REPORT OF THE
DEPARTMENT OF SOCIAL SERVICES

Report on the Implementation of 2005 Legislation for Assisted Living Facilities

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

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COMMONWEALTH OF VIRGINIA
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COMMONWEALTH OF VIRGINIA
DEPARTMENT OF SOCIAL SERVICES

November 1, 2005

TO: The Honorable Mark R. Warner
Governor, Commonwealth of Virginia

The Honorable Harvey B. Morgan, Chairman
Joint Commission on Health Care

The Honorable Phillip A. Hamilton, Chairman
Committee on Health, Welfare and Institutions

The Honorable Emmett W. Hanger, Jr., Chairman
Committee on Rehabilitation and Social Services

The 2005 General Assembly passed legislation to amend the *Code of Virginia* relative to assisted living facilities. The legislation was intended to increase the care and protection of the Commonwealth's vulnerable adult population. The ninth enactment clause in Chapter 924 of the 2005 Acts of Assembly directs the Department of Social Services to submit a report on the implementation of this act to the Governor and the chairmen of the Joint Commission on Health Care, the House Committee on Health, Welfare and Institutions, and the Senate Committee on Rehabilitation and Social Services by November 1, 2005. The enclosed report addresses the steps taken by the Department of Social Services to implement the 2005 assisted living facility legislation.

Respectfully submitted,

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REPORT ON THE IMPLEMENTATION OF 2005 LEGISLATION FOR ASSISTED LIVING FACILITIES

PREFACE

The 2005 General Assembly enacted legislation to amend the *Code of Virginia* relative to the care and protection of residents in assisted living facilities. Enactment clauses to the legislation were intended to amplify those protections and establish methods and timeframes to implement the amendments. The ninth enactment clause in Chapter 924 of the 2005 Acts of Assembly directs the Department of Social Services to submit a report on the implementation of the legislation to the Governor and the chairmen of the Joint Commission on Health Care, the House Committee on Health, Welfare and Institutions, and the Senate Committee on Rehabilitation and Social Services.

The following report was prepared by the Department of Social Services, and addresses the elements of the legislation being addressed by the Department. The report covers activities that occurred between the enactment of the legislation and September 5, 2005.

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EXECUTIVE SUMMARY

The 2005 General Assembly passed legislation to amend the *Code of Virginia* relative to assisted living facilities. The legislation was intended to increase the care and protection of some of the Commonwealth's most vulnerable adult population. The ninth enactment clause in Chapter 924 of the 2005 Acts of Assembly directs the Department of Social Services to submit a report on the implementation of the assisted living facility legislation to the Governor and the chairmen of the Joint Commission on Health Care, the House Committee on Health, Welfare and Institutions, and the Senate Committee on Rehabilitation and Social Services by November 1, 2005.

The 2005 legislation was proposed in response to growing concerns over the care and protection of Virginia's vulnerable adult population residing in assisted living facilities. A number of stakeholders and agencies representing a wide range of concerns provided input into the legislation.

Elements of Chapter 924 of the 2005 Appropriations Act include the following:

- Increases the ratio of long term care ombudsman to one ombudsman per 2000 long term care beds, subject to sufficient appropriation by the General Assembly;
- Requires licensure of assisted living administrators;
- Requires registration of medication aides;
- Requires applicants for licensure to have background checks;
- Requires provisional licenses to be posted;
- Creates a provision for appointing an interim manager in assisted living facilities;
- Grants authority to the Commissioner for summary suspension of licenses;
- Creates a provision for partial delicensure in lieu of forcible closure;
- Increases the maximum for civil penalties to $10,000 within a 24-month period;
- Adds a statutory base for allowable variances;
- Requires regulations for direct care staff qualifications and training;
- Requires a facility medication management plan;
- Requires a limit on the number of facilities an administrator may be responsible for overseeing;
- Provides requirements for public disclosure of information; and
- Requires referral for MI/MR/SAS populations.

In addition, enactment clauses require the following actions by the Department of Social Services (DSS).

- Requires the State Board of Social Services to promulgate regulations within 280 days of enactment;

- Requires DSS to develop a training module on regulations and statutes, and train all adult inspectors;
- Requires DSS to seek consultation on development of regulations and integrate recommendations from the Department of Mental Health, Mental Retardation and Substance Abuse Services; and
- Requires protocol for the expedited appointment of hearing officers in summary suspension appeals.

Implementation of Legislation

- The state long-term care ombudsman program was granted a ratio of one ombudsman to every 2000 long-term care beds, subject to sufficient appropriation by the General Assembly. This provision was not funded.

- The Department of Health Professions (DHP) Board of Long-Term Care Administrators was established to administer and regulate the licensure of assisted living facility administrators. The first meeting was held in August 2005 and a task force was appointed to develop the curriculum and criteria for licensure. The DHP Board of Nursing has also established a task force to develop the registration process for medication aides and has started meeting. The DSS serves on both of these task forces.

- An exempt regulatory action was approved by the State Board of Social Services on April 20, 2005 to require applicants for licensure to have background checks. This became effective on July 1, 2005.

- An emergency regulation and proposed replacement regulation for 22 VAC 40-80, General Procedures and Information for Licensure, were approved by the State Board of Social Services on August 17, 2005. The effective date of the emergency regulation is December 28, 2005. The regulations provide for implementation of the following provisions:

    - The requirement for provisional licenses to be posted;
    - Procedures for the summary suspension of a license to operate an assisted living facility when conditions or practices exist that pose imminent threat to the health, safety, and welfare of the residents; and
    - Procedures for denying, revoking or summarily suspending a portion of a license to operate an assisted living facility when conditions or practices exist that pose imminent threat to the health, safety, and welfare of the residents have been added to the General Procedures.

  Appropriate provisions for allowable variances already exist in the General Procedures regulation.

- An emergency and proposed replacement regulation for 22 VAC 40-71, Standards and Regulations for Licensed Assisted Living Facilities, were approved by the State Board of Social Services on August 17, 2005. The effective date of the emergency regulation is

December 28, 2005. The regulations provide for implementation of the following provisions:

- Increased requirements for direct care staff qualifications and training;
- Requirements for a facility medication management plan;
- Requirements for determining the number of facilities an administrator may administer;
- Requirements for information a facility must disclose to the public; and
- Requirements for the referral of residents diagnosed with mental illness, mental retardation or substance abuse or who exhibit patterns of behavior related to these diagnoses to a mental health.

In addition, the following steps have been taken by the State Board of Social Services and DSS:

- Protocols for the implementation of the provision for an interim manager when conditions or practices exist that pose an imminent and substantial threat to the health, safety, and welfare of the residents have been developed by the DSS Division of Licensing Programs.
- Criteria that allow a maximum of $10,000 in civil penalties to be issued in any 24-month period was approved by the State Board of Social Services in August 2005. Staff will be trained on these procedures in October 2005.
- The DSS Division of Licensing Programs developed a training module on regulations and statutes relevant to assisted living facilities that was presented to all adult care licensing inspectors in August and September 2005 and is supplemented by a self-paced workbook with exercises and a final knowledge check.
- Sections of the revised regulation for assisted living facilities related to mental health, mental retardation and substance abuse were submitted to DMHMRSAS in April 2005, for input and recommendations. Written recommendations received by DSS from DMHMRSAS were incorporated into the emergency and proposed regulations for assisted living facilities.
- The Office of the Executive Secretary of the Supreme Court of Virginia informed DSS in April 2005 that a protocol regarding the expedited appointment of hearing officers in summary suspension appeals was unnecessary and that the Supreme Court would be required to comply with established timeframes.
- The DSS Division of Licensing Programs will meet with and provide progress updates no less than every six weeks to the Assisted Living Advisory Committee and interested parties.

REPORT ON THE IMPLEMENTATION OF 2005 LEGISLATION FOR ASSISTED LIVING FACILITIES

Study Mandate

The 2005 General Assembly enacted legislation to amend the *Code of Virginia* relative to assisted living facilities (ALFs). The amendments were intended to increase the care and protection of adults residing in ALFs. This report was prepared in response to the ninth enactment clause in Chapter 924 of the 2005 Acts of Assembly.

9. That the Department of Social Services shall submit a report on the implementation of this act to the Governor and the chairmen of the Joint Commission on Health Care, the House Committee on Health, Welfare and Institutions, and the Senate Committee on Rehabilitation and Social Services by November 1, 2005.

Introduction

The rationale for and intent of the 2005 legislation can best be understood by reviewing the history of the assisted living industry which, owing to the pace of change in health care technologies and social policies, evolved from an unsophisticated "rest home" (board and care) model to its present state within 25 years. During that same period, the industry approximately doubled to its current 604 facilities. As is true nationally, the assisted living industry not only experienced heavy growth but became the most diverse and least differentiated component of the long term care industry.

Approximately 13 years ago, partly in response to a 1990 report by the Joint Legislative Audit and Review Commission, a study group of legislators and staff from several agencies laid the initial plans for two-tiered licenses in the industry. The intent was to expand permissible health care and the role of the assisted living facilities, then known as homes for adults, in caring for Virginia's vulnerable adults in non-medical settings. The group recognized that the Commonwealth was aging, that health care costs were rising rapidly, and that people much preferred non-institutional settings that could preserve their connectedness to families and communities. In the years that followed, ongoing advances in medical technology and pharmaceuticals allowed people to spend even less time in hospitals and nursing homes and led to corresponding challenges for the assisted living industry.

The quickening pace of de-institutionalization from the mental health system made similar new demands on the assisted living industry as more seriously impaired patients were placed in ALFs, now continuing as the state moves in response to the Olmstead decision. The availability of community-based mental health treatment services is uneven and stretched, and ALFs are admitting residents whose needs cannot be met by the facility. Most residents with diagnoses of mental illness and mental retardation are also Auxiliary Grant recipients, meaning that resources to meet their needs are more limited – currently about $31 per day.

Life extension through advances in medicine and from the emphasis on healthier life-styles challenged families and the assisted living industry to care for increasing numbers of adults with Alzheimer's and other progressive dementias. The assisted living industry's "aging in place" philosophy also contributed to higher acuity levels among the populations in care.

Moreover, the range as well as the acuity of residents' care needs increased the demands on the industry, which now serves many residents that would have been in nursing homes or hospitals only a few years ago. Examples of the types of residents now in care include not only the frail elderly but those affected by a wide range of conditions, impairments, and disorders, such as strokes, heart disease, cancer, diabetes, pulmonary obstructive disease, AIDS, mental illness, traumatic brain injury, progressive dementia, developmental disabilities, substance abuse, and aged/disabled ex-prisoners. Facilities may offer a range of service that includes both independent living for residents needing little or no actual care and hospice care to terminally ill residents.

Medications have become high risk, escalating the dangers of administration errors, which accounted for almost 16 percent of the nearly 15,000 violations cited in 2004. By law, medication may be administered by non-licensed staffs trained in a curriculum approved by the Board of Nursing. In separate legislation, the 2005 Assembly added permission for non-licensed staff to perform gastric tube feeding under the supervision of a registered nurse.

With the exception of adding requirements related to dementia care, standards for the assisted living industry remained largely as first adopted for the two-tiered licensing system that went into effect in 1996. Regulatory staffing also failed to keep pace with the increasing risks and with the rising workload that was occurring across all the human care industries. For example, from 1993-2005, the Department of Social Services' (DSS) regulatory staff increased by 21 percent while child and adult care facilities increased by 126 percent, consumer capacity increased by 129 percent, and adverse enforcement actions increased ten-fold.

It became increasingly clear that the assisted living industry needed stronger regulations and closer regulatory oversight with stronger enforcement tools, both to protect the increasingly health-impaired people in care and to protect the industry itself. As incidents of preventable injuries and harm increased, so did media reports that began to shake consumer confidence; lawsuits by families increased as well. The legislation discussed in this report was enacted by the 2005 General Assembly without a dissenting vote. It arose first from a genuine concern for residents but also from recognition that, without action, the industry itself could be damaged and its many good services would be overshadowed in the eyes of consumers, lenders, insurance carriers, workers, and the whole array of stakeholders it takes to sustain the industry. Many groups of stakeholders and agencies joined forces to craft a consensus bill that would address fundamental weaknesses in the laws and regulations to keep safe the consumers and the industry that

has emerged to serve the approximately 34,000 people that reside in these facilities, about 20 percent of whom are dependent on Auxiliary Grants.

IMPLEMENTATION OF LEGISLATION

Major provisions in the 2005 ALF legislation and implementation status are addressed below.

Increases ratio of long term care ombudsman to number of beds (§ 2.2-703.)

The state long-term care ombudsman program was granted a ratio of one ombudsman to every 2000 long-term care beds, subject to sufficient appropriations by the General Assembly. This provision was not funded. The Department of Aging is responsible for this statute.

Requires licensure of assisted living administrators (§ 54.1-3102.)

The Department of Health Professions (DHP) Board of Long-Term Care Administrators was established to administer and regulate the licensure of assisted living facility administrators. The first meeting was held on August 10, 2005 and a task force was appointed to develop the curriculum and criteria for licensure. The DSS gave a presentation at this initial meeting on the history, needs and issues within the assisted living industry in Virginia and is serving on the task force.

The first meeting of the task force was held on September 14, 2005 and members were assigned to develop recommendations for the licensure process.

Requires registration of medication aides (§ 54.1-3041.)

The DHP Board of Nursing established a medication aide task force to develop the criteria for the certification of medication aides. The first meeting of the task force was held on July 12, 2005, during which members were divided into separate workgroups; one workgroup is responsible for drafting training program requirements, curriculum, credentials required for teaching personnel, and fees. The second workgroup is responsible for drafting initial and renewal registration requirements, competency evaluation requirements, fees and disciplinary action provisions.

Committees submitted drafts and input to DHP by August 24, 2005. This information was compiled and forwarded to all task force members for meeting held on September 7, 2005.

Requires applicants for licensure to have background checks (§ 63.2-1702.)

The State Board of Social Services approved an exempt regulatory action on April 20, 2005, amending 22 VAC 40-90, Regulation for Criminal Record Checks for Assisted

Living Facilities and Adult Day Care Centers. This action enables DSS to require that an applicant for licensure as an assisted living facility obtain a background check.

Requires provisional licenses to be posted (§ 63.2-1707.)

The requirement for provisional licenses to be posted was added to 22 VAC 40-80, General Procedures and Information for Licensure, and approved by the State Board of Social Services on August 17, 2005. An emergency regulation was approved as was a proposed replacement regulation. Inspection staff from DSS Division of Licensing Programs (DOLP) have been informed of this requirement and provided directions for monitoring compliance.

Creates a provision for an interim manager in assisted living facilities (§ 63.2-1709.)

Protocols for the implementation of the provision of an interim manager when conditions or practices exist that pose an imminent and substantial threat to the health, safety, and welfare of the residents have been developed by the DSS DOLP. Protocols may be implemented in conjunction with any proceeding for revocation, denial, injunction or summary suspension of their facility license. The provision for an interim manager has not been utilized to date.

Grants authority to the Commissioner for summary suspension of licenses (§ 63.2-1709.)

Procedures for the summary suspension of a license to operate an assisted living facility when conditions or practices exist that pose imminent threat to the health, safety, and welfare of the residents were added to the General Procedures and Information for Licensure regulation. Both an emergency regulation and the proposed replacement regulation were approved by the State Board of Social Services on August 17, 2005.

Creates a provision for partial delicensure in lieu of forcible closure (§ 63.2-1709.)

Procedures for denying, revoking or summarily suspending a portion of a license to operate an assisted living facility when conditions or practices exist that pose imminent threat to the health, safety, and welfare of the residents were added to the General Procedures and Information for Licensure regulation. Both an emergency regulation and the proposed replacement regulation were approved by the State Board of Social Services on August 17, 2005.

Increases the maximum for civil penalties to $10,000 (§ 63.2-1709.2.)

The legislation allows a maximum of $10,000 in civil penalties to be issued in any 24-month period and requires the State Board of Social Services to develop criteria for imposition of civil penalties and amounts, expressed in ranges. Civil penalties are issued to facilities when they are out of compliance with the terms of their licenses and the health, safety, and welfare of residents are at risk. Criteria have been developed and were

approved by the State Board of Social Services on August 17, 2005. DSS staff will be trained on these procedures in October 2005. (See Appendix E)

Adds a statutory base for allowable variances (§ 63.2-1732.)

Suitable procedures for the application for and approval of allowable variances currently exist in the General Procedures and Information for Licensure regulation and continue to be available to assisted living licensees.

Requires regulations for direct care staff qualifications and training (§ 63.2-1732.)

Requirements for direct care staff qualifications and training currently exist in 22 VAC 40-71, Standards and Regulations of Licensed Assisted Living Facilities. These requirements have been increased in both an emergency regulation and proposed replacement regulation. The emergency and proposed replacement regulations were approved by the State Board of Social Services on August 17, 2005.

Requires a facility medication management plan (§ 63.2-1732.)

Requirements for a facility mediation management plan were established in the emergency regulation for assisted living facilities and the proposed replacement regulation, approved by the State Board of Social Services on August 17, 2005.

Requires a limit to be set on the number of facilities an administrator may administer
(§ 63.2-1732.)

Requirements for determining the number of facilities an administrator may administer have been established in the emergency regulation for assisted living facilities and the proposed replacement regulation, approved by the State Board of Social Services on August 17, 2005.

Creates requirements for public disclosure information in a common format (§ 63.2-1805.)

Requirements for information a facility must disclose to the public have been established in the emergency regulation for assisted living facilities and the proposed replacement regulation, approved by the State Board of Social Services on August 17, 2005. The format for the disclosure statement will be completed by November 15, 2005 and enforced upon implementation of the emergency regulation.

Requires referral for MI/MR/SAS populations upon indication of need (§ 63.2-1805.)

Requirements for the referral of residents diagnosed with mental illness, mental retardation or substance abuse or, who exhibit patterns of behavior related to these

diagnoses, to a mental health provider have been established in the emergency regulation for assisted living facilities and the proposed replacement regulation. Both regulations were approved by the State Board of Social Services on August 17, 2005.

CHAPTER 924, 2005 ACTS OF ASSEMBLY, ENACTMENT CLAUSES

In addition to the above, enactment clauses in the 2005 ALF legislation require the following actions by DSS:

Requires State Board of Social Services promulgation of regulations within 280 days (#8.)

An emergency regulation for 22 VAC 40-71, Standard and Regulations for Licensed Assisted Living Facilities, and 22 VAC 40-80, General Procedures and Information for Licensure, encompass the contents of the legislation and were approved by the State Board of Social Services on August 17, 2005. The emergency regulations become effective on December 28, 2005.

Requires DSS to develop training for adult care licensing inspectors on regulations and statutes (#10.)

The DSS DOLP developed a training module on regulations and statutes relevant to assisted living facilities that was presented to all adult care licensing inspectors on August 30-31, 2005 and September 7-8, 2005, and supplemented by a self-paced workbook with exercises and a final knowledge check. Inspectors and licensing supervisors will choose one of the two training sessions in which to participate. In addition, all adult inspectors are required to attend UAI (Uniform Assessment Instrument) training, ISP (Individualized Service Plan) training, and APS (Adult Protective Services) Mandated Reporter training prior to October 1, 2005.

This training will be evaluated and revised at the conclusion of the initial training and presented within 60 days to all adult inspectors who are employed subsequent to the initial training. The three external training modules will also be required.

Requires DSS to seek consultation on development of regulations and integrate recommendations from DMHMRSAS (#11.)

The DSS DOLP posted a website from May 10, 2005 to June 30, 2005 to seek recommendations for the proposed emergency and replacement regulations for assisted living facilities. 133 comments/recommendations were received. DOLP met with the Assisted Living Advisory Committee on June 22, 2005 to review the major areas of change to the regulations and seek comments and recommendations (see Appendix F for committee membership). During the months of April, May, June and July 2005, DOLP representatives made presentations to members of the Board of Social Services, the Virginia Assisted Living Association (VALA), the Virginia Adult Home Association (VAHA), the Virginia Health Care Association (VHCA) and the Virginia Association for

Non-Profit Homes for Adults (VANHA) to review the requirements of the legislation and discuss potential revisions to the regulations.

Sections of the revised regulations for assisted living facilities related to mental health, mental retardation and substance abuse were submitted to the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) on April 14, 2005 for input and recommendations. DOLP met with representatives of DMHMRSAS on April 25, 2005 to review the proposed regulations and discuss any concerns. Written recommendations were received by DSS from DMHMRSAS on April 26, 2005 and incorporated into the emergency and proposed regulations for assisted living facilities.

Requires protocol for expedited appointment of hearing officers (#12.)

The DSS contacted the Office of the Executive Secretary of the Supreme Court of Virginia on April 27, 2005 to discuss the requirements of the legislation in regard to summary suspension of licenses and the need for expedited appointment of hearing officers. Currently, it normally takes approximately 60 days to obtain the services of a hearing officer for actions required by the Administrative Process Act (APA). The Executive Secretary informed DSS that a protocol was unnecessary and that DSS should communicate to his office when the hearing officer request is an emergency. The DSS was also informed that DOLP could establish a short time frame for the hearing and that the Supreme Court would be required to comply. If the hearing officer is not willing to comply with the time frame, the DSS will ask for a different hearing officer. If the hearing officer does not comply once appointed, DSS will follow the procedures in the APA for removal of the hearing officer.

PROGRESS UPDATES

The DSS Division of Licensing Programs will meet with the Assisted Living Advisory Committee and interested parties no less than every six weeks. The purpose will be to provide progress updates on the implementation of the ALF legislation and regulations.

APPENDIX A
Study Mandate

Chapter 924, 2005 Acts of Assembly

9. That the Department of Social Services shall submit a report on the implementation of this act to the Governor and the chairmen of the Joint Commission on Health Care, the House Committee on Health, Welfare and Institutions, and the Senate Committee on Rehabilitation and Social Services by November 1, 2005.

APPENDIX B
SUMMARY OF CHAPTER 924 OF THE 2005 ACTS OF ASSEMBLY

1. **OMBUDSMAN RATIO**
   - Department for Aging to establish a ratio of one Ombudsman per 2000 Long Term Care beds, subject to sufficient appropriation by the General Assembly

2. **LICENSURE OF ALF ADMINISTRATORS**
   - Licensure of ALF Administrators by Department of Health Professions (DHP)
     - Licensed administrator required only for assisted living level ALFs
     - Board of Nursing Home Administrators expanded to become Board of Long Term Care Administrators
   - Enactment Timeframe:
     - DHP to convene taskforce; reports by 11/1/05 and 11/1/06
     - Regulation effective 7/1/07; enforcement 12 months later
   - State Board of Social Services to adopt regulations regarding:
     - Number of ALFs a licensed administrator may serve; statutory criteria specified
     - Permissible period to operate without a licensed administrator during turnover transitions

3. **REGISTRATION OF MEDICATION ADMINISTRATION AIDES**
   - Registration of medication aides by DHP, Board of Nursing (BON), which promulgates regulations to:
     - Approve training programs, including requirements for instructional personnel, curriculum, continuing education and competency evaluation
     - Competency evaluation for registration
     - Comport with Board of Pharmacy (security and record-keeping), with State Board of Social Services' and facility's Medication Management Plan, and with other BON requirements
   - Enactment timeframes:
     - Convene taskforce; report to General Assembly by 12/05
     - Final regulations by 7/07; enforcement 12 months later

4. **APPLICANTS TO HAVE BACKGROUND CHECKS (§63.2-1702)**

5. **PROVISIONAL LICENSES TO BE POSTED (§63.2-1707)**
   - Must be posted at all entrances
   - Must be legible in size and style
   - Must have notice posted adjacent giving location of violation report, with correction dates, and on facility website, if applicable

6. **PROVISION FOR INTERIM MANAGER (§63.2-1709, A)**
   - Commissioner may require facility to appoint interim manager
     - When imminent and substantial risk involved

- But not if defects in premises pose imminent and substantial risks and could not be corrected in a reasonable time
- Right of appeal per APA
- Facility bears costs

7. SUMMARY SUSPENSION PROVISION (§63.2-1709, C)

- Summary Suspension provisions added to Commissioner's powers
  - Concurrent with revocation, denial, other action
  - Notice of reasons and procedures required
  - Appeal heard by VA Supreme Court roster Hearing Officer within 15 days or 25 with granted continuance
  - Appeal to Circuit Court to be filed within 10 days of Commissioner's resulting order
- Court considers only the suspension;
- Court's decision does not impact decisions on concurrent enforcement proceedings
  - Posting order or the facility's summary and location of the order required non-compliance an offense
  - Agencies to assist with relocation

8. PARTIAL DELICENSURE, IN LIEU OF FORCIBLE CLOSURE (§63.2-1709, D)

- Provision for partial suspension, revocation or denial added to Commissioner's powers. May modify license to limit facility's authority to provide certain services or functions
- May be appealed as any other denial, revocation or summary suspension

9. INCREASE IN CIVIL PENALTY CAP, WITH TERMS AND CONDITIONS (§63.2-1709.2)

- Civil penalty amount increased, not to exceed $10,000 within 24-month period
- Fines collected go to non-reverting training fund
- State Board of Social Services required to develop criteria
  - For imposition and amounts, in ranges, based on severity, pervasiveness, duration and degree of risk to health, safety or welfare of residents
- Commissioner may accept a plan of correction prior to setting penalty and may reduce or abate penalty if facility complies within terms of plan
- Single act not to have multiple fines
- Licenses not to be renewed if fine and any interest due, not paid unless appeal is pending

10. ADDITION OF STATUTORY BASE FOR ALLOWABLE VARIANCE PROCEDURES (§63.2-1732, A)

- Provision for allowable variance procedures
  - [Note: General Procedures and Information for Licensure regulation adequately covers procedures]

11. PROVISION TO ADOPT REGULATIONS ON DIRECT CARE STAFF QUALIFICATIONS AND TRAINING (§63.2-1732, B)

- State Board of Social Services to adopt regulations on qualifications and training for employees in direct care positions
  - supervisors, assistants, aides, others who assist with daily living activities

12. **REQUIREMENT FOR MEDICATION MANAGEMENT PLAN ADDED (§63.2-1732, C)**
    - State Board of Social Services to develop regulations for a Medication Management Plan in consultation with Boards of Nursing and Pharmacy, to include:
        - Plan elements/understanding
        - Staff qualifications, training and supervision
        - Documentation of daily medication administration
        - Internal compliance monitoring
        - DSS approval
    - Provides that failure to comply is subject to sanctions

13. **REQUIREMENT TO LIMIT FACILITIES A LICENSED ADMINISTRATOR MAY ADMINISTER (§63.2-1732, F)**
    - State Board of Social Services, in developing regulations related to number of facilities a licensed administrator of record may have, is to consider:
        - Number of residents in each of the facilities
        - Travel time between each of the facilities
        - Qualifications of the on-site manager the administrator of record supervises

14. **PROVISION FOR CONSISTENT PUBLIC DISCLOSURE INFORMATION (§63.2-1805, A, 2)**
    - State Board of Social Services to adopt regulation requiring facility to provide a disclosure statement – in a format prescribed by DSS – to prospective resident and any legal representative on admission or request that is full, accurate and in plain language concerning:
        - Services included in base or additional fees
        - Criteria for admission, transfer and discharge to higher level or from facility
        - General number and qualifications of staff per shift
        - Range, frequency and number of activities provided
        - Facility's ownership structure

15. **REFERRAL REQUIREMENTS ON BEHALF OF MI/MR/SA POPULATIONS (§63.2-1805, B)**
    - State Board of Social Services to adopt regulations requiring facility administrator, if indicators of mental illness, retardation, substance abuse, or behavioral disorders are observed, documented in UAI, to ensure following actions for resident:
        - Evaluation by qualified professional
        - Notification to authorized contact person
        - Notification to CSB or other licensed provider
    - Department not to sanction if facility demonstrates and documents continual good faith effort to comply

16. **EMERGENCY ENACTMENT PROVISIONS FOR STATE BOARD OF SOCIAL SERVICES REGULATIONS**
    - Promulgate regulations within 280 days

17. **ENACTMENT PROVISION FOR EXECUTIVE SECRETARY OF THE SUPREME COURT AND THE DEPARTMENT OF SOCIAL SERVICES**
    - To establish a protocol for the expedited appointment of a hearing officer to comply with subsection C of § 63.2-1709.
      [Note: Executive Secretary of Supreme Court determined such protocol unnecessary]

18. **DSS TO REPORT ON IMPLEMENTATION TO GOVERNOR AND DESIGNATED ASSEMBLY COMMITTEES**
    - Submit by 11/1/05

19. **DEVELOP TRAINING MODULE FOR ADULT LICENSING STAFFS ON ALFS, STATUTES AND REGULATIONS BY 10/1/05; SUBSEQUENT EMPLOYEES TO BE TRAINED WITHIN 60 DAYS OF EMPLOYMENT**

20. **DSS TO SEEK CONSULTATION AND INFORMATION FROM ALL RELEVANT AGENCIES OF GOVERNMENT IN ITS DEVELOPMENT OF REGULATIONS AND POLICIES FOR IMPLEMENTATION**

21. **DSS TO INTEGRATE INTO ITS REGULATIONS AND POLICIES THE STANDARDS CONSISTENT WITH DMHMRSAS RECOMMENDATIONS TO ENSURE APPROPRIATE CARE FOR SUCH RESIDENTS; DMHMRSAS TO COOPERATE FULLY IN DEVELOPMENT OF THESE STANDARDS**

22. **2005 NON-OMNIBUS ALF BILLS**
    - House Bill 1980 (Howell) establishes a day of recognition for people who work in long term care
    - House Bill 2807 (Scott) modifies and expands an existing exception to the general prohibition against ALFs' serving residents with gastric tubes.
      - Allows ALF staffs to provide tube feeding under the supervision of a registered nurse

23. **2005 APPROPRIATIONS ACT**
- Item 359.1. Increase AG rate to $944/month, with $62 personal allowance
- Item 21. F. JLARC to report on the impact of new ALF regulations on the cost of providing services, access to services and tangible improvements

APPENDIX C
2005 ACTS OF ASSEMBLY

CHAPTER 924

An Act to amend and reenact §§ 2.2-703, 54.1-2503, 54.1-3005, 54.1-3007, 54.1-3100, 54.1-3101, 54.1-3102, 54.1-3103, 54.1-3408, 63.2-1702, 63.2-1707, 63.2-1709, 63.2-1721, 63.2-1732, 63.2-1803, and 63.2-1805 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 30 of Title 54.1 an article numbered 7, consisting of sections numbered 54.1-3041, 54.1-3042, and 54.1-3043, by adding in Chapter 31 of Title 54.1 a section numbered 54.1-3103.1, and by adding sections numbered 63.2-1709.1, 63.2-1709.2, and 63.2-1803.1, relating to assisted living facilities; civil penalty.

[H 2512]
Approved April 6, 2005

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-703, 54.1-2503, 54.1-3005, 54.1-3007, 54.1-3100, 54.1-3101, 54.1-3102, 54.1-3103, 54.1-3408, 63.2-1702, 63.2-1707, 63.2-1709, 63.2-1721, 63.2-1732, 63.2-1803, and 63.2-1805 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 30 of Title 54.1 an article numbered 7, consisting of sections numbered 54.1-3041, 54.1-3042, and 54.1-3043, by adding in Chapter 31 of Title 54.1 a section numbered 54.1-3103.1, and by adding sections numbered 63.2-1709.1, 63.2-1709.2, and 63.2-1803.1 as follows:

§ 2.2-703. Powers and duties of Department with respect to aging persons; area agencies on aging.

A. The mission of the Department shall be to improve the quality of life for older Virginians and to act as a focal point among state agencies for research, policy analysis, long-range planning, and education on aging issues. The Department shall also serve as the lead agency in coordinating the work of state agencies on meeting the needs of an aging society. The Department's policies and programs shall be designed to enable older persons to be as independent and self-sufficient as possible. The Department shall promote local participation in programs for older persons, evaluate and monitor the services provided for older Virginians and provide information to the general public. In furtherance of this mission, the Department shall have, without limitation, the following duties to:

1. Study the economic and physical condition of the residents in the Commonwealth whose age qualifies them for coverage under Public Law 89-73 or any law amendatory or supplemental thereto of the Congress of the United States, and the employment, medical, educational, recreational and housing facilities available to them, with the view of determining the needs and problems of such persons;

2. Determine the services and facilities, private and governmental and state and local, provided for and available to older persons and to recommend to the appropriate persons such

coordination of and changes in such services and facilities as will make them of greater benefit to older persons and more responsive to their needs;

3. Act as the single state agency, under Public Law 89-73 or any law amendatory or supplemental thereto of the Congress of the United States, and as the sole agency for administering or supervising the administration of such plans as may be adopted in accordance with the provisions of such laws. The Department may prepare, submit and carry out state plans and shall be the agency primarily responsible for coordinating state programs and activities related to the purposes of, or undertaken under, such plans or laws;

4. Apply, with the approval of the Governor, for and expend such grants, gifts or bequests from any source that becomes available in connection with its duties under this section, and may comply with such conditions and requirements as may be imposed in connection therewith;

5. Hold hearings and conduct investigations necessary to pass upon applications for approval of a project under the plans and laws set out in subdivision 3, and shall make reports to the Secretary of the United States Department of Health and Human Services as may be required;

6. Designate area agencies on aging pursuant to Public Law 89-73 or any law amendatory or supplemental thereto of the Congress of the United States and to adopt regulations for the composition and operation of such area agencies on aging;

7. Provide information to consumers and their representatives concerning the recognized features of special care units. Such information shall educate consumers and their representatives on how to choose special care and may include brochures and electronic bulletin board notices;

8. Provide staff support to the Commonwealth Council on Aging;

9. Assist state, local, and nonprofit agencies, including, but not limited to, area agencies on aging, in identifying grant and public-private partnership opportunities for improving services to elderly Virginians;

10. Contract with a not-for-profit Virginia corporation granted tax-exempt status under § 501 (c) (3) of the Internal Revenue Code with statewide experience in Virginia in conducting a state long-term care ombudsman program or designated area agencies on aging for the administration of the ombudsman program. *Such contract shall provide a minimum staffing ratio of one ombudsman to every 2,000 long-term care beds, subject to sufficient appropriations by the General Assembly.* The Department may also contract with such entities for the administration of elder rights programs as authorized under Public Law 89-73, such as insurance counseling and assistance, and to create an elder information/elder rights center;

11. Serve as the focal point for the rights of older Virginians and their families by establishing, maintaining and publicizing a toll-free number to provide resource and referral information, and to provide such other assistance and advice as may be requested; and

12. Develop and maintain a four-year plan for aging services in the Commonwealth, including but not limited to identifying collaborative opportunities with other state and local agencies and programs to better serve the needs of an aging society. This plan shall be developed by the Department in consultation with relevant stakeholders.

B. The governing body of any county, city or town may appropriate funds for support of area agencies on aging designated pursuant to subdivision A 6.

C. All agencies of the Commonwealth shall assist the Department in effectuating its functions in accordance with its designation as the single state agency as required in subdivision A 3.

D. As used in this chapter, "older Virginians" or "older persons" mean persons aged 60 years or older.

§ 54.1-2503. Boards within Department.

In addition to the Board of Health Professions, the following boards are included within the Department: Board of Audiology and Speech-Language Pathology, Board of Counseling, Board of Dentistry, Board of Funeral Directors and Embalmers, *Board of Long-Term Care Administrators,* Board of Medicine, Board of Nursing, ~~Board of Nursing Home Administrators,~~ Board of Optometry, Board of Pharmacy, Board of Physical Therapy, Board of Psychology, Board of Social Work and Board of Veterinary Medicine.

§ 54.1-3005. Specific powers and duties of Board.

In addition to the general powers and duties conferred in this title, the Board shall have the following specific powers and duties:

1. To prescribe minimum standards and approve curricula for educational programs preparing persons for licensure or certification under this chapter;

2. To approve programs that meet the requirements of this chapter and of the Board;

3. To provide consultation service for educational programs as requested;

4. To provide for periodic surveys of educational programs;

5. To deny or withdraw approval from educational programs for failure to meet prescribed standards;

6. To provide consultation regarding nursing practice for institutions and agencies as requested and investigate illegal nursing practices;

7. To keep a record of all its proceedings;

8. To certify and maintain a registry of all certified nurse aides and to promulgate regulations consistent with federal law and regulation. The Board shall require all schools to demonstrate their compliance with § 54.1-3006.2 upon application for approval or reapproval, during an on-site visit, or in response to a complaint or a report of noncompliance. The Board may impose a fee pursuant to § 54.1-2401 for any violation thereof. Such regulations may include standards for the authority of licensed practical nurses to teach nurse aides;

9. To approve programs that entitle professional nurses to be registered as clinical nurse specialists and to prescribe minimum standards for such programs;

10. To maintain a registry of clinical nurse specialists and to promulgate regulations governing clinical nurse specialists;

11. To certify and maintain a registry of all certified massage therapists and to promulgate regulations governing the criteria for certification as a massage therapist and the standards of professional conduct for certified massage therapists;

12. To promulgate regulations for the delegation of certain nursing tasks and procedures not involving assessment, evaluation or nursing judgment to an appropriately trained unlicensed person by and under the supervision of a registered nurse, who retains responsibility and accountability for such delegation;

13. To develop and revise as may be necessary, in coordination with the Boards of Medicine and Education, guidelines for the training of employees of a school board in the administration of insulin and glucagon for the purpose of assisting with routine insulin injections and providing emergency treatment for life-threatening hypoglycemia. The first set of such guidelines shall be finalized by September 1, 1999, and shall be made available to local school boards for a fee not to exceed the costs of publication;

14. To enter into the Nurse Licensure Compact as set forth in this chapter and to promulgate regulations for its implementation; ~~and~~

15. To collect, store and make available nursing workforce information regarding the various categories of nurses certified, licensed or registered pursuant to § 54.1-3012.1*;*

16. To register medication aides and promulgate regulations governing the criteria for such registration and standards of conduct for medication aides; and

17. To approve training programs for medication aides to include requirements for instructional personnel, curriculum, continuing education, and a competency evaluation.

§ 54.1-3007. Refusal, revocation or suspension, censure or probation.

The Board may refuse to admit a candidate to any examination, refuse to issue a license ~~or~~*,* certificate*, or registration* to any applicant and may suspend any license, certificate*, registration,* or multistate licensure privilege for a stated period or indefinitely, or revoke any license,

certificate*, registration,* or multistate licensure privilege, or censure or reprimand any licensee, certificate holder*, registrant,* or multistate licensure privilege holder, or place him on probation for such time as it may designate for any of the following causes:

1. Fraud or deceit in procuring or attempting to procure a license*, certificate, or registration*;

2. Unprofessional conduct;

3. Willful or repeated violation of any of the provisions of this chapter;

4. Conviction of any felony or any misdemeanor involving moral turpitude;

5. Practicing in a manner contrary to the standards of ethics or in such a manner as to make his practice a danger to the health and welfare of patients or to the public;

6. Use of alcohol or drugs to the extent that such use renders him unsafe to practice, or any mental or physical illness rendering him unsafe to practice;

7. The denial, revocation, suspension or restriction of a license, certificate*, registration,* or multistate licensure privilege to practice in another state, the District of Columbia or a United States possession or territory; or

8. Abuse, negligent practice, or misappropriation of a patient's or resident's property.

Article 7.
Medication Aides.

§ 54.1-3041. Registration required.

A medication aide who administers drugs that would otherwise be self-administered to residents in an assisted living facility licensed by the Department of Social Services shall be registered by the Board.

§ 54.1-3042. Application for registration by competency evaluation.

Every applicant for registration as a medication aide by competency evaluation shall pay the required application fee and shall submit written evidence that the applicant:

1. Has not committed any act that would be grounds for discipline or denial of registration under this article; and

2. Has met the criteria for registration including successful completion of an education or training program approved by the Board.

§ 54.1-3043. Continuing training required.

Every applicant for registration as a medication aide shall complete ongoing training related to the administration of medications as required by the Board.

CHAPTER 31.
NURSING HOME *AND ASSISTED LIVING FACILITY* ADMINISTRATORS.

§ 54.1-3100. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Assisted living facility" means any public or private assisted living facility, as defined in § 63.2-100, that is required to be licensed as an assisted living facility by the Department of Social Services under the provisions of Subtitle IV (§ 63.2-1700 et seq.) of Title 63.2.

"Assisted living facility administrator" means any individual charged with the general administration of an assisted living facility, regardless of whether he has an ownership interest in the facility.

"Board" means the Board of ~~Nursing Home~~ *Long-Term Care* Administrators.

"Nursing home" means any public or private facility required to be licensed as a nursing home under the provisions of Chapter 5 (§ 32.1-123 et seq.) of Title 32.1 and the regulations of the Board of Health.

"Nursing home administrator" means any individual charged with the general administration of a nursing home regardless of whether he has an ownership interest in the facility.

§ 54.1-3101. Board of Long-Term Care Administrators; terms; officers; quorum; special meetings.

The Board of Long-Term Care Administrators is established as a policy board, within the meaning of § 2.2-2100, in the executive branch of state government. The Board of ~~Nursing Home~~ *Long-Term Care* Administrators shall consist of ~~seven members, four~~ *nine nonlegislative citizen members to be appointed by the Governor. Nonlegislative citizen members shall be appointed as follows: three* who are licensed nursing home administrators~~,~~*; three who are assisted living facility administrators;* two who are from professions and institutions concerned with the care and treatment of chronically ill and elderly *or mentally impaired* patients~~,~~ *or residents;* and one who is a resident of a nursing home *or assisted living facility* or a family member *or guardian* of a resident of a nursing home *or assisted living facility*. ~~Two~~ *One* of the licensed nursing home administrators shall be ~~administrators~~ *an administrator* of *a* proprietary nursing ~~homes~~ *home*. *Nonlegislative citizen members of the Board shall be citizens of the Commonwealth.*

After the initial staggering of terms, the terms of Board members shall be four years. *Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments. All members may be reappointed consistent with § 54.1-107.*

The Board shall annually elect a chairman *and vice chairman from among its membership*. ~~Four~~ *Five* members of the Board, including one who is not a licensed nursing home administrator *or assisted living facility administrator*, shall constitute a quorum. Special meetings of the Board shall be called by the chairman upon the written request of any three members.

All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of expenses shall be provided by the Department of Health Professions.

The Department of Health Professions shall provide staff support to the Board. All agencies of the Commonwealth shall provide assistance to the Board, upon request.

The Board shall be authorized to promulgate canons of ethics under which the professional activities of persons regulated shall be conducted.

§ 54.1-3102. License required.

A. In order to engage in the general administration of a nursing home, it shall be necessary to hold a nursing home administrator's license issued by the Board.

B. In order to engage in the general administration of an assisted living facility, it shall be necessary to hold an assisted living facility administrator's license or a nursing home administrator's license issued by the Board. However, an administrator of an assisted living facility licensed only to provide residential living care, as defined in § 63.2-100, shall not be required to be licensed.

§ 54.1-3103. Administrator required for operation of nursing home; operation after death, illness, etc., of administrator; notification of Board.

All licensed nursing homes within the Commonwealth shall be under the supervision of an administrator licensed by the Board. If a licensed nursing home administrator dies, becomes ill, resigns or is discharged, the nursing home ~~which~~ *that* was administered by him at the time of his death, illness, resignation or discharge may continue to operate until his successor qualifies, but in no case for longer than ~~six months~~ *is permitted by the licensing authority for the nursing home*. The temporary supervisor or administrator shall immediately notify the Board of ~~Nursing Home~~ *Long-Term Care* Administrators and the Commissioner of Health that the nursing home is operating without the supervision of a licensed nursing home administrator.

§ 54.1-3103.1. Administrator required for operation of assisted living facility; operation after death, illness, etc., of administrator; notification of Board; administrators operating more than one facility.

A. All licensed assisted living facilities within the Commonwealth shall be under the supervision of an administrator licensed by the Board, except as provided in subsection B of § 54.1-3102. If a licensed assisted living facility administrator dies, becomes ill, resigns, or is discharged, the assisted living facility that was administered by him at the time of his death, illness, resignation,

or discharge may continue to operate until his successor qualifies, but in no case for longer than is permitted by the licensing authority for the facility. The temporary supervisor or administrator shall immediately notify the Board of Long-Term Care Administrators and the Commissioner of the Department of Social Services that the assisted living facility is operating without the supervision of a licensed assisted living facility administrator.

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

§ 54.1-3408. Professional use by practitioners.

A. A practitioner of medicine, osteopathy, podiatry, dentistry, or veterinary medicine or a licensed nurse practitioner pursuant to § 54.1-2957.01, a licensed physician assistant pursuant to § 54.1-2952.1, or a TPA-certified optometrist pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32 of this title shall only prescribe, dispense, or administer controlled substances in good faith for medicinal or therapeutic purposes within the course of his professional practice.

B. The prescribing practitioner's order may be on a written prescription or pursuant to an oral prescription as authorized by this chapter. The prescriber may administer drugs and devices, or he may cause them to be administered by a nurse, physician assistant or intern under his direction and supervision, or he may prescribe and cause drugs and devices to be administered to patients in state-owned or state-operated hospitals or facilities licensed as hospitals by the Board of Health or psychiatric hospitals licensed by the State Mental Health, Mental Retardation and Substance Abuse Services Board by other persons who have been trained properly to administer drugs and who administer drugs only under the control and supervision of the prescriber or a pharmacist or a prescriber may cause drugs and devices to be administered to patients by emergency medical services personnel who have been certified and authorized to administer such drugs and devices pursuant to Board of Health regulations governing emergency medical services and who are acting within the scope of such certification. A prescriber may authorize a certified respiratory therapy practitioner as defined in § 54.1-2954 to administer by inhalation controlled substances used in inhalation or respiratory therapy.

C. Pursuant to an oral or written order or standing protocol, the prescriber, who is authorized by state or federal law to possess and administer radiopharmaceuticals in the scope of his practice, may authorize a nuclear medicine technologist to administer, under his supervision, radiopharmaceuticals used in the diagnosis or treatment of disease.

D. Pursuant to an oral or written order or standing protocol issued by the prescriber within the course of his professional practice, such prescriber may authorize registered nurses and licensed practical nurses to possess (i) epinephrine for administration in treatment of emergency medical conditions and (ii) heparin and sterile normal saline to use for the maintenance of intravenous access lines.

Pursuant to the regulations of the Board of Health, certain emergency medical services technicians may possess and administer epinephrine in emergency cases of anaphylactic shock.

E. Pursuant to an oral or written order or standing protocol issued by the prescriber within the course of his professional practice, such prescriber may authorize licensed physical therapists to possess and administer topical corticosteroids, topical lidocaine, and any other Schedule VI topical drug.

F. Pursuant to an oral or written order or standing protocol issued by the prescriber within the course of his professional practice, and in accordance with policies and guidelines established by the Department of Health pursuant to § 32.1-50.2, such prescriber may authorize registered nurses or licensed practical nurses under the immediate and direct supervision of a registered nurse to possess and administer tuberculin purified protein derivative (PPD) in the absence of a prescriber. The Department of Health's policies and guidelines shall be consistent with applicable guidelines developed by the Centers for Disease Control and Prevention for preventing transmission of mycobacterium tuberculosis and shall be updated to incorporate any subsequently implemented standards of the Occupational Safety and Health Administration and the Department of Labor and Industry to the extent that they are inconsistent with the Department of Health's policies and guidelines. Such standing protocols shall explicitly describe the categories of persons to whom the tuberculin test is to be administered and shall provide for appropriate medical evaluation of those in whom the test is positive. The prescriber shall ensure that the nurse implementing such standing protocols has received adequate training in the practice and principles underlying tuberculin screening.

The Health Commissioner or his designee may authorize registered nurses, acting as agents of the Department of Health, to possess and administer, at the nurse's discretion, tuberculin purified protein derivative (PPD) to those persons in whom tuberculin skin testing is indicated based on protocols and policies established by the Department of Health.

G. Pursuant to a written order or standing protocol issued by the prescriber within the course of his professional practice, such prescriber may authorize, with the consent of the parents as defined in § 22.1-1, an employee of a school board who is trained in the administration of insulin and glucagon to assist with the administration of insulin or administer glucagon to a student diagnosed as having diabetes and who requires insulin injections during the school day or for whom glucagon has been prescribed for the emergency treatment of hypoglycemia. Such authorization shall only be effective when a licensed nurse, nurse practitioner, physician or physician assistant is not present to perform the administration of the medication.

H. A prescriber may authorize, pursuant to a protocol approved by the Board of Nursing, the administration of vaccines to adults for immunization, when a practitioner with prescriptive authority is not physically present, (i) by licensed pharmacists, (ii) by registered nurses, or (iii) licensed practical nurses under the immediate and direct supervision of a registered nurse. A prescriber acting on behalf of and in accordance with established protocols of the Department of Health may authorize the administration of vaccines to any person by a pharmacist or nurse when the prescriber is not physically present.

I. A dentist may cause Schedule VI topical drugs to be administered under his direction and supervision by either a dental hygienist or by an authorized agent of the dentist.

Further, pursuant to a written order and in accordance with a standing protocol issued by the dentist in the course of his professional practice, a dentist may authorize a dental hygienist under his general supervision, as defined in § 54.1-2722, to possess and administer topical oral fluorides, topical oral anesthetics, topical and directly applied antimicrobial agents for treatment of periodontal pocket lesions, as well as any other Schedule VI topical drug approved by the Board of Dentistry.

J. This section shall not prevent the administration of drugs by a person who has satisfactorily completed a training program for this purpose approved by the Board of Nursing and who administers such drugs in accordance with a physician's instructions pertaining to dosage, frequency, and manner of administration, and in accordance with regulations promulgated by the Board of Pharmacy relating to security and record keeping, when the drugs administered would be normally self-administered by (i) a resident of a facility licensed or certified by the ~~State~~ *Department of* Mental Health, Mental Retardation and Substance Abuse Services ~~Board~~; (ii) ~~a resident of any assisted living facility which is licensed by the Department of Social Services; (iii)~~ a resident of the Virginia Rehabilitation Center for the Blind and Vision Impaired; ~~(iv)~~ *(iii)* a resident of a facility approved by the Board or Department of Juvenile Justice for the placement of children in need of services or delinquent or alleged delinquent youth; ~~(v)~~ *(iv)* a program participant of an adult day-care center licensed by the Department of Social Services; or ~~(vi)~~ *(v)* a resident of any facility authorized or operated by a state or local government whose primary purpose is not to provide health care services.

K. *Medication aides registered by the Board of Nursing pursuant to Article 7 (§ 54.1-3041 et seq.) of Chapter 30 may administer drugs that would otherwise be self-administered to residents of any assisted living facility licensed by the Department of Social Services. A registered medication aide shall administer drugs pursuant to this section in accordance with the prescriber's instructions pertaining to dosage, frequency, and manner of administration; in accordance with regulations promulgated by the Board of Pharmacy relating to security and recordkeeping; in accordance with the assisted living facility's Medication Management Plan; and in accordance with such other regulations governing their practice promulgated by the Board of Nursing.*

L. In addition, this section shall not prevent the administration of drugs by a person who administers such drugs in accordance with a physician's instructions pertaining to dosage, frequency, and manner of administration and with written authorization of a parent, and in accordance with school board regulations relating to training, security and record keeping, when the drugs administered would be normally self-administered by a student of a Virginia public school. Training for such persons shall be accomplished through a program approved by the local school boards, in consultation with the local departments of health.

~~L~~ *M.* In addition, this section shall not prevent the administration or dispensing of drugs and devices by persons if they are authorized by the State Health Commissioner in accordance with protocols established by the State Health Commissioner pursuant to § 32.1-42.1 when (i) the Governor has declared a disaster or a state of emergency caused by an act of terrorism or the United States Secretary of Health and Human Services has issued a declaration of an actual or potential bioterrorism incident or other actual or potential public health emergency; (ii) it is

necessary to permit the provision of needed drugs or devices; and (iii) such persons have received the training necessary to safely administer or dispense the needed drugs or devices. Such persons shall administer or dispense all drugs or devices under the direction, control and supervision of the State Health Commissioner.

~~M~~ *N*. Nothing in this title shall prohibit the administration of normally self-administered oral or topical drugs by unlicensed individuals to a person in his private residence.

~~N~~ *O*. This section shall not interfere with any prescriber issuing prescriptions in compliance with his authority and scope of practice and the provisions of this section to a Board agent for use pursuant to subsection G of § 18.2-258.1. Such prescriptions issued by such prescriber shall be deemed to be valid prescriptions.

~~O~~ *P*. Nothing in this title shall prevent or interfere with dialysis care technicians or dialysis patient care technicians who are certified by an organization approved by the Board of Health Professions pursuant to Chapter 27.01 (§ 54.1-2729.1 et seq.) of this title, in the ordinary course of their duties in a Medicare-certified renal dialysis facility, from administering heparin, topical needle site anesthetics, dialysis solutions, sterile normal saline solution, and blood volumizers, for the purpose of facilitating renal dialysis treatment, when such administration of medications occurs under the orders of a licensed physician, nurse practitioner or physician assistant and under the immediate and direct supervision of a licensed registered nurse.

The dialysis care technician or dialysis patient care technician administering the medications shall have demonstrated competency as evidenced by holding current valid certification from an organization approved by the Board of Health Professions pursuant to Chapter 27.01 (§ 54.1-2729.1 et seq.) of this title.

§ 63.2-1702. Investigation on receipt of application.

Upon receipt of the application the Commissioner shall cause an investigation to be made of the activities, services and facilities of the applicant, of the applicant's financial responsibility, and of his character and reputation or, if the applicant is an association, partnership, limited liability company or corporation, the character and reputation of its officers and agents. In the case of child welfare agencies, the financial records of an applicant shall not be subject to inspection if the applicant submits a current balance sheet and income statement accompanied by a letter from a certified public accountant certifying the accuracy thereof and three credit references. In the case of child welfare agencies *and assisted living facilities*, the character and reputation investigation upon application shall include background checks pursuant to § 63.2-1721; however, a children's residential facility shall comply with the background check requirements contained in § 63.2-1726.

§ 63.2-1707. Issuance or refusal of license; notification; provisional and conditional licenses.

Upon completion of his investigation, the Commissioner shall issue an appropriate license to the applicant if (i) the applicant has made adequate provision for such activities, services and facilities as are reasonably conducive to the welfare of the residents, participants or children over

whom he may have custody or control; (ii) the applicant has submitted satisfactory documentation of financial responsibility such as, but not limited to, a letter of credit, a certified financial statement, or similar documents; (iii) he is, or the officers and agents of the applicant if it is an association, partnership, limited liability company or corporation are, of good character and reputation; and (iv) the applicant and agents comply with the provisions of this subtitle. Otherwise, the license shall be denied. Immediately upon taking final action, the Commissioner shall notify the applicant of such action.

Upon completion of the investigation for the renewal of a license, the Commissioner may issue a provisional license to any applicant if the applicant is temporarily unable to comply with all of the licensure requirements. ~~Such~~ *The* provisional license may be renewed, but the issuance of a provisional license and any renewals thereof shall be for no longer a period than six successive months. *A copy of the provisional license shall be prominently displayed by the provider at each public entrance of the subject facility and shall be printed in a clear and legible size and style. In addition, the facility shall be required to prominently display next to the posted provisional license a notice that a description of specific violations of licensing standards to be corrected and the deadline for completion of such corrections is available for inspection at the facility and on the facility's website, if applicable.*

At the discretion of the Commissioner, a conditional license may be issued to an applicant to operate a new facility in order to permit the applicant to demonstrate compliance with licensure requirements. Such conditional license may be renewed, but the issuance of a conditional license and any renewals thereof shall be for no longer a period than six successive months.

§ 63.2-1709. Enforcement and sanctions; assisted living facilities and adult day care centers; interim administration; receivership, revocation, denial, summary suspension.

A. *Upon receipt and verification by the Commissioner of information from any source indicating an imminent and substantial risk of harm to residents, the Commissioner may require an assisted living facility to contract with an individual licensed by the Board of Long-Term Care Administrators, to be either selected from a list created and maintained by the Department of Medical Assistance Services or selected from a pool of appropriately licensed administrators recommended by the owner of the assisted living facility, to administer, manage, or operate the assisted living facility on an interim basis, and to attempt to bring the facility into compliance with all relevant requirements of law, regulation, or any plan of correction approved by the Commissioner. Such contract shall require the interim administrator to comply with any and all requirements established by the Department to ensure the health, safety, and welfare of the residents. Prior to or upon conclusion of the period of interim administration, management, or operation, an inspection shall be conducted to determine whether operation of the assisted living facility shall be permitted to continue or should cease. Such interim administration, management, or operation shall not be permitted when defects in the conditions of the premises of the assisted living facility (i) present imminent and substantial risks to the health, safety, and welfare of residents, and (ii) may not be corrected within a reasonable period of time. Any decision by the Commissioner to require the employment of a person to administer, manage, or operate an assisted living facility shall be subject to the rights of judicial review and appeal as provided in the Administrative Process Act (§ 2.2-4000 et seq.). Actual and reasonable costs of*

such interim administration shall be the responsibility of and shall be borne by the owner of the assisted living facility.

B. The Board shall adopt regulations for the Commissioner to use in determining when the imposition of administrative sanctions or initiation of court proceedings, severally or jointly, is appropriate in order to ensure prompt correction of violations in assisted living facilities and adult day care centers involving noncompliance with state law or regulation as discovered through any inspection or investigation conducted by the Departments of Social Services, Health, or Mental Health, Mental Retardation and Substance Abuse Services. The Commissioner may impose such sanctions or take such actions as are appropriate for violation of any of the provisions of this subtitle or any regulation adopted under any provision of this subtitle that adversely affects the health, safety or welfare of an assisted living facility resident or an adult day care participant. Such sanctions or actions may include (i) petitioning the court to appoint a receiver for any assisted living facility or adult day care center and (ii) revoking or denying renewal of the license for the assisted living facility or adult day care center for violation of any of the provisions of this subtitle, § 54.1-3408 or any regulation adopted under this subtitle that violation adversely affects, or is an imminent and substantial threat to, the health, safety or welfare of the person cared for therein, or for permitting, aiding or abetting the commission of any illegal act in an assisted living facility or adult day care center.

C. The Commissioner may issue a summary order of suspension of the license to operate the assisted living facility pursuant to the procedures hereinafter set forth in conjunction with any proceeding for revocation, denial, or other action when conditions or practices exist that pose an imminent and substantial threat to the health, safety, and welfare of the residents. Before a summary order of suspension shall take effect, the Commissioner shall issue to the assisted living facility a notice of summary order of suspension setting forth (i) the procedures for the summary order of suspension, (ii) hearing and appeal rights as provided under this subsection, and (iii) facts and evidence that formed the basis for which the summary order of suspension is sought. Such notice shall be served on the assisted living facility or its designee as soon as practicable thereafter by personal service or certified mail, return receipt requested, to the address of record of the assisted living facility. The order shall state the time, date, and location of a hearing to determine whether the suspension is appropriate. Such hearing shall be presided over by a hearing officer selected by the Commissioner from a list prepared by the Executive Secretary of the Supreme Court of Virginia and shall be held as soon as practicable, but in no event later than 15 business days following service of the notice of hearing; however, the hearing officer may grant a written request for a continuance, not to exceed an additional 10 business days, for good cause shown. After such hearing, the hearing officer shall provide to the Commissioner written findings and conclusions, together with a recommendation whether the license should be summarily suspended, whereupon the Commissioner shall adopt the hearing officer's recommended decision unless to do so would be an error of law or Department policy. Any final agency case decision in which the Commissioner rejects a hearing officer's recommended decision shall state with particularity the basis for rejection. The Commissioner shall issue: (a) a final order of summary suspension or (b) an order that summary suspension is not warranted by the facts and circumstances presented. A final order of summary suspension shall include notice that the assisted living facility may appeal the Commissioner's decision to the appropriate circuit court no later than 10 days following service of the order. A copy of any final order of summary

suspension shall be prominently displayed by the provider at each public entrance of the facility, or in lieu thereof, the provider may display a written statement summarizing the terms of the order in a prominent location, printed in a clear and legible size and typeface, and identifying the location within the facility where the final order of summary suspension may be reviewed.

Upon appeal, the sole issue before the court shall be whether the Department had reasonable grounds to require the assisted living facility to cease operations during the pendency of the concurrent revocation, denial, or other proceeding. Any concurrent revocation, denial, or other proceeding shall not be affected by the outcome of any hearing on the appropriateness of the summary order of suspension. Failure to comply with the summary order of suspension shall constitute an offense under subdivision 1 of § 63.2-1712. All agencies and subdivisions of the Commonwealth shall cooperate with the Commissioner in the relocation of residents of an assisted living facility whose license has been summarily suspended pursuant to this section and in any other actions necessary to reduce the risk of further harm to residents.

D. Notice of the Commissioner's intent to revoke or deny renewal of the license for the assisted living facility shall be provided by the Department and a copy of such notice shall be posted in a prominent place at each public entrance of the licensed premises to advise consumers of serious or persistent violations. In determining whether to deny, revoke, or summarily suspend a license, the Commissioner may choose to deny, revoke, or summarily suspend only certain authority of the assisted living facility to operate, and may restrict or modify the assisted living facility's authority to provide certain services or perform certain functions that the Commissioner determines should be restricted or modified in order to protect the health, safety, or welfare of the residents. Such denial, revocation, or summary suspension of certain services or functions may be appealed as otherwise provided in this subtitle for any denial, revocation, or summary suspension.

~~B. The Commissioner may revoke or deny the renewal of the license of any child welfare agency which violates any provision of this subtitle or fails to comply with the limitations and standards set forth in its license.~~

~~C. Notwithstanding any other provision of law, following a proceeding as provided in § 2.2-4019, the Commissioner may issue a special order for violation of any of the provisions of this subtitle, § 54.1-3408 or any regulation adopted under any provision of this subtitle that violation adversely affects, or is an imminent and substantial threat to, the health, safety or welfare of the person cared for therein, or for permitting, aiding or abetting the commission of any illegal act in an assisted living facility, adult day care center or child welfare agency. The issuance of a special order shall be considered a case decision as defined in § 2.2-4001. The Commissioner shall not delegate his authority to impose civil penalties in conjunction with the issuance of special orders.~~

~~D. The Commissioner may take the following actions regarding licensed assisted living facilities, adult day care centers and child welfare agencies through the issuance of a special order:~~

~~1. Place a licensee on probation upon finding that the licensee is substantially out of compliance with the terms of its license and that the health and safety of residents, participants or children are at risk;~~

~~2. Reduce licensed capacity or prohibit new admissions when the Commissioner concludes that the licensee cannot make necessary corrections to achieve compliance with regulations except by a temporary restriction of its scope of service;~~

~~3. Require that probationary status announcements, provisional licenses, and denial or revocation notices be posted in a prominent place at each public entrance of the licensed premises and be of sufficient size and distinction to advise consumers of serious or persistent violations;~~

~~4. Mandate training for the licensee or licensee's employees, with any costs to be borne by the licensee, when the Commissioner concludes that the lack of such training has led directly to violations of regulations;~~

~~5. Assess civil penalties of not more than $500 per inspection upon finding that the licensee is substantially out of compliance with the terms of its license and the health and safety of residents, participants or children are at risk;~~

~~6. Require licensees to contact parents, guardians or other responsible persons in writing regarding health and safety violations; and~~

~~7. Prevent licensees who are substantially out of compliance with the licensure terms or in violation of the regulations from receiving public funds.~~

~~E. The Board shall adopt regulations to implement the provisions of this section.~~

§ 63.2-1709.1. Enforcement and sanctions; child welfare agencies; revocation and denial.

The Commissioner may revoke or deny the renewal of the license of any child welfare agency that violates any provision of this subtitle or fails to comply with the limitations and standards set forth in its license.

§ 63.2-1709.2. Enforcement and sanctions; special orders; civil penalties.

A. Notwithstanding any other provision of law, following a proceeding as provided in § 2.2-4019, the Commissioner may issue a special order (i) for violation of any of the provisions of this subtitle, § 54.1-3408, or any regulation adopted under any provision of this subtitle which violation adversely affects, or is an imminent and substantial threat to, the health, safety, or welfare of the person cared for therein, or (ii) for permitting, aiding, or abetting the commission of any illegal act in an assisted living facility, adult day care center, or child welfare agency. Notice of the Commissioner's intent to take any of the actions enumerated in subdivisions B 1 through B 7 shall be provided by the Department and a copy of such notice shall be posted in a prominent place at each public entrance of the licensed premises to advise consumers of serious or persistent violations. The issuance of a special order shall be considered a case decision as defined in § 2.2-4001. The Commissioner shall not delegate his authority to impose civil penalties in conjunction with the issuance of special orders.

B. The Commissioner may take the following actions regarding assisted living facilities, adult day care centers, and child welfare agencies through the issuance of a special order and may require a copy of the special order provided by the Department to be posted in a prominent place at each public entrance of the licensed premises to advise consumers of serious or persistent violations:

1. Place a licensee on probation upon finding that the licensee is substantially out of compliance with the terms of its license and that the health and safety of residents, participants, or children are at risk;

2. Reduce licensed capacity or prohibit new admissions when the Commissioner concludes that the licensee cannot make necessary corrections to achieve compliance with regulations except by a temporary restriction of its scope of service;

3. Mandate training for the licensee or licensee's employees, with any costs to be borne by the licensee, when the Commissioner concludes that the lack of such training has led directly to violations of regulations;

4. Assess civil penalties for each day the assisted living facility is or was out of compliance with the terms of its license and the health, safety, and welfare of residents are at risk, which shall be paid into the state treasury and credited to the Assisted Living Facility Education, Training, and Technical Assistance Fund created pursuant to § 63.2-1803.1. The aggregate amount of such civil penalties shall not exceed $10,000 for assisted living facilities in any 24-month period. Criteria for imposition of civil penalties and amounts, expressed in ranges, shall be developed by the Board, and shall be based upon the severity, pervasiveness, duration, and degree of risk to the health, safety, or welfare of residents. Such civil penalties shall be applied by the Commissioner in a consistent manner. Such criteria shall also provide that (i) the Commissioner may accept a plan of correction, including a schedule of compliance, from an assisted living facility prior to setting a civil penalty, and (ii) the Commissioner may reduce or abate the penalty amount if the facility complies with the plan of correction within its terms.

A single act, omission, or incident shall not give rise to imposition of multiple civil penalties even though such act, omission, or incident may violate more than one statute or regulation. A civil penalty that is not appealed becomes due on the first day after the appeal period expires. The license of an assisted living facility that has failed to pay a civil penalty due under this section shall not be renewed until the civil penalty has been paid in full, with interest, provided that the Commissioner may renew a license when an unpaid civil penalty is the subject of a pending appeal;

5. Assess civil penalties of not more than $500 per inspection upon finding that the adult day care center or child welfare agency is substantially out of compliance with the terms of its license and the health and safety of residents, participants, or children are at risk;

6. Require licensees to contact parents, guardians, or other responsible persons in writing regarding health and safety violations; and

7. Prevent licensees who are substantially out of compliance with the licensure terms or in violation of the regulations from receiving public funds.

C. The Board shall adopt regulations to implement the provisions of this section.

§ 63.2-1721. Background check upon application for licensure or registration; background check of foster or adoptive parents approved by child-placing agencies and family day homes approved by family day systems; penalty.

A. Upon application for licensure or registration as a child welfare agency, (i) all applicants; (ii) agents at the time of application who are or will be involved in the day-to-day operations of the child welfare agency or who are or will be alone with, in control of, or supervising one or more of the children; and (iii) any other adult living in the home of an applicant for licensure or registration as a family day home shall undergo a background check. *Upon application for licensure as an assisted living facility, all applicants shall undergo a background check.* In addition, foster or adoptive parents requesting approval by child-placing agencies and operators of family day homes requesting approval by family day systems, and any other adult residing in the family day home or existing employee or volunteer of the family day home, shall undergo background checks pursuant to subsection B prior to their approval.

B. Background checks pursuant to this section require:

1. A sworn statement or affirmation disclosing whether the person has a criminal conviction or is the subject of any pending criminal charges within or outside the Commonwealth and whether or not the person has been the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;

2. A criminal history record check through the Central Criminal Records Exchange pursuant to § 19.2-389; and

3. ~~A~~ *In the case of child welfare agencies or adoptive or foster parents, a* search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of child abuse and neglect.

C. The character and reputation investigation pursuant to § 63.2-1702 shall include background checks pursuant to subsection B of persons specified in subsection A. The applicant shall submit the background check information required in subsection B to the Commissioner's representative prior to issuance of a license, registration or approval. The applicant shall provide an original criminal record clearance with respect to offenses specified in § 63.2-1719 or an original criminal history record from the Central Criminal Records Exchange. Any person making a materially false statement regarding the sworn statement or affirmation provided pursuant to subdivision B 1 shall be guilty of a Class 1 misdemeanor. If any person specified in subsection A required to have a background check has any offense as defined in § 63.2-1719, and such person has not been granted a waiver by the Commissioner pursuant to § 63.2-1723 or is not subject to an exception in subsections E or F, (i) the Commissioner shall not issue a license or registration to a child welfare agency; (ii) *the Commissioner shall not issue a license to an assisted living*

facility; (iii) a child-placing agency shall not approve an adoptive or foster home; or ~~(iii)~~ *(iv)* a family day system shall not approve a family day home.

D. No person specified in subsection A shall be involved in the day-to-day operations of the child welfare agency or shall be alone with, in control of, or supervising one or more of the children without first having completed background checks pursuant to subsection B.

E. Notwithstanding any provision to the contrary contained in this section, a child-placing agency may approve as an adoptive parent an applicant convicted of not more than one misdemeanor as set out in § 18.2-57 not involving abuse, neglect or moral turpitude, provided 10 years have elapsed following the conviction.

F. Notwithstanding any provision to the contrary contained in this section, a child-placing agency may approve as a foster parent an applicant convicted of statutory burglary for breaking and entering a dwelling home or other structure with intent to commit larceny, who has had his civil rights restored by the Governor, provided 25 years have elapsed following the conviction.

G. If an applicant is denied licensure, registration or approval because of information from the central registry or convictions appearing on his criminal history record, the Commissioner shall provide a copy of the information obtained from the central registry or the Central Criminal Records Exchange or both to the applicant.

H. Further dissemination of the background check information is prohibited other than to the Commissioner's representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination.

I. The provisions of this section referring to a sworn statement or affirmation and to prohibitions on the issuance of a license for any offense shall not apply to any children's residential facility licensed pursuant to § 63.2-1701, which instead shall comply with the background investigation requirements contained in § 63.2-1726.

§ 63.2-1732. Regulations for assisted living facilities.

A. The Board shall have the authority to adopt and enforce regulations to carry out the provisions of this subtitle and to protect the health, safety, welfare and individual rights of residents of assisted living facilities and to promote their highest level of functioning. Such regulations shall take into consideration cost constraints of smaller operations in complying with such regulations *and shall provide a procedure whereby a licensee or applicant may request, and the Commissioner may grant, an allowable variance to a regulation pursuant to § 63.2-1703*.

B. Regulations shall include standards for staff qualifications and training; facility design, functional design and equipment; services to be provided to residents; administration of medicine; allowable medical conditions for which care can be provided; and medical procedures to be followed by staff, including provisions for physicians' services, restorative care, and specialized rehabilitative services. *The Board shall adopt regulations on qualifications and training for employees of an assisted living facility in a direct care position. "Direct care*

position" means supervisors, assistants, aides, or other employees of a facility who assist residents in their daily living activities.

C. Regulations for a Medication Management Plan in a licensed assisted living facility shall be developed by the Board, in consultation with the Board of Nursing and the Board of Pharmacy. Such regulations shall (i) establish the elements to be contained within a Medication Management Plan, including a demonstrated understanding of the responsibilities associated with medication management by the facility; standard operating and record-keeping procedures; staff qualifications, training and supervision; documentation of daily medication administration; and internal monitoring of plan conformance by the facility; (ii) include a requirement that each assisted living facility shall establish and maintain a written Medication Management Plan that has been approved by the Department; and (iii) provide that a facility's failure to conform to any approved Medication Management Plan shall be subject to the sanctions set forth in § 63.2-1709 or 63.2-1709.2.

~~C~~ *D.* Regulations shall require all licensed assisted living facilities with six or more residents to be able to connect by July 1, 2007, to a temporary emergency electrical power source for the provision of electricity during an interruption of the normal electric power supply. The installation shall be in compliance with the Uniform Statewide Building Code.

~~D~~ *E.* Regulations for medical procedures in assisted living facilities shall be developed in consultation with the State Board of Health and adopted by the Board, and compliance with these regulations shall be determined by Department of Health or Department inspectors as provided by an interagency agreement between the Department and the Department of Health.

F. In developing regulations to determine the number of assisted living facilities for which an assisted living administrator may serve as administrator of record, the Board shall consider (i) the number of residents in each of the facilities, (ii) the travel time between each of the facilities, and (iii) the qualifications of the on-site manager under the supervision of the administrator of record.

§ 63.2-1803. Staffing of assisted living facilities.

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

B. The assisted living facility shall have adequate*, appropriate,* and sufficient staff to provide services to attain and maintain (i) the physical, mental and psychosocial well-being of each resident as determined by resident assessments and individual plans of care and (ii) the physical

safety of the residents on the premises. Upon admission and upon request, the assisted living facility shall provide in writing a description of the types of staff working in the facility and the services provided, including the hours such services are available.

§ 63.2-1803.1. Assisted Living Facility Education, Training, and Technical Assistance Fund established.

There is hereby created in the state treasury a special nonreverting fund to be known as the Assisted Living Facility Education, Training, and Technical Assistance Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All penalties directed to this fund by subdivision B 4 of § 63.2-1709.2 and all other funds from any public or private source directed to the Fund shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purpose of providing education and training for staff of and technical assistance to assisted living facilities to improve the quality of care in such facilities. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Commissioner.

§ 63.2-1805. Admission, retention, and discharge.

A. The Board shall adopt regulations:

1. Governing admissions to assisted living facilities;

2. *Requiring that each assisted living facility prepare and provide a statement, in a format prescribed by the Department, to any prospective resident and his legal representative, if any, prior to admission and upon request, that discloses information, fully and accurately in plain language, about the (i) services; (ii) fees, including clear information about what services are included in the base fee and any fees for additional services; (iii) admission, transfer, and discharge criteria, including criteria for transfer to another level of care within the same facility or complex; (iv) general number and qualifications of staff on each shift; (v) range, frequency, and number of activities provided for residents; and (vi) ownership structure of the facility;*

3. Establishing a process to ensure that ~~residents~~ *each resident* admitted or retained in an assisted living facility ~~receive the~~ *receives* appropriate services and ~~that, in order to determine whether a resident's needs can continue to be met by the facility and whether continued placement in the facility is in the best interests of the resident, each resident receives~~ periodic independent reassessments and reassessments ~~in the event of~~ *when there is a* significant ~~deterioration of~~ *change in* the resident's condition *in order to determine whether a resident's needs can continue to be met by the facility and whether continued placement in the facility is in the best interests of the resident*;

~~3~~ *4*. Governing appropriate discharge planning for residents whose care needs can no longer be met by the facility;

~~4~~ *5*. Addressing the involuntary discharge of residents;

~~5~~ *6*. Requiring that residents are informed of their rights pursuant to § 63.2-1808 at the time of admission;

~~6~~ *7*. Establishing a process to ensure that any resident temporarily detained in an inpatient facility pursuant to § 37.1-67.1 is accepted back in the assisted living facility if the resident is not involuntarily committed pursuant to § 37.1-67.3; and

~~7~~ *8*. Requiring that each assisted living facility train all employees who are mandated to report adult abuse, neglect, or exploitation pursuant to § 63.2-1606 on such reporting procedures and the consequences for failing to make a required report.

B. *If there are observed behaviors or patterns of behavior indicative of mental illness, mental retardation, substance abuse, or behavioral disorders, as documented in the uniform assessment instrument completed pursuant to § 63.2-1804, the facility administrator or designated staff member shall ensure that an evaluation of the individual is or has been conducted by a qualified professional as defined in regulations. If the evaluation indicates a need for mental health, mental retardation, substance abuse, or behavioral disorder services, the facility shall provide (i) a notification of the resident's need for such services to the authorized contact person of record when available and (ii) a notification of the resident's need for such services to the community services board or behavioral health authority established pursuant to Title 37.1 that serves the city or county in which the facility is located, or other appropriate licensed provider. The Department shall not take adverse action against a facility that has demonstrated and documented a continual good faith effort to meet the requirements of this subsection.*

C. Assisted living facilities shall not admit or retain ~~individuals~~ *an individual* with any of the following conditions or care needs:

1. Ventilator dependency.

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

3. Intravenous therapy or injections directly into the vein except for intermittent intravenous therapy managed by a health care professional licensed in Virginia or as permitted in subsection ~~C~~ *D*.

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

5. Psychotropic medications without appropriate diagnosis and treatment plans.

6. Nasogastric tubes.

7. Gastric tubes except when the individual is capable of independently feeding himself and caring for the tube or as permitted in subsection ~~C~~ *D*.

8. ~~Individuals presenting~~ An imminent physical threat or danger to self or others *is presented by the individual*.

9. ~~Individuals requiring~~ Continuous licensed nursing care (seven-days-a-week, 24-hours-a-day) *is required by the individual*.

10. ~~Individuals whose physician certifies that~~ Placement is no longer appropriate *as certified by the individual's physician*.

11. ~~Unless the individual's independent physician determines otherwise, individuals who require~~ Maximum physical assistance *is required by the individual* as documented by the uniform assessment instrument and ~~meet~~ *the individual meets* Medicaid nursing facility level-of-care criteria as defined in the State Plan for Medical Assistance*, unless the individual's independent physician determines otherwise*. 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.

12. ~~Individuals whose health care needs cannot be met in the specific~~ *The* assisted living facility ~~as determined by the facility~~ *determines that it cannot meet the individual's physical or mental health care needs*.

13. ~~Such~~ Other medical and functional care needs ~~of residents which~~ *that* the Board determines cannot ~~properly~~ be met *properly* in an assisted living facility.

~~C~~ *D*. Except for auxiliary grant recipients, at the request of the resident, and pursuant to regulations of the Board, care for the conditions or care needs defined in subdivisions ~~B~~ *C* 3 and ~~B~~ *C* 7 may be provided to a resident in an assisted living facility by a licensed physician, a licensed nurse or a nurse holding a multistate licensure privilege under a physician's treatment plan*,* or ~~by~~ a home care organization licensed in Virginia when the resident's independent physician determines that such care is appropriate for the resident.

~~D~~ *E*. In adopting regulations pursuant to subsections A, B ~~and~~*,* C *and D*, the Board shall consult with the Departments of Health and Mental Health, Mental Retardation and Substance Abuse Services.

2. That the Board of Nursing shall convene a task force to develop regulations for the registration of medication aides and submit a progress report on such regulations to the chairmen of the Joint Commission on Health Care, the House Committee on Health, Welfare and Institutions and the Senate Committee on Rehabilitation and Social Services on or before December 1, 2005.

3. That the Board of Nursing shall adopt final regulations to implement the provisions of this act to be effective on or before July 1, 2007.

4. That, notwithstanding the due course effective date of this act, the provisions of this act in §§ 54.1-3041, 54.1-3042, 54.1-3043 and 54.1-3408 of the Code of Virginia shall not be implemented or enforced until 12 months after the regulations promulgated pursuant to the third enactment become effective; however, the Board of Nursing may accept and process applications for the registration of medication aides and charge an application fee anytime on or after July l, 2005.

5. That the Board of Long-Term Care Administrators shall convene a task force to develop licensing regulations for assisted living facility administrators and submit an initial progress report by November 1, 2005, and a follow-up progress report by November 1, 2006, on such regulations to the chairmen of the Joint Commission on Health Care, the House Committee on Health, Welfare and Institutions, and the Senate Committee on Rehabilitation and Social Services.

6. That the Board of Long-Term Care Administrators shall adopt final regulation+ns to implement the provisions of this act to be effective on or before July 1, 2007.

7. That, notwithstanding the due course effective date of this act, the provisions of this act in §§ 54.1-3102, 54.1-3103.1 and 63.2-1803 shall not be implemented or enforced until 12 months after the regulations promulgated pursuant to the sixth enactment become effective.

8. That the State Board of Social Services shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.

9. That the Department of Social Services shall submit a report on the implementation of this act to the Governor and the chairmen of the Joint Commission on Health Care, the House Committee on Health, Welfare and Institutions, and the Senate Committee on Rehabilitation and Social Services by November 1, 2005.

10. That the Department of Social Services shall develop a training module on assisted living facilities, including all applicable statutes and regulations, that shall be used to train all adult care licensing inspectors currently employed by the Department no later than October 1, 2005. Any person subsequently employed as an adult care inspector shall receive such training no later than 60 days following the commencement of employment.

11. That the Department of Social Services shall seek consultation and information from all relevant agencies of government in its development of regulations and policies to implement the provisions of the act. The Department of Social Services shall integrate into the regulations and policies standards that are consistent with the recommendations of the Department of Mental Health, Mental Retardation and Substance Abuse Services necessary to ensure appropriate care for residents with mental illness, mental retardation, substance abuse, and other behavioral disabilities. The Department of Mental Health, Mental Retardation and Substance Abuse Services shall cooperate fully in the development of these standards.

12. That the Executive Secretary of the Supreme Court and the Department of Social Services shall establish a protocol for the expedited appointment of a hearing officer to comply with subsection C of § 63.2-1709.

APPENDIX D

Milestones and Estimated Dates for Implementing 2005 Assisted Living Facility Legislation

- **April 2005**
  - State Board of Social Services (SBSS): Notice of Intended Regulatory Action (NOIRA) for replacement General Procedures regulation (NOIRA for ALF regulation already in place)
  - Contacts with relevant agencies for input/consultation
- **May 2005**
  - Begin reviews of draft regulations with agencies and committees
  - Prepare Town Hall documents
- **June 2005**
  - Establish positions and recruit new staffs
  - Develop protocols with Board of Nursing (BON) for gastric tube care
  - Develop protocols with Medical Assistance Services (DMAS) for interim managers
  - Orient SBSS to contours of emergency and replacement regulations
  - Meet with ALF Advisory Committee
- **July 2005**
  - Fill Positions
  - Complete staff training revisions
  - Establish non-reverting Special Fund for ALF fines
- **August 2005**
  - Orient new SBSS members to process and regulatory action items
  - Seek SBSS approval for civil penalty criteria; begin procedures to implement with regulations
  - SBSS: Adopt Emergency Regulations: ALF and General Procedures (GP)
  - SBSS: Adopt Proposed Replacements (ALF and GP)
  - Implement amended background clearance regulation for applicant clearances
- **September 2005**
  - Develop public disclosure format
  - Begin preparations to develop, print and mail emergency regulations and related technical assistance information during October
  - File DSS implementation report with Secretary of Health and Human Resources
  - Complete initial inspector training by 9/30/05
- **October - November 2005**
  - Initiate and support 60-day comment period for proposed regulations (ALF/GP)
  - Reprogram and test information system for emergency regulations
  - Prepare and deliver second-round training on emergency regulations by 11/1/05
  - Conduct orientation sessions for providers on emergency regulations
- **December 2005 – March 2006**
  - Emergency Regulations become effective 12/28/05
  - Analyze public comments, revise proposed regulations, prepare Town Hall documents
  - Prepare Proclamation; plan awareness and activities for LTC Day of Recognition
- **April-May-June 2006**
  - Prepare Town Hall Documents
  - Orient SBSS to expected changes in replacement regulations in April
  - Submit drafts of final replacement regulations (ALFs & GP) through channels for SBSS action in June
- **July-October 2006**
  - Print, distribute standards and related documents

  - Reprogram and test information system for replacement regulations
  - Conduct training updates for inspectors
  - Conduct orientation updates for providers
- **November/December 2006**
  - Replacement regulations become effective
- **July 2008** – Implement licensure of administrators, registration of medication aides

APPENDIX E
Proposed Criteria and Process for Assigning Civil Penalties for Violations in Assisted Living Facilities

Introduction

Legislation enacted by the 2005 General Assembly requires the State Board of Social Services (SBSS) to develop criteria the department will use to set fiscal sanctions in response to violations by Assisted Living Facilities (ALF). The new law:

- Increases the current maximum fine from $500 per inspection to $10,000 within a 24 month period and
- Requires SBSS to approve criteria for imposition and amounts, in ranges, based on:
    - Severity,
    - Pervasiveness,
    - Duration, and,
    - Degree of risk to health, safety or welfare of residents.

Other provisions of this new section are:

- Collections are directed into a non-reverting training fund;
- Commissioner may accept a plan of correction prior to setting penalty and may reduce or abate penalty if facility complies within terms of plan;
- A single act may not have multiple fines; and,
- Licenses cannot to be renewed if fines, and any interest due, are not paid unless appeal is pending.

Analysis and Discussion of Criteria

Staff found no compelling need to recommend criteria beyond those required in the law itself. There was need, however, to:

- Examine the terminology for ordinary meaning and legislative intent,
- Re-order the criteria to align with usual working sequence,
- Consider how the criteria inter-relate,
- Identify additional concepts embedded in the criteria,
- Establish additional definitions to better clarify those criteria, and,
- Establish gradations or levels within each criterion to accommodate the statutory requirement to issue fines in ranges

Risk and Severity

Risk and severity were examined together because of the way they inter-twine in practice. Both involve the dimension of probability. Risk focuses more on the probability that an adverse event

will occur as a consequence of a violation; severity focuses more on the probability (estimate) of the degree of harm that will result from the adverse event.

<u>*Risk*</u> means a *threat* or *danger* that has not necessarily materialized. In this context it has been defined as *the reasonable likelihood or probability that harm will occur as a consequence of one or more violations*.

Because the law requires the department to apply fines in ranges, risk was then classified into levels defined as follows:

- ***Low*** risk means that injury or harm is relatively unlikely
- ***Medium*** risk means that injury or harm is more likely than not
- ***High*** risk means that harm is likely to occur at any time, or that injury or harm has already occurred

Risk is a complex criterion that can only be applied with the exercise of professional judgment.

- Each standard is adopted because it defends against one or more risks to consumers; hence any violation is presumed to expose consumers to some degree of risk. It is not, however, reasonable to contemplate issuing a fine or other sanction for each and every violation.
- Determining risk in human care is far from an exact science. There are many unknowns and inter-twined variables, many of which cannot be fully accommodated in a regulatory-consequence process. For example:
    - Incident data are currently limited and incomplete in human care settings
    - Group care, by its nature introduces more risks, and those risks may also vary by activity, time of day, or other variables. Some risks may be of relatively low probability but are vigorously defended because of their catastrophic potential, such as explosion or fire
    - Sometimes the harm will not necessarily have overt evidence (may be concealed or may be psychological in nature)
    - Sometimes the harm will not materialize until later. For example, poor nutrition and depression are responses/symptoms that usually develop over time. That is, while poor nutrition has a 100% probability of harm, the expected level of harm and speed-of-impact will vary according to other variables, e.g., the reserves and resiliency of the individual, the degree of sub-optimum food intake, and the *duration* of exposure, which is another Code-mandated criterion.

Thus, risk-level can be affected by any number of actions or conditions and variables, such as:

- Characteristics of individual or population (age, status of physical/mental/emotional health)
- Repetition of violation within the 24-month period ("Repetition" has some conceptual overlap with "duration." That is, a violation may have duration because it extends uninterrupted over a period or time, or it may be a repeated/recurrent violation that increases risk because the facility has only intermittent rather than sustained compliance.)
- Speed or acceleration of impact
- Management's oversight of operations, which acts to establish the culture of the facility, (quality of preventive planning and risk-incompatible actions, alertness in detecting problems,

promptness of responsiveness, appropriateness of corrective interventions, including whether the corrective action is superficial or aimed at preventing recurrence)
- Enhanced physical safety features
- Enhanced surveillance of building or landscape
- Staffing above required numbers
- Staffing above required knowledge, skills, and abilities or requiring annual skills proficiency tests

Severity refers to the extent or seriousness of injury or harm that could reasonably be expected to result from violation(s) of applicable standards.

The concept of reasonable expectation (probability) is important. The purpose of regulation is to prevent harm, not merely to react after actual harm has been inflicted. For example, if a resident with serious cognitive impairment is lost, the risk level and the expectation of serious harm are both high because that resident cannot defend himself from ordinary hazards; the fact that a particular resident was lucky enough to be found before actual harm occurred does not figure into the estimation of risk or expected severity. It is the occurrence of the event that is judged. Gradations set were:
- ***Moderate:*** means injury/harm that would not require intervention beyond the knowledge, skills, and abilities of direct care personnel.
- ***Serious:*** means non-life-threatening or temporary physical and/or mental health dysfunction that would require professional intervention.
- ***Extreme:*** means life-threatening partial or total physical and/or mental health dysfunction that would require professional intervention; or death.

Duration

Duration refers to the length of time the violation occurred or has been occurring. The levels established are:
- ***Short:*** the conditions that caused the violation have existed for a day or less
- ***Intermediate:*** the conditions that caused the violation have persisted for two days to two weeks
- ***Long:*** the conditions that caused the violation have persisted for more than two weeks

Pervasiveness

Pervasiveness means the extent to which the violations are spread throughout the facility's operations or systems, i.e., the "scope" of the problem as suggested by the pattern and number (frequency) of violations. An operation or system *is a group of interdependent tasks or functions organized to operate together to achieve a desired result.* Some examples are: personnel and staffing functions; resident record-keeping; medication administration; resident accommodations; resident care and services; building maintenance; housekeeping; etc. Pervasiveness may indicate, for example, whether the facility's violations signal a noticeable breakdown of narrow scope or instead signal extensive breakdown that affects many aspects of the facility's performance, with the latter typically affecting more residents.

The rating established is:

- ***Isolated:*** one or more violations in only one operation
- ***Scattered:*** three or fewer violations in each of no more than two operations
- ***Widespread:*** four or more violations in each of two or more operations

Integration and Implementation

These decision-making criteria do not exist in isolation. Instead, they tend to exacerbate one another. For example, the longer a violation persists (duration) or is repeated, the more likely it is that an adverse event will occur (risk) and cause harm (severity) – and if violations are widespread (pervasiveness), then the risk is heightened because this pattern suggests that management control is weak and unlikely to detect and correct violations effectively.

Neither does the fiscal penalty enforcement tool exist in isolation. There are other intermediate sanctions that can be used alone or in combination with fiscal penalties, such as probation, reduced capacity, mandated training, or interim manager.

Forcible closure options are also available decision options that must be considered when the overall risks warrant, e.g., revocation, denial of initial or renewal application, or suspension. A critical decision-point will be to determine when violations are serious enough to warrant a $10,000 fine yet not serious enough to move the case to forcible closure.

Moreover the decision to issue a sanction is part of a decision-sequence – and, in the case of determining the amount of civil penalty, both series of decisions are using some of the same concepts. During an inspection, staff must do a risk-assessment on each violation cited from a prescribed list of key standards considered to have the greatest impact on health, safety and rights. Guidelines are provided to help the inspector determine when to recommend a sanction. (See Attachment 2)

Achieving fair and consistent decision-making, which are prime values for both regulators and licensees, is challenging in the regulation of human care because of the multiplicity of variables. The primary method most regulatory agencies use is a consensus-seeking method called Institutional Decision-making, which simply means establishing processes for serial and concurrent reviews by peers and supervisors to bring a wider span of expertise, perspectives, and experience to bear on the task of improving the quality and consistency of decisions.

The department proposes to continue to use this method as the foundation for implementing the ALF civil penalty structure. However, staff will also pilot and refine a point-system that will be used by the decision-making group to reach and test consensus with respect to the amount of the penalty within set ranges. Given sufficient time and resources, the information system could be enhanced to help weight and profile violations, which would allow the proposed point-system to become a stronger tool for structuring and supporting professional judgment.

The proposed process for assigning fines requires establishing a Civil Penalty Review Committee comprising:

- Adverse Enforcement Consultant
- Adult Programs Medical Consultant
- Adult Programs Mental Health Consultant
- 2 Licensing Inspectors who are not involved in the case

Process:

- Field office submits case and sanction recommendation to committee, meaning the assigned inspector and unit administrator have concurred on the action based on the initial risk assessment and the history of the facility
- Review Committee meets bi-weekly or as needed, and may perform its work by teleconferencing
- Committee recommends penalty amount based on criteria or, conferring with originating office as needed, recommends a different sanction response, including justification,
- Licensing Director makes final determination on what to recommend to Commissioner
- Appeal, including proposed consent agreement that may serve as the basis for reducing the fine, follows normal APA processes

For the Board's information, the initial point system is presented as an attachment.

Requested Action

The department requests the Board to approve the criteria and concepts described above and a decision making process that uses a professional review panel supported by *a* point system but not specifically *the* point system in Attachment 1 since the points may need to be adjusted as data are collected. Further, the Board is requested to approve the date to implement this process to coincide with the effective date of the ALF emergency regulation. This will allow time to flesh out procedures, train staffs, do shadow drills, orient providers, and begin the process of methods testing and refinement.

ATTACHMENT 1

Initial Point System

Steps:
1. Once the likelihood and severity of harm/injury, pervasiveness, and duration are determined, points are assigned as follows:

- **High** likelihood of ***extreme*** harm/injury: 18
- **Medium** likelihood of ***extreme*** harm/injury: 16
- **Low** likelihood of ***extreme*** harm/injury: 14
- **High** likelihood of ***serious*** harm/injury: 12
- **Medium** likelihood of ***serious*** harm/injury: 10
- **Low** likelihood of ***serious*** **harm**/injury: 8
- **High** likelihood of ***moderate*** **harm**/injury: 6
- **Medium** likelihood of ***moderate*** harm/injury: 4
- **Low** likelihood of ***moderate*** harm/injury: 2

For groups of violations, the risk/severity points may not be lower than the points assigned to the highest individual risk/severity level found.

2. Additional Points are assigned for Multiple Serious Findings

- 7 or more **High** Likelihood of ***Extreme*** Injury: 64
- 4 - 6 **High** Likelihood of ***Extreme*** Injury: 44
- 2 - 3 **High** Likelihood of ***Extreme*** Injury: 24

3. Additional points are assigned for pervasiveness:

- Isolated: 1
- Scattered: 9
- Widespread: 18

4. Additional points are assigned for duration:

- Short: 1
- Intermediate: 9
- Long: 18

5. Point scores are adjusted if necessary:
For any combination of 18 or more points for duration and pervasiveness, where the level of severity is no greater than moderate, subtract 18 points from the total number of points.

Example:

Low Likelihood of Moderate Injury	2
Widespread Pervasiveness	18
Long Duration	18
Total Points	38
Less	18
Total Adjusted Points	20

Civil Penalty Range

Points	Dollar Amount
0 - 7	$ 0
8 - 18	up to $500
19 - 27	$ 501 - 750
28 - 36	$ 751 - 1,000
37 - 45	$ 1,101 - 2,000
46 - 54	$ 2,001 - 3,000
55 - 63	$ 3,001 - 4,000
64 - 72	$ 4,001 - 5,000
73 - 81	$ 5,001 - 7,500
82 - 100	$ 7,501 - 10,000

Sample case:

- Facility failed to obtain refill prescription and provide Clozapine (an anti-psychotic) to a resident.
- Resident missed two and a half days of medication.
- On the evening of the third day, resident was given at least a full dose of the medication despite written warnings from the dispensing pharmacy that this medication needed to be titrated if a resident missed two or more days.
- Resident's behavior deteriorated over the next week.
- No documentation of behavior change in resident's record.
- In addition, MAR revealed medication was not being administered according to physician's order; instead of getting two 25 mg BID and 100 mg HS, she was getting 50 mg at 8:00 a.m. and 150 mg at HS.

Point Assessment:

Overall risk/severity:	High likelihood of serious injury	12
Pervasiveness:	Scattered	9
Duration:	Intermediate	9
	Total points:	30

Penalty range: $ 751 – 1,000

ATTACHMENT 2

Virginia Department of Social Services
Division of Licensing Programs

Risk Assessment

Based on a recommendation by JLARC, the Division of Licensing Programs (DOLP) developed a Risk Assessment instrument to assist staff with providing better protection for consumers and to help ensure that the application of enforcement options is consistent among providers. Most violations pose some degree of risk for consumers. For this reason, risk assessment comes to the forefront of any type of facility inspection. However, while the expectation is that all providers achieve and remain in substantial compliance with all standards of care at all times, the degree of risk posed by each, if violated, vary widely. In this risk assessment process, attention is focused on violations and patterns of violations that pose significant and obvious risk to consumers.

The following components make up the risk assessment process:

A) Identify standards considered key to ensuring the health and safety of consumers.

B) Develop a conceptual framework to assist in evaluating possible harm and appropriate enforcement options.

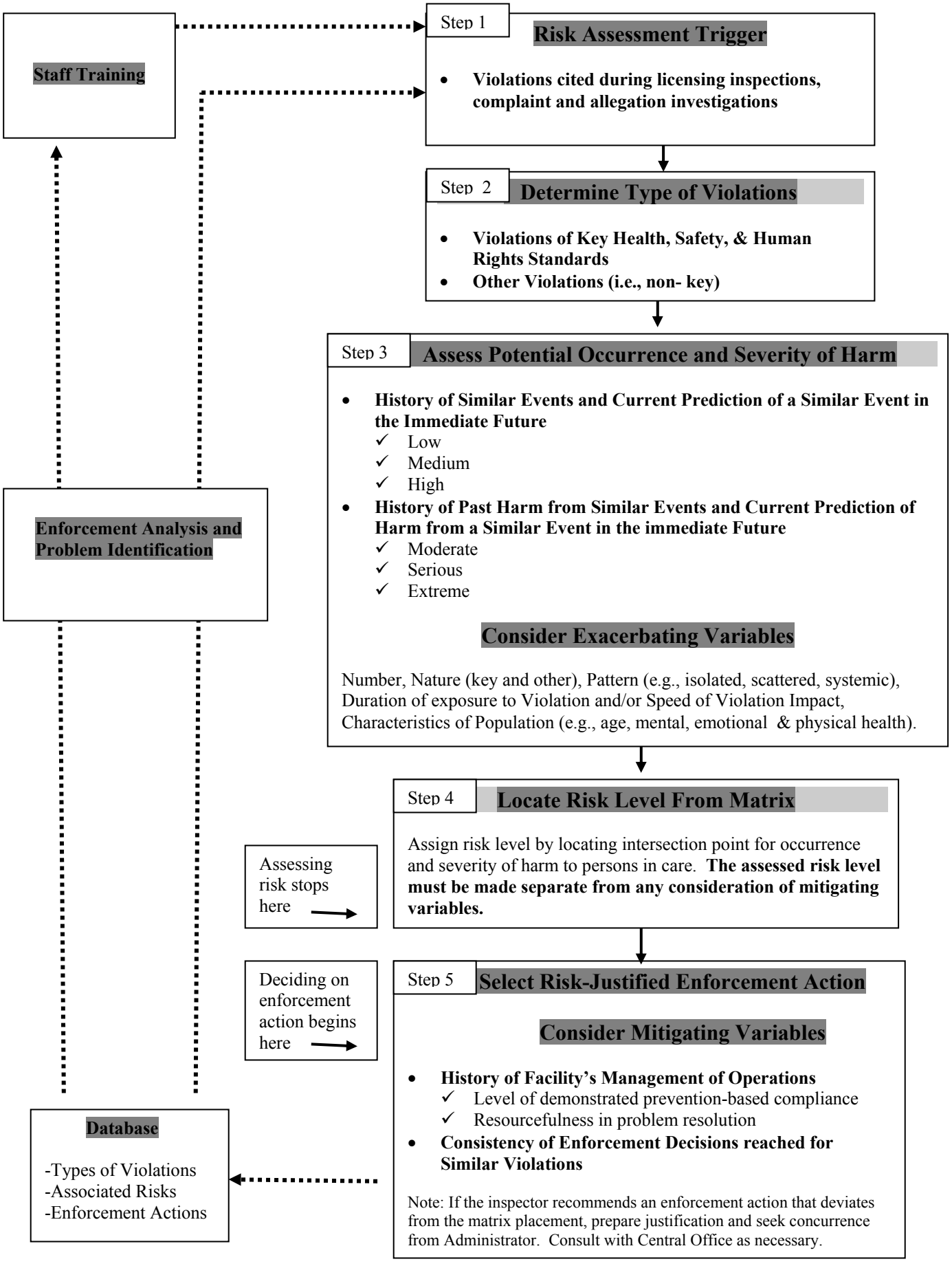
C) Implement ongoing staff training activities in order to improve the decision-making process involved with the assessment of risks and the consideration of enforcement options.

D) Set up a database to track trends in violations, associated risks, and enforcement actions taken for the purposes of accountability and staff education.

Risk Assessment Matrix

The matrix provides the conceptual framework to assist licensing staff with evaluating possible harm and appropriate enforcement options. In using the matrix, the assumption is that a violation has been observed. The question that the licensing staff, then, must answer, is "What is the likelihood that harm will result, if it has not already, and how severe might the harm be to the consumer?" Again, according to the definition, risk is an expression of possible harm in terms of likelihood and severity. Risk assessment, therefore, is the process of detecting violations and assessing any associated risks. Hence, the matrix is constructed to permit the licensing staff to look at a violation(s) along two dimensions, i.e., likelihood and severity.

FLOW CHART FOR THE RISK ASSESSMENT PROCESS



Note: Dotted arrow means these components support the primary risk assessment process to the right.

Risk Assessment and Enforcement Options Matrix

OCCURRENCE (Step 1: Potential for violation to result in harm?)	1) Moderate	2) Serious	3) Extreme
C) High Harm is imminent	**C-1 (14)**	**C-2 (16)**	**C-3 (18)**
B) Medium Harm is likely to occur	**B-1**	**B-2**	**B-3 (12)**
	B-1 (8)	**B-2 (10)**	
A) Low Harm is not likely to occur, but possibility exists	**A-1 (2)**	**A-2 (4)**	**A-3 (6)**

SEVERITY
(Step 2: Potential degree of harm from violation?)

1) Moderate	2) Serious	3) Extreme
Violation(s) exposes consumers to a degree of harm that does not require intervention(s) beyond the knowledge, skills, and abilities of the direct care employees	Violation(s) exposes consumers to a degree of harm that requires professional interven-tion(s) such as from medical and/or mental health personnel	Violation(s) exposes consumers to serious life-threatening harm, or permanent partial or total disability in the area of physical, emotional and/or psychological functioning

Must consider the following variables before determining level of risk:

Exacerbating characteristics of violations: nature (or type); repetition (rare, episodic, or frequent); pattern (isolated, scattered, or systemic); duration of exposure (length of impact); speed (acceleration of impact)

Exacerbating characteristics of target population: age, status of mental, emotional and physical health

Step 3: TABLE OF ENFORCEMENT OPTIONS

At Minimum, Consultation Is Provided A-1 & B-1	Intermediate Sanctions Must Be Considered B-1, C-1, A-2, B-2 & A-3
Revocation/Denial Must Be Considered B-2, C-2, B-3 & C-3	

Must consider the following variables before recommending an enforcement option:

Mitigating variables considered in recommendation of action: history of demonstrated prevention-based compliance, resourcefulness in problem resolution, consistency of enforcement actions for similar violations.

Revised July 15, 2002

APPENDIX F
ALF Advisory Committee Members

Mr. Charles E. (Ed) Altizer
Virginia Department of Housing and Community Development

Ms. Leslie Anderson
Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services

Mr. Roy Bryant
Independent Home Owners Group

Faye Cates
Virginia Dept. for the Aging

Mr. David Cattell-Gordon
Virginia League of Social Services Executives

Ms. Sherry Confer
Virginia Office for Protection and Advocacy

Mr. Jonathan Ellis
Virginia Assisted Living Association

Ms. Abbe Goettl
Consumer Representative

Mr. Jeffrey Hairston
Virginia Adult Home Association

Mr. Carter Harrison
Alzheimer's Association

Ms. Yvonne Haynes
Richmond Behavioral Health Authority

Ms. Nancy Hofheimer
Virginia Department of Health

Mr. Irvin Land
Virginia Assisted Living Association

Ms. Joani Latimer
State Ombudsman

Ms. Sandy Reen
Virginia Board of Nursing Home Administrators

Mr. Linwood Russell
Independent Home Owners Group

Mr. David Sadowski
Virginia Coalition on Aging

Dr. Paula Saxby
Virginia Board of Nursing

Ms. Rita Schumacher
Virginia Association of Area Agencies on Aging

Mr. Randy Scott
Virginia Association of Nonprofit Homes for the Aging

Ms. Beverley Soble
Virginia Health Care Association

Ms. Dana L. Steger
Virginia Association of Nonprofit Homes for the Aging

Ms. Marcia A. Tetterton
Virginia Association for Home Care

Ms. Diana Thorpe
Virginia Department of Medical Assistance Services

Ms. Susan Ward
Virginia Hospital & Health Care Association

Ms. Teresa Weeks
Virginia Health Care Association

Mr. Mike Williams
Virginia Adult Home Association

Ms. Lana Wingate
Virginia Nurses Association

State Board of Social Services:

Ms. Julie Christopher, Chair

Ms. Nettie L. Simon-Owens, Adult Care Liaison