



Commonwealth of Virginia  
STATE BOARD OF SOCIAL SERVICES

State Board of Social Services

Lou Ali  
Chair  
VDSS Central Region

October 16, 2019

Mary Ann Boyd  
Vice Chair  
Child Care Center

**Memorandum**

William Boone  
Secretary  
VDSS Western Region

**TO:** The Honorable Bryce E. Reeves, Chair  
Senate Committee on Rehabilitation and Social Services

Dr. Daniel IK Ayula  
VDSS Central Region

The Honorable Jennifer L. McClellan

Kent Willis  
VDSS Northern Region

**FROM:** Lou Ali, Chair *Lou Ali*  
State Board of Social Services

Mona Malik  
VDSS Northern Region

**SUBJECT:** Report on Senate Bill 1326 (2019)

Clyde Santana  
VDSS Eastern Region

I am pleased to submit the attached report in response to the request from the Senate Committee on Rehabilitation and Social Services regarding Senate Bill 1326 (2019). Please contact Tara Ragland, Director, Division of Licensing Programs at the Virginia Department of Social Services, should there be any questions.

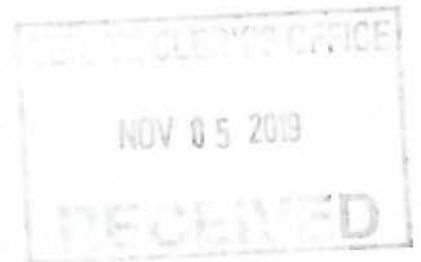
John G. Kines, Jr.  
VDSS Eastern Region

Joan Brennan  
Child Care Center

Andrew Heck  
VDSS Northern Region

**Attachments**

Veronica Washington  
VDSS Piedmont Region



LA: de  
✓cc: Susan Clarke Schaar, Clerk of the Senate

**State Board of Social Services**  
**Report to the Senate Committee on Rehabilitation and Social Services**  
**on the Subject Matter of Senate Bill 1326 (2019)**

***Report Mandate***

This report is in response to the letter sent March 20, 2019 requesting the State Board of Social Services (Board) to study and report on the subject matter contained in Senate Bill (SB) 1326. SB 1326 required the Board to amend its regulations regarding bed limits for licensed assisted living facilities. The bill specified that the *Standards for Licensed Assisted Living Facilities* regulation be amended to exempt all buildings in which a licensed assisted living facility was located as of February 1, 2018 from the requirement that no more than two residents reside in a bedroom. Senate Bill 1326 was passed by in the Committee on Rehabilitation and Social Services with a letter.

The assisted living regulation, 22VAC40-73-900-5 provides:

“For occupancy as provided in this subdivision:

- a. As of December 28, 2006, in all buildings approved for construction or change in use and occupancy classification, as referenced in the Virginia Uniform Statewide Building Code (13VAC5-63), there shall be no more than two residents residing in a bedroom.
- b. As of February 1, 2018, when there is a new facility licensee, there shall be no more than two residents residing in a bedroom.
- c. Unless the provisions of subdivisions 5 a and 5 b of this section apply, there shall be no more than four residents residing in a bedroom;”

***National Research***

Department of Social Services licensing staff conducted a review of other states’ assisted living regulations to determine maximum occupancy requirements. Thirty-six states limit maximum occupancy to two individuals per room. Seven of those states have exceptions for facilities built or licensed before a certain date to have a maximum occupancy of four per room. All seven exceptions specify if there is a new license, change in ownership, or renovations completed, the maximum occupancy shall be two per room. Five states allow a maximum of four individuals per room and two states allow three individuals per room. Six states do not specify maximum occupancy in their regulations. As of July 26, 2019, there were 485 assisted living facilities in Virginia. Of those facilities, 62 (13%) are currently licensed for more than two residents per room.

<b>State</b>	<b>Resident Allowed Per Room</b>
Alabama	Max: 2
Alaska	Max: 2
Arizona	Max: 2
Arkansas	Max: 2
California	Max: 2
Colorado	Max: 2 Max : 4 In facilities licensed prior to July 1, 1986



<b>State</b>	<b>Resident Allowed Per Room</b>
Connecticut	State does not specify a maximum number, managed residential communities may not require tenants to share units
Delaware	Max: 2
District of Columbia	Max: 4 for community residence facility Assisted living resident: none specified
Florida	Max: 2 Prior to October 17, 1999, a maximum of four persons were permitted for multiple occupancy. Resident bedrooms designated for multiple occupancy in facilities newly licensed or renovated six months after October 17, 1999, shall have a maximum occupancy of two persons.
Georgia	Max: 2
Hawaii	None specified
Idaho	Max: 2 Licensed prior to July 1, 1991: 4 per room. When there is any change in ownership of the facility, the maximum number of residents allowed in any room is two.
Illinois	Max: 2
Indiana	Max: 4
Iowa	Max: 2
Kansas	None specified
Kentucky	Max: 2
Louisiana	Max: 2
Maine	Max: 2
Maryland	Max: 2
Massachusetts	Max: 2
Michigan	Max: 4
Minnesota	None specified
Mississippi	Max: 4
Missouri	Max: 4
Montana	Max: 2 Max: 4 for existing facilities
Nebraska	Max: 2 Max: 4 for existing facilities
Nevada	Max: 3
New Hampshire	Max: 2
New Jersey	Max: 2
New Mexico	Max: 2
New York	Max: 2
North Carolina	Max: 2
North Dakota	Max: 2
Ohio	Max: 4
Oklahoma	Max: 2
Oregon	Max: 2

<b>State</b>	<b>Resident Allowed Per Room</b>
Pennsylvania	Max: 2
Rhode Island	Max: 2
South Carolina	Max: 3
South Dakota	Max: 2
Tennessee	Max: 2
Texas	Max: 4
Utah	Max: 2
Vermont	All resident units must be private occupancy unless a resident voluntarily chooses to share the unit.
Virginia	Max: 2, As of December 28, 2006, in all buildings approved for construction or change in use and occupancy classification, there shall be no more than two residents residing in a bedroom. As of February 1, 2018, when there is a new facility licensee, there shall be no more than two residents residing in a bedroom. Max: 4, if licensed before February 1, 2018
Washington	Max: 2 Max: 4 if licensed before July 1, 1989
West Virginia	In an existing residence, no bedroom shall be occupied by more residents than the bed capacity approved by the commissioner on May 1, 2006.
Wisconsin	Max: 2
Wyoming	Max: 2

Source of Information: NCAL (National Center for Assisted Living)

### ***Issues and Opposition to Proposed Changes***

Residents are staying longer in assisted living settings with increasingly more serious medical needs and cognitive impairments. Stress from dealing with these issues, along with lack of self-awareness due to cognitive impairments, can lead to conflict among residents. Allowing more than two residents per room reduces each resident's privacy in aspects of daily living and increases the chances for conflict among residents. While conflict is not always eliminated by limiting room capacity to two individuals, having four individuals with health issues in one room can be unmanageable for staff providing basic care for residents. According to the Assisted Living Workgroup's Report to the U.S. Senate Special Committee on Aging (2003), the requirement for privacy was based on "the premise that dignity, autonomy, and independence cannot be realized without personal space controlled by the resident."<sup>1</sup> Fewer individuals per room allows for increased personal space and greater individual control for residents.

Several provider associations spoke out against SB 1326 including: Disability Law Center, Alzheimer's Association, National Association for Mentally Ill, and the Virginia Poverty Law Center.

<sup>1</sup> The Assisted Living Workgroup "Assuring Quality in Assisted Living: Guidelines for Federal and State Policy, State Regulations and Operations." A report to the U.S. Senate Special Committee on Aging, April 23, 2003, page 13.



***State Board of Social Services Position and Recommendation***

Section § 63.2-1703 of the Code of Virginia allows the Commissioner to grant a variance to a regulation. A licensee or applicant may request an allowable variance when he believes that the existing regulation or requirement poses a substantial financial or programmatic hardship and when he believes that either an alternative method of compliance with the intent of the regulation that is causing the hardship, or the actual suspension of all or part of that regulation, would neither endanger the safety or well-being of persons in care nor create a violation of statutes or of the requirements of another regulatory agency. A request for an allowable variance could be submitted for this issue, if a two-bed limit is financially burdensome. The request would indicate how the provider will account for the health, safety, and privacy of the residents if the variance is granted. Issues that would be considered include: infection control; obtaining permission from residents; resident privacy; resident safety; and resident storage of medication in the room.

The Board maintains that the current wording of the regulation is in line with almost all other states in the country, and best protects resident privacy, health, and well-being. The Board recommends that the current provisions in the Code of Virginia regarding variances be considered in lieu of legislation for this matter.

Additionally, the Board recognizes that the room occupancy issue is directly related to the current Auxiliary Grant rate, as some of the facilities advocating for higher room occupancy serve individuals who receive Auxiliary Grant funding. The Board recommends that the General Assembly increase the Auxiliary Grant rate, as the current rate does not cover the cost of Assisted Living Facility services. As a result, many assisted living facilities have opted out of serving individuals who receive Auxiliary Grant funding.