances under which a resident may remain in an assisted living during the appeal process. This statement should include, but not be limited to, conditions such as the resident must meet contractual requirements and not pose an immediate threat to their own health or safety, or that of other residents. Additionally, we recommend establishing a clear time frame for vacating the assisted living community following the resolution of the appeal to ensure both resident and	Pursuant to § 63.2-1805 A 5 of the Code of Virginia, the Board is authorized to promulgate regulations for providing relocation assistance for residents subject to involuntary discharge. No changes were made to these provisions, as they reflect the Board's recommended requirements. This is addressed in § 63.2-1805 A 5 (v) of the Code of Virginia. A timeframe for leaving the ALF was not added to the regulation as situations may vary by each ALF's resident agreement and policies.

	community expectations are clear and consistent. **Proposed:** E. The discharge appeal process. … 3. The hearing officer will conduct an appeal hearing within ~~30~~ 14 days following the date of confirmation, unless a different timeframe is agreed upon by the parties and the hearing officer. … 5. A final written department case decision, as defined in § 2.2-4001 of the Code of Virginia, will be sent by mail and electronic mail to the resident and the resident's legal representative or designated contact person, if any, and the facility within ~~20~~ 10 days of the hearing, unless the case record is held open by the hearing officer to receive additional evidence. **Recommendation:** We recommend reducing the timeframes as noted above to help minimize the financial and administrative burdens on assisted living communities.	To ensure adequate time for all parties to prepare for the appeal, conduct the hearing and a final case decision to be issued, the established timeframes will remain the same as in the proposed action.
Virginia Health Care Association-Virginia Center for Assisted Living (VHCA-VCAL)	The Virginia Health Care Association-Virginia Center for Assisted Living (VHCA-VCAL) submits this comment on behalf of its members. **22VAC40-73-430 Discharge of Residents** 1. Recommended edits for clarity and practicality: (I) 2. Providing access to a listing of licensed facilities that may be able to meet the resident's needs or arranging an appointment with the resident and the resident's legal representative or designated contact person, if any, and, if requested, the contact information for the local DSS agency to request a case manager who can provide such information; 2. Existing law or policy does not require facilities to pay for or handle packing and moving individuals. Adding such requirements could strain resources and create operational	Pursuant to § 63.2-1805 A 5 of the Code of Virginia, the Board is authorized to promulgate regulations for providing relocation assistance for residents subject to involuntary discharge. No changes were made to these provisions, as they reflect the Board's recommended requirements.

	challenges and undue negative implications. VHCA-VCAL recommended removing the regulatory text of 22VAC40-73-430 subsections: I 3, I 4, J and K. **22VAC40-73-435 Involuntary and emergency discharge appeals** 1. Under the proposal, a person may stay at the facility for up to 80 days following an involuntary discharge notice. Given that a 30-day advance notice is required prior to discharge, it is recommended that the Division of Appeals and Fair Hearings adopt expedited timelines compared to those outlined in the proposed regulations. (E) 2. The Division of Appeals and Fair Hearings will provide written confirmation of receipt of the discharge appeal hearing request form to the resident and the resident's legal representative or designated contact person, if any, and the facility within ~~10~~ 7 days of receipt of the discharge appeal hearing request form. (E) 3. The hearing officer will conduct an appeal hearing within ~~30~~ 15 days following the date of confirmation, unless a different timeframe is agreed upon by the parties and the hearing officer. (E) 5. A final written department case decision, as defined in § 2.2-4001 of the Code of Virginia, will be sent by mail and electronic mail to the resident and the resident's legal representative or designated contact person, if any, and the facility within ~~20~~ 7 days of the hearing, unless the case record is held open by the hearing officer to receive additional evidence.	To ensure adequate time for all parties to prepare for the appeal, conduct the hearing and a final case decision to be issued, the established timeframes will remain the same as in the proposed action.

Detail of Changes Made Since the Previous Stage

*List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements
10			Updated existing definition of "Discharge". Updated definition of "Emergency discharge".	*Added language to the existing definition of discharge to clarify that a 'discharge' is initiated by a resident. *Removed language to clarify the requirement. The intent, rationale and impact for this change is to provide clarity of the three types of discharges from an ALF: a discharge that is resident initiated, involuntary discharge and emergency discharge.
430			Clarified throughout section the name of the department-approved forms are: "involuntary or emergency discharge notice form" or "involuntary or emergency appeal hearing request form"	The intent, rationale and impact for this change is to ensure that residents who are discharged under an involuntary or emergency basis are given the department-approved forms for notice and the appeal hearing request form.
430			Updated subsection I subdivision 1.	Removed "or transfer" to clarify the requirement applies to discharges only, as "transfer" is defined in 22VAC40-73-10.
430			Updated L to create 3 subdivisions for clarity. L was moved to L 1, M was moved to L 2 and N was moved to L 3.	Subsection L was reordered with the intent, rationale and impact that requirements in subdivisions 1-3 apply to all discharges.
435			*Update subsection D to outline requirements for involuntary discharges.	*Removed references to emergency discharges to clarify the requirements in this subsection pertain to involuntary discharges.
435		Added subsection E		*Added to clarify requirements for emergency discharges.

435			The previous subsection E is now subsection F. *Removed subsection F subdivision 7.	Reordered subsection E to subsection F to improve understanding of the section. *Removed as subdivision 6 addresses that any appeal to the final department case decision is subject to the Administrative Process Act.
435		Added subsection G		*Added language outlining an exception, explaining that the ALF is not required to receive the resident back in the facility if there was an involuntary discharge and the resident voluntarily moves out before a final case decision. The intent, rationale and impact of this subsection is to clarify the regulation.
435		Added subsection H and subdivisions H 1- 4.		*Added language describing the responsibility of the ALF if an emergency discharge is reversed and the resident wants to move back to the ALF. *The ALF will need to determine if the resident has a prohibited condition, receive the resident back into the ALF, have the resident sign a new resident agreement, and update the Individualized Service Plan and Uniform Assessment Instrument to ensure appropriate services are provided to the resident. *The intent, rationale and impact of the addition of this subsection is to clarify the regulations for a resident's return to the ALF if the final case decision reverses an emergency discharge.

Detail of All Changes Proposed in this Regulatory Action

*List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
Throughout chapter		The terms “he, his, him, and himself” are used.	Replaced the terms with the individual the regulation requirement applies to for clarification.
22VAC40-73-10		Definitions used in regulation	Removed definition for chapter as it is unnecessary. Technical edits were made throughout this section for clarification and ease of understanding. *Added to the current definition for discharge for clarification and differentiation in discharge classification. *New definitions added: emergency discharge and involuntary discharge. The intent, rationale, and impact is for ALF and the public to understand the meaning of these terms.
22VAC40-73-430		Section describes discharge requirements, including discharge planning, notifications, and assistance the ALF provides the resident who is being discharged.	The current subsections A-H are reorganized. The new subsection A is reworded requirements from current subsection C that the ALF shall develop and implement written policies and procedures regarding discharge to align with § 63.2-1805 and new section 435. The new subsection B is reworded requirements from current subsection C

			regarding minimum length of notice to the ALF when a resident initiates plans to move from the facility. The new subsection C is reworded requirements from current subsection A adding resident's preferences to the list of reasons for discharge planning and removing the requirement for the resident to move in 30 days. *The new subsection D is reworded requirements from current subsection B to describe discharge notification requirements for involuntary or emergency discharge, as required by § 63.2-1805. The current subsection C is removed. Requirements in current subsection C included in new subsection A and B. *The new subsections E and F describe situations that allow involuntary discharges from the ALF. *These sections include requirements to notify residents of the reason for certain discharges and provide 30 days to cure the basis prior to receiving a discharge notice, as required by § 63.2-1805 A 5. Requirements in current subsections E-F were incorporated into subsection G. *The current subsection G was reworded to add the requirement to use the DSS-provided involuntary or emergency discharge notice form and describes the

			notification requirements from § 63.2-1805 A 5 and removes the notification requirement for public-pay residents as this is addressed in Department of Aging and Rehabilitative Services (DARS) regulations 22VAC30-80-45 and 22VAC30-110-40. *Subsection H was revised to incorporate the requirement from § 63.2-1805 A 5 mandating that the Department's involuntary or emergency discharge appeal hearing request form be provided at the time of an involuntary or emergency discharge. Provisions related to the discharge statement were removed, as this information is now included in the involuntary or emergency discharge notice form referenced in subsection G. *Subsection I is revised to describe requirements to provide relocation assistance to residents who are being involuntarily or emergency discharged from the facility. The current subsection I is now subsection L subdivision 2 and is amended for technical changes for ease of understanding. *The new subsection J provides exceptions to the relocation assistance requirements found in subsection I. *The new subsection K prohibits the facility from billing the resident for the fees from a third-party provider of relocation assistance.

			The new subsection L outlines requirements that apply to all types of discharges. The current subsection J is the new subsection L subdivision 3 which is amended for technical changes for ease of understanding. The intent and rationale is to clearly describe all discharge requirements in one section, so that the ALF, residents, and the public understand the different requirements for different types of discharges. The impact is clearer understanding and compliance with Code and regulation requirements for ALF discharges.
	22VAC40-73-435		*A new section 435 was written to incorporate the requirements from § 63.2-1805 A 5 of the Code of Virginia. *It describes the process and requirements for appealing involuntary or emergency discharges, the ALF requirements when a resident files an involuntary or emergency discharge appeal, and the involuntary and emergency discharge appeal process, including timeframes for notifications, a hearing, and the appeal case decision. *Added language outlining an exception, explaining that the ALF is not required to receive the resident back in the facility if there was an involuntary discharge and the resident voluntarily moves out before a

			final case decision. The intent, rationale and impact of this subsection is to clarify the regulation. *It also includes requirements for the ALF when an emergency discharge is reversed, and the resident wishes to move back to the ALF. The intent and rationale is to clearly describe the involuntary or emergency discharge appeal process so that residents, ALF, and the public understand the requirements and protections provided for involuntary and emergency discharge appeals. The impact is understanding and compliance with the Code of Virginia and regulation requirements for discharge appeals.

COMMONWEALTH *of* VIRGINIA

Office of the Attorney General

Jay Jones
Attorney General

804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120

MEMORANDUM

TO: KARIN CLARK
Virginia Department of Social Services

FROM: Jennifer C. Williamson
Senior Assistant Attorney General

DATE: July 8, 2026

SUBJECT: Review of Final 22 VAC 40-73
Amend Sections to Add Appeal Process for Discharges

I am in receipt of and have reviewed the attached regulations being amended as required by Chapter 706 of the 2022 Acts of Assembly, which amended Virginia Code § 63.2-1805 and requires the State Board of Social Services ("State Board") to adopt regulations regarding the discharge of residents. You have asked the Office of the Attorney General to review this action and determine if the State Board has the statutory authority to promulgate the regulations and if the regulations comport with applicable state law.

Pursuant to Virginia Code § 63.2-217, the State Board is required to promulgate regulations as may be necessary or desirable to carry out the purposes of Title 63.2 of the Virginia Code. Additionally, and as stated above, Virginia Code § 63.2-1805 requires the State Board to adopt regulations addressing the discharge of residents. The regulations comport with applicable state law.

Accordingly, it is my opinion the State Board has the authority to promulgate these regulations, subject to compliance with the provisions of Article 2 of the Administrative Process Act ("APA") and Executive Order 17 (2026), and that in so doing the State Board does not exceed that authority.

If you have any questions, please feel free to call me at (804) 225-3197.

Attachment

Project 7391 - Final

Department of Social Services

Update Standards to Add Appeal Process for Discharges

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" 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.

"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 [initiated by the resident or the resident's legal representative, if any].

"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 discharge" means the unplanned discharge of a resident from the facility due to immediate and serious risk to the health, safety, or welfare of the resident or others [~~within the facility~~] .

"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, 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.

"Involuntary discharge" means the movement of a resident out of the assisted living facility that is initiated by the facility.

"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 the buildings are 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.

22VAC40-73-430. Discharge of residents.

A. The facility shall develop and implement written policies and procedures regarding the discharge of residents in accordance with § 63.2-1805 of the Code of Virginia, this section, and 22VAC40-73-435.

B. No facility shall require more than 30 days of notice when a resident initiates plans to move from the facility.

C. When actions, circumstances, conditions, ~~or~~ care needs, or resident preferences 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~~ date that discharge planning began shall ~~document the reason and the efforts that have been made~~ be documented in the resident's record.

~~B. As soon as~~ D. In the event of an involuntary or emergency discharge ~~planning begins~~, the ~~assisted living~~ facility shall notify the resident~~,~~ and the resident's legal representative ~~and~~ or 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~~ in accordance with subsection G of this section and review the plan for the [involuntary or emergency] discharge to take place.

~~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~~ E. Involuntary discharge of residents may only occur under the following circumstances:

1. The facility determines that it cannot meet the individual's needs as specified in § 63.2-1805 B of the Code of Virginia and has met the requirements pursuant to § 63.2-1805 of the Code of Virginia and other applicable statutory and regulatory requirements, provided that the resident and the resident's legal representative or designated contact person, if any, has been given written notice and at least 30 days to cure the basis for [the involuntary] discharge.

2. Nonpayment of contracted charges, provided that the resident has been given at least 30 days to cure the delinquency after notice of such nonpayment was provided to the resident and the resident's legal representative or designated contact person, if any.

3. The resident's failure to substantially comply with the terms and conditions relating to the basis for [the involuntary] discharge, as allowed by this chapter, of the resident agreement between the resident and the assisted living facility, provided that the resident and the resident's legal representative or designated contact person, if any, has been given written notice and at least 30 days to cure the basis for [the involuntary] discharge.

4. The facility closes in accordance with regulations.

5. The resident develops a condition or care need that is prohibited pursuant to § 63.2-1805 D of the Code of Virginia or 22VAC40-73-310 H.

~~D. The~~ F. Unless an emergency discharge is necessary, the facility shall ~~assist the~~, prior to involuntarily discharging a resident ~~and his legal representative, if any, in~~, make reasonable efforts, as appropriate, to resolve any issues with the resident upon which the decision to [involuntarily] discharge ~~or transfer process~~ is based. The ~~facility~~ decision and such efforts shall ~~help the resident prepare for relocation, including discussing~~ be documented in the resident's ~~destination. Primary responsibility for transporting the resident and his possessions rests with the resident or his legal representative~~ record.

~~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 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~~ all involuntary and emergency discharges, the ~~assisted living~~ facility shall ~~provide written notification to the eligibility worker and assessor within five days after the resident's death~~ use the department-provided [involuntary or emergency] discharge notice form and adhere to the following notification requirements:

1. In the event of an involuntary discharge, the facility shall notify the resident and the resident's legal representative or designated contact person, if any, in writing at least 30 days prior to the [involuntary] discharge date;

2. In the event of an emergency discharge, the facility shall notify the resident and the resident's legal representative or designated contact person, if any, as soon as possible, and provide written notice within five days after the emergency discharge;

3. The facility shall provide a copy of the [involuntary or emergency] discharge notice to the regional licensing office and the State Long-Term Care Ombudsman at least 30 days prior to an involuntary discharge and within five days after an emergency discharge; and

4. A copy of the [involuntary or emergency] discharge notice shall be retained in the resident's record.

H. ~~Discharge statement. 1. At the time of discharge, the assisted living~~ The facility shall provide ~~to~~ the resident and~~, as appropriate, his~~ the resident's legal representative ~~and~~ or designated contact person, if any, with the department-provided [involuntary or emergency] discharge appeal hearing request form at the time of involuntary or emergency discharge notice. The notice shall include 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~~ that the resident may continue to reside in the facility pursuant to [~~the terms of 22VAC40-73-435 D~~ § 63.2-1805 of the Code of Virginia] , unless it is an emergency discharge or the facility is closing.

I. The facility shall provide relocation assistance for residents who are being involuntarily or emergency discharged, which shall include:

1. Assisting the resident and the resident's legal representative or designated contact person, if any, in the discharge [~~or transfer~~] process;

2. Providing a list of facilities that may be able to meet the resident's needs or arranging an appointment with the resident and the resident's legal representative or designated contact person, if any, and a case manager who can provide such information;

3. If needed, providing assistance with packing the resident's possessions or paying for a third party to do so, less any insurance, government, or other comparable assistance that the resident is entitled to receive; and

4. If needed, providing assistance with moving and transportation to the resident's new location or paying for a third party to provide such moving and transportation, less any insurance, government, or other comparable assistance that the resident is entitled to receive.

J. No facility shall be required to pay more for relocation assistance as described in subsection I of this section than the monthly charges for accommodations, services, and care as described in the resident agreement (22VAC40-73-390 A), and no facility shall be required to move and transport a resident's belongings outside the state unless such assistance is for a location outside the state within 50 miles of the facility.

K. If the facility employs a third party to pack, move, or transport the resident's belongings as described in subdivisions I 3 and I 4 of this section, no costs shall be billed to the resident.

L. [For all discharges, including involuntary and emergency discharges, the following regulations apply:

1.] If the discharge timeframe is not met, although persistent efforts have been made, the facility shall document the reason.

[~~M.~~ 2.] When the resident is discharged and moves to another caregiving facility, the ~~assisted living~~ discharging 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.

[~~J. N.~~ 3.] Within 60 days of the date of discharge, ~~each~~ the facility shall provide the resident ~~or his~~ and the resident's 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.

22VAC40-73-435. Involuntary and emergency discharge appeals.

A. A resident may appeal any involuntary or emergency discharge, except discharges resulting from the closing of the facility in accordance with this chapter, by completing the department-provided [involuntary or emergency] discharge appeal hearing request form and submitting it to the department's Division of Appeals and Fair Hearings.

B. [~~A discharge~~ An] appeal [of an involuntary or emergency discharge] must be filed with the department's Division of Appeals and Fair Hearings within 30 days of the resident and the resident's legal representative or designated contact person, if any, receiving the written [involuntary or emergency] discharge notice. An appeal is considered filed upon receipt by the department's Division of Appeals and Fair Hearings.

C. A resident who no longer resides in the facility due to an emergency discharge retains the right to file an appeal pursuant to subdivision A 5 of § 63.2-1805 of the Code of Virginia.

D. When a resident appeals [~~a~~ an involuntary] discharge, the facility shall:

1. Allow [~~the~~ a] resident [who has been issued an involuntary discharge] to continue to reside in the facility, free from retaliation, until the appeal has a final department case decision, as defined in § 2.2-4001 of the Code of Virginia, unless [~~the discharge is an emergency discharge or~~] the resident has developed a condition or care need that is prohibited by 22VAC40-73-310 H in accordance with § 63.2-1805 D of the Code of Virginia;

2. Assist the resident and the resident's legal representative or designated contact person, if any, with filing the appeal; and

3. Upon request, provide a postage prepaid envelope addressed to the department's Division of Appeals and Fair Hearings.

[E. When a resident appeals an emergency discharge, the following applies:

1. The facility shall assist the resident and the resident's legal representative or designated contact person, if any, with filing the appeal; and

2. The facility shall, upon request, provide a postage prepaid envelope addressed to the department's Division of Appeals and Fair Hearings.

3. A resident who has been issued an emergency discharge does not have the right to remain in the facility pending the final case decision of the appeal.]

~~E.~~ F.] The [involuntary and emergency] discharge appeal process.

1. The department's Division of Appeals and Fair Hearings will conduct the [involuntary and emergency] discharge appeal hearings.

2. The Division of Appeals and Fair Hearings will provide written confirmation of receipt of the [involuntary or emergency] discharge appeal hearing request form to the resident and the resident's legal representative or designated contact person, if any, and the facility

within 10 days of receipt of the [involuntary or emergency] discharge appeal hearing request form.

3. The hearing officer will conduct an appeal hearing within 30 days following the date of confirmation, unless a different timeframe is agreed upon by the parties and the hearing officer.

4. The burden of proof shall be upon the facility to present evidence to support that the [involuntary or emergency] discharge was in compliance with § 63.2-1805 of the Code of Virginia and this chapter.

5. A final written department case decision, as defined in § 2.2-4001 of the Code of Virginia, will be sent by mail and electronic mail to the resident and the resident's legal representative or designated contact person, if any, and the facility within 20 days of the hearing, unless the case record is held open by the hearing officer to receive additional evidence.

6. The final department case decision may be appealed in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

[~~7. When a resident appeals a final department case decision, the requirements in subsection D of this section do not apply.~~

G. The facility shall not be required to receive the resident back into the facility if the resident was involuntarily discharged, and the resident voluntarily moved out of the facility prior to the final case decision.

H. If a resident is moved out of the facility under an emergency discharge, and the case decision reverses the discharge, and the resident wishes to move back to the facility, the facility shall:

1. Determine if the resident has significant changes, including prohibited conditions pursuant to § 63.2-1805 D of the Code of Virginia or 22VAC40-73-310 H;

2. Receive the resident back into the facility;

3. Have the resident or the appropriate legal representative, if applicable, sign a resident agreement pursuant to 22VAC40-73-390; and

4. Update the Individualized Service Plan (ISP) pursuant to 22VAC40-73-450 and the Uniform Assessment Instrument (UAI) pursuant to 22VAC40-73-440 within seven days of the resident's return.]

FORMS (22VAC40-73)

~~Report of Tuberculosis Screening (eff. 10/2011)~~

~~Virginia Department of Health Report of Tuberculosis Screening Form (undated)~~

~~Virginia Department of Health TB Control Program Risk Assessment Form, TB 512 (eff. 9/2016)~~

[~~Assisted Living Facility Discharge Notice and Appeal Hearing Request (DRAFT)~~

Assisted Living Facility Involuntary or Emergency Discharge Notice Form

Assisted Living Facility Involuntary or Emergency Appeal Hearing Request Form]

Instructions for Completing the
Assisted Living Facility Involuntary or Emergency Discharge Notice Form
Required by the Virginia Department of Social Services

The Assisted Living Facility Involuntary or Emergency Discharge Notice form is required by the *Standards for Licensed Assisted Living Facilities* (22VAC40-73). The facility is required to complete this form for all involuntary and emergency discharges. A copy must be provided to the resident and the resident's legal representative or designated contact person, if any. This form must also be used to notify the Virginia Department of Social Services (VDSS) Division of Licensing Programs (DOLP), the State Long Term Care Ombudsman (ombudsman@dars.virginia.gov), and local departments of social services (LDSS) for public pay residents. A copy of this form shall be retained in the resident's record.

The facility is required to provide the resident, the resident's legal representative or designated contact person, if any, with an involuntary or emergency discharge appeal hearing request form at the time of involuntary or emergency discharge notice.

Please refer to 22VAC40-73-430 & 22VAC40-73-435 for requirements relating to involuntary or emergency discharges and involuntary or emergency discharge appeals.

The involuntary or emergency discharge notice form starts on the page after these instructions. The facility must complete the form in its entirety. If needed, the facility can attach additional documentation.

This form can be accessed on the VDSS website and is available in two versions: a fillable PDF and a Microsoft Word document (Doc). Both versions can be completed electronically and must be printed. Please select the version that best suits your preferences and capabilities.

- No additional topics or items may be added to the form.
- Information entered on this form must be fully and accurately disclosed in plain language, easily read, and in at least 12-point type if completed electronically.

Please contact your Licensing Inspector if you have any questions about the involuntary or emergency discharge notice or involuntary or emergency discharge appeal request form.

DO NOT ATTACH THESE INSTRUCTIONS TO THE INVOLUNTARY OR EMERGENCY DISCHARGE NOTICE

ASSISTED LIVING FACILITY INVOLUNTARY OR EMERGENCY DISCHARGE NOTICE

RESIDENT INFORMATION	
Name:	**Phone number:**
Email Address:	
LEGAL REPRESENTATIVE OR DESIGNATED CONTACT PERSON (if applicable)	
Name:	**Phone Number:**
Address:	
Email Address:	**Relationship:**
FACILITY INFORMATION	
Facility Name:	**Phone Number:**
Address:	
Facility Administrator or Designee:	
Email Address:	
DISCHARGE INFORMATION	
Date of Discharge Notice:	**Projected or Actual Discharge Date:**
Type of Discharge (Check only one)	☐ **Involuntary** ☐ **Emergency**

Reason for Discharge
(Must select one or more of the reasons below)

- ☐ **You have a medical condition or care need that is not allowed in an ALF.**
- ☐ **This facility can no longer meet your care needs.**
- ☐ **You did not follow the terms and conditions of your resident agreement.**
- ☐ **You did not pay your monthly charges.**
- ☐ **This facility is closing on .**
- ☐ **This is an Emergency Discharge due to an immediate and serious risk to the health, safety, or welfare of you or others.**

Discharge Details
(Explain circumstances for the involuntary or emergency discharge and reasonable efforts made to resolve issues)

INVOLUNTARY OR EMERGENCY DISCHARGE PLANS	
Resident's Destination:	**Phone Number:**
Address:	

Involuntary or Emergency Discharge Planning Assistance
(Actions taken by the facility to assist with the discharge and relocation process)

YOUR INVOLUNTARY OR EMERGENCY DISCHARGE APPEAL RIGHTS

You have the right to appeal this involuntary or emergency discharge, unless it is due to the facility closing.

If you were discharged under an involuntary discharge, you have the right to continue to reside in the facility, free from retaliation, until the appeal has a final case decision unless you have developed a condition or care need that is prohibited in § 63.2-1805 D of the Code of Virginia or *Standards for Licensed Assisted Living Facilities*, 22VAC40-73. If you have received an involuntary discharge notice and move out before a final case decision is made on your appeal, you will be considered discharged, regardless of the outcome of your appeal. If you wish to be re-admitted to the facility, you will need to apply as a prospective resident for admission at the facility.

If you are discharged under an emergency discharge and no longer live in the facility, you can still appeal if you file the request within 30 days from the date you received the written discharge notice.

The facility must assist you and your legal representative, if any, to file an appeal and provide, upon your request, a postage prepaid envelope addressed to the VDSS Division of Appeals and Fair Hearings.

HOW TO APPEAL

You may file an appeal by completing the attached involuntary or emergency discharge appeal hearing request form and submitting it to VDSS Division of Appeals and Fair Hearings.

Appeals must be filed within 30 days from the date you received your involuntary or emergency discharge notice.

Discharge Appeal Hearing Requests may be submitted by:
Fax: (804) 726-7656,
Email: appeals@dss.virginia.gov, or
Mail: VDSS Division of Appeals and Fair Hearings
5600 Cox Road Glen Allen, VA. 23060

If you have questions about involuntary or emergency discharge appeals, ~~you may~~ contact:

VDSS Division of Appeals and Fair Hearings
Toll free number: 1-800-552-7096 or
Email: appeals@dss.virginia.gov

If you need help, contact:

Virginia Long-Term Care Ombudsman Program:

Toll free number: 1-800-552-5019 or Email: ombudsman@dars.virginia.gov

SIGNATURES

X	
Licensee, Administrator, or Designee	Date
X	
Resident	Date
X	
Resident's Legal Representative or Designated Contact, if applicable	Date

ASSISTED LIVING FACILITY INVOLUNTARY OR EMERGENCY DISCHARGE APPEAL HEARING REQUEST

Instructions: If you wish to appeal your involuntary or emergency discharge, please complete this form and submit to VDSS Division of Appeals and Fair Hearings within 30 days of receiving your involuntary or emergency discharge notice.

The completed hearing request form and additional documentation can be submitted by fax at (804) 726-7656, email at appeals@dss.virginia.gov or mail to VDSS Division of Appeals and Fair Hearings, 5600 Cox Road, Glen Allen, VA 23060. Please attach a copy of your involuntary or emergency discharge notice.

RESIDENT INFORMATION	
Name:	**Phone Number:**
Current Address:	
Email Address:	
LEGAL REPRESENTATIVE OR DESIGNATED CONTACT PERSON (if applicable)	
Name:	**Phone Number:**
Address:	
Email Address:	**Relationship:**
DISCHARGING FACILITY INFORMATION	
Name:	**Phone Number:**
Address:	
Facility Administrator or Designee:	
Facility Email Address:	

DISCHARGE INFORMATION		
Type of Discharge (Check only one)	☐ **Involuntary**	☐ **Emergency**
Date you received the discharge notice:	**Projected or Actual Discharge Date:**	
Are you still residing at the facility pending the discharge appeal?	☐ **Yes**	☐ **No**
Reason for Discharge:		

Reason for Involuntary or Emergency Discharge Appeal

In the box below, please describe why you disagree with your involuntary or emergency discharge. If more space is needed, you may attach additional pages.

SIGNATURES	
X **Resident**	**Date:**
X **Resident's Legal Representative or Designated Contact, if applicable**	**Date:**