

**REPORT OF THE VIRGINIA BOARD OF NURSING  
DEPARTMENT OF HEALTH PROFESSIONS**

# **Interim Report on the Regulation of Medication Aides**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



**SENATE DOCUMENT NO. 28**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
2005**

**VIRGINIA BOARD OF NURSING  
DEPARTMENT OF HEALTH PROFESSIONS**

**Interim Report on the Regulation of Medication Aides  
Pursuant to Chapters 610 and 924 (2005)**

***Background***

Senate Bill 1183 (Chapter 610), patroned by Senator Emmett Hanger and House Bill 2512 (Chapter 924), patroned by Delegate Phillip Hamilton required the Board of Nursing to promulgate regulations for the registration and regulation of medication aides who administer medications in assisted living facilities. (A copy of HB2512 is attached to this report.) In the second enactment clause, the legislation provides: *“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.”*

As specified in the enactment of the legislation, the Board of Nursing presents the following initial progress report:

***Initiation of a Notice of Intended Regulatory Action***

Legislation mandating the regulation of medication aides in assisted living facilities became effective on July 1, 2005. However, once the legislation was enacted and signed by the Governor, the Board began the process of implementation and promulgation of regulation. At the May 17, 2005 meeting of the Board, the issues surrounding registration of medication aides were discussed, a timetable reviewed and a Notice of Intended Regulatory Action (NOIRA) adopted. In the agency background document for the NOIRA, the purpose of the action is stated as implementation of a statutory mandate to promulgate regulations for registration, and to that end, to develop regulations establishing educational and experiential qualifications, an assessment to test minimal competency, standards for professional practice and provisions for fees, renewal and reinstatement.

**Agency Background Document for the NOIRA**

With the introduction of HB2512 and SB1183, proponents of legislation for greater oversight for assisted living facilities and the care of residents in those facilities, including registration of medication aides, argued that the current regulatory scheme was insufficient to ensure the health, safety and welfare of residents who are increasingly becoming a more frail population in need to a higher level of competency for caregivers. The Drug Control Act allows medication aides to *“administer drugs that would otherwise be self-administered to residents of any assisted living facility licensed by the Department of Social Services”* but specifies that

only a licensed nurse can administer medications to patients of nursing homes. In the current healthcare environment, residents of assisted living facilities often have similar characteristics to patients in nursing homes, so additional competencies and accountability are necessary through registration of medication aides by the Board.

The primary challenges and issues to be addressed in the development and implementation of the regulation will be to write rules that: 1) recognize the training and experience of current medication aides who are administering drugs after completion of the approved training program now in effect, but also will ensure competency and consistency with new requirements; and 2) maintain the fiscal viability of a competency evaluation and a regulatory/disciplinary program under the Board of Nursing, but also will establish fees that are reasonable and not prohibitive. In addition, the Board will have the challenge of identifying or developing a competency evaluation or examination that is defensible and assures minimal competency since there is no such national standard or credential available for this profession.

The specifics of the new chapter for registration of medication aides will be guided by the provisions of law, which require the Board to “*approve training programs for medication aides to include requirements for instructional personnel, curriculum, continuing education, and a competency evaluation,*” to register any 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*” and to require an application, a fee and written evidence that the applicant has completed a competency evaluation, “*has not committed any act that would be grounds for discipline or denial of registration under this article; and has met the criteria for registration including successful completion of an education or training program approved by the Board.*” In addition, the Code requires that medication aides complete ongoing training related to the administration of medications, as specified in regulation to be adopted by the Board.

The goal will be to develop regulations that provide some assurance that the aide is sufficiently trained to handle the increasing complexity of medications being administered in an assisted living facility and to adequately protect and care for the residents of that facility.

### **Solicitation of Public Comment on the NOIRA**

The Notice of Intended Regulatory Action (NOIRA) was submitted for Executive Branch review on May 20, 2005 and, once approved, submitted to the Register of Regulations on June 23, 2005 with publication on July 25, 2005. Approximately 155 persons on a list of interested parties were sent a notice of the first meeting of the Task Force and a copy of the NOIRA with a request for comment until August 24, 2005.

### ***Appointment of a Task Force on Regulation of Medication Aides***

As provided in the enactment of the legislation, the Board of Nursing convened a Task Force on Regulation of Medication Aides, which held its organizational meeting on Tuesday, July 12, 2005. The members serving are:

- Lynne Cooper, Chairperson and citizen member of the Board of Nursing

- Gregory Huber, R.N. member of the Board
- Woody Hanes, R.N. member of the Board
- Lin Arnett, Westminster-Canterbury of the Blue Ridge
- Susan Bess, Williamson's Pharmacy
- Joanne Alston-Hooker, Williamson's Health Care Network
- Sherry Broussard, R.N., Neighbor Care Pharmacy
- Carolyn Inman, R.N., Sunrise Senior Living
- Deborah Lloyd, R.N., Dept. of Social Services
- Christine Stacy, R.N., Adult Care Education Consultants, LLC
- Julie Wine, Administrator of Beth Shalom Gardens
- Toni Parks, R.N., Medical Facilities of America

### **Meeting of July 12, 2005**

As guidance for rule-making, the Task Force reviewed the current regulations for approval of a training program for medication aides, as stated in regulations 18VAC90-20-370 through 18VAC90-20-400 to determine those aspects of the program that are adequate to ensure minimum competency and those that need to be strengthened. In addition, the Task Force was given information on laws and regulations from 15 other jurisdictions that regulate medication aides, including specific requirements from North Carolina, Maryland, Oregon and New Mexico. Since most other states have requirements that the medication aide must first be a CNA and that the practice of a medication aide is supervised by a licensed nurse, there is no model regulation or standard on which the Board can rely. Following a discussion about the issues and problems surrounding administration of medications in assisted living facilities with differing options about minimal competencies, there was unanimous consent that patient advocacy and safety, as well as increased patient acuity be considered. Discussion also included the importance of the development of a competency evaluation that would reflect a minimum competency for the medication aides, as well as standards for monitoring and oversight. The Task Force was presented with a summary of the tasks to be completed for the development of regulatory language for medication aides and medication aide training and competency evaluation and agreed to work on draft language prior to the next scheduled meeting.

### **Meeting of September 7, 2005**

Draft regulations compiled from comments/suggestions sent by Task Force members provided the basis for discussion at the September meeting. The Task Force began with the format and basic rules governing the practice of certified nurse aides and agreed to consistency between the two professions where appropriate. For example, the renewal fee for certified nurse aides is \$50 per biennium, which is the amount proposed for medication aides. Decision points that were not resolved included: qualifications for instructors in a medication aide training program, the minimum number of didactic and clinical training hours for an approved program, the content of the curriculum, the ratio of instructor to students, requirements for registration of currently-practicing medication aides, and continuing education. Task Force members were asked to work on specific recommendations for the decision points that remained prior to the next scheduled meeting in October.

### **Meeting of October 25, 2005**

A revised draft of regulations was sent to members prior to the meeting for review. In addition, the members reviewed comments on regulations, minimum qualifications for direct care staff required by Social Services for licensed assisted living facilities and information from Oregon and Texas about hours of training and examinations. The Task Force agreed to criteria for approved training programs to include a total of 68 hours of didactic and clinical education with an eight-hour module for insulin training. They agreed to the qualifications for instructors and supervisors of a clinical practicum and a ratio of instructor to student for the practical skills portion of the training. Finally, it was recommended that a person who has worked as a medication aide for one year prior to the requirement for registration be given credit for that experience as a training program if he or she also completed a 8-hour refresher course and passed with competency evaluations.

The Task Force recommended that the Board set broad curriculum requirements in regulation but approve a specified curriculum for use by all programs. Six members of the Task Force volunteered to serve as a subcommittee for the purpose of writing the curriculum document. No additional meetings will be scheduled until completion of the 60-day comment period on proposed regulations, which hopefully will occur sometime in the Spring of 2006.

### ***Adoption of regulations by the Board***

In the third enactment clauses, the Board of Nursing was mandated to adopt final regulations to implement the provisions of this act to be effective on or before July 1, 2007. Therefore, the Board has planned and scheduled to complete all requirements of Executive Order 21(2002) and the Administrative Process Act for Executive Branch review and approval of each stage of regulatory action, for publication of regulatory language, public comment periods and a public hearing by July 1, 2007.

At its meeting on November 15, 2005, the Board received the recommendations of the Task Force and adopted proposed regulations. The regulatory package must be approved by the Department of Planning and Budget, the Secretary of Health and Human Resources, and the Governor prior to publication and distribution for public comment. During the 60-day comment period, the Board will conduct a public hearing on the proposed regulation. After the comment period, the Task Force will be convened to review and consider all public comment to determine if changes to the proposal should be recommended.

With the fourth enactment stating: *“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 1, 2005,”* it would be anticipated that registration of medication aides would begin in the second half 2007 and not be required before July 1, 2008.

### ***Resources***

In order to assure appropriate implementation of a new regulatory program under the Board of Nursing, the Department has submitted budget requests (Decision Packages) for the '06-'08 biennium. These requests include additional staffing for this Board to assure that staff will be able to implement the processes for examination, applicant processing and regulation of aides, which will begin in earnest in the coming biennium. Additional staff and resources will also be needed to handle the anticipated increase in investigation of complaints and adjudication of disciplinary cases involving medication aides.

***Projected Timetable for Promulgation of Regulations for Medication Aides***

Enactment of legislation	(SB1183)	3/23/05
	(HB2512)	4/6/05
Adoption of Notice of Intended Regulatory Action (NOIRA) by Board		5/17/05
Attendance by staff and two board members at National Council of State Boards of Nursing conference on regulation of medication technicians and administration		6/3/05
Effective date of legislation		7/1/05
1 <sup>st</sup> meeting of Task Force on Medication Aide Regulation		7/12/05
Publication of NOIRA		7/25/05
Close of comment on NOIRA		8/24/05
2 <sup>nd</sup> meeting of Task Force		9/7/05
3 <sup>rd</sup> meeting of Task Force		10/25/05
Adoption of proposed regulations		11/15/05
Submission of progress report to the General Assembly		
12/1/05		
Publication of proposed regulations	(late Spring of 2006 ?)	
60-day Comment period		
Public hearing		
Adoption of final regulations	(possibly Sept. of 2006?)	

Effective date of final regulations

by July 1, 2007

# VIRGINIA ACTS OF ASSEMBLY -- 2005 SESSION

## CHAPTER 610

*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.*

[S 1183]

Approved March 23, 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 ~~an administrator~~ an administrator of a proprietary nursing 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.*

*⊥ 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.*

*⊍ 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.*

*⊎ 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.*

*⊐ 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 6 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 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.

⊖ 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.

⊘ 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 facility 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 *E 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 *E 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~~ *properly* be met *properly* in an assisted living facility.

*E 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.

Ð *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.

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 regulations 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.