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**Subject:** ALF Liability Insurance Requirements

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# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF SOCIAL SERVICES

**DATE:** July 26, 2024

**TO:** Assisted Living Facilities

**FROM:** Tara Ragland, Director  
Division of Licensing Programs

**SUBJECT:** Revisions to Chapter 73. *Standards for Licensed Assisted Living Facilities*  
New liability insurance requirements

The regulation, 22VAC40-73, *Standards for Licensed Assisted Living Facilities*, has been revised to incorporate Chapter [580](#) of the 2023 Acts of the General Assembly requiring assisted living facilities (ALF) to maintain a minimum amount of liability insurance based on licensed capacity and to provide notice of such insurance, upon request, to any resident or prospective resident using the department provided liability insurance statement form.

This emergency regulation is effective July 26, 2024, and provides a 180-day exemption period for ALF to comply with the new liability insurance coverage requirements.

**Licensing will not inspect for any of the requirements in the emergency regulation until January 23, 2025.**

The regulation replacement pages are attached to this memo. A copy of the revised regulation and replacement pages can be found on the Virginia Department of Social Services (VDSS) [website](#) under the Regulations and Code References on the ALF program page.

The Liability Insurance Statement form is attached to this memo and will be posted to the VDSS [website](#) on the ALF program page under the “Current ALF Providers” section. Use of this form is required beginning January 23, 2025. Revised Disclosure Statement and Resident Agreement forms will be posted once the forms are updated.

This regulation is in effect for 18 months, during which time, DSS will prepare a proposed regulation. More information on the regulatory process is found [here](#).

Please contact your licensing inspector if you have any questions.

**22VAC40-73-40. Licensee.**

contact persons of the intended sale or closure of the facility and the date for such.

EXCEPTION: If plans are made at such time that 60-day notice is not possible, the licensee shall notify the regional licensing office, the residents, legal representatives, case managers, assessors, eligibility workers, and designated contact persons as soon as the intent to sell or close the facility is known.

2. If the facility is to be sold, at the time of notification specified in subdivision 1 of this subsection, the licensee shall explain to each resident, the resident's legal representative, case manager, assessor, and at least one designated contact person that the resident can choose whether to stay or relocate, unless the new licensee specifies relocation. If a resident chooses to stay, there must be a new resident agreement between the resident and the new licensee that meets the specifications of 22VAC40-73-390.
3. The licensee shall provide updates regarding the closure or sale of the facility to the regional licensing office, as requested.

**22VAC40-73-45. Liability insurance.**

- A. As of January 23, 2025, all assisted living facilities shall maintain liability insurance coverage according to the following licensed capacity tiers:
  1. Tier I: A minimum of \$250,000 for facilities licensed for 25 residents or fewer;
  2. Tier II: A minimum of \$400,000 for facilities licensed for more than 25 but no more than 75 residents;
  3. Tier III: A minimum of \$500,000 for facilities licensed for more than 75 but no more than 150 residents; or
  4. Tier IV: A minimum of \$1,000,000 for facilities licensed for 151 or more residents.
- B. Each facility shall prepare and provide, upon request of the prospective resident or resident and resident's legal representative, if any, a statement that the facility maintains liability insurance in force to compensate residents or other individuals for injuries and losses from the negligent acts of the facility. The statement shall be made on the liability insurance statement form provided by the department.

**22VAC40-73-50. Disclosure.**

- A. The assisted living facility shall prepare and provide a statement to the prospective resident and the prospective resident's legal representative, if any, that discloses information about the facility. The statement shall be on a form developed by the department and shall:

**22VAC40-73-50. Disclosure.**

1. Disclose information fully and accurately in plain language;
2. Be provided in advance of admission and prior to signing an admission agreement or contract;
3. Be provided upon request; and
4. Disclose the following information, which shall be kept current:
  - a. Name of the facility;
  - b. Name of the licensee;
  - c. Ownership structure of the facility (e.g., individual, partnership, corporation, limited liability company, unincorporated association, or public agency);
  - d. Description of all accommodations, services, and care that the facility offers;
  - e. Fees charged for accommodations, services, and care, including clear information about what is included in the base fee and all fees for additional accommodations, services, and care;
  - f. Criteria for admission to the facility and restrictions on admission;
  - g. Criteria for transfer to a different living area within the same facility, including transfer to another level or type of care within the same facility or complex;
  - h. Criteria for discharge;
  - i. Categories, frequency, and number of activities provided for residents;
  - j. General number, position types, and qualifications of staff on each shift;
  - k. Whether the facility has an onsite emergency electrical power source for the provision of electricity during an interruption of the normal electric power supply. If the facility does have an onsite emergency electrical power source, the statement must include (i) the items for which the source will supply power and (ii) whether staff of the facility have been trained to maintain and operate the power source. For the purposes of this subdivision k, an onsite emergency electrical power supply shall include both permanent emergency electrical power sources and portable emergency electrical power sources, provided that such temporary electrical power supply source remains on the premises of the facility at all times. Written acknowledgement of the disclosure shall be evidenced by the signature or initials of the resident or the resident's legal representative immediately following the onsite emergency electrical power source disclosure

**22VAC40-73-50. Disclosure.**

- statement.
- I. Notation that additional information about the facility that is included in the resident agreement is available upon request; and
  - m. The department's website address, with a note that additional information about the facility may be obtained from the website.
- B. Written acknowledgment of the receipt of the disclosure by the resident or the resident's legal representative shall be retained in the resident's record.
- C. The disclosure statement shall also be available to the general public, upon request.

**22VAC40-73-60. Electronic records and signatures.**

- A. Use of electronic records or signatures shall comply with the provisions of the Uniform Electronic Transactions Act (§ 59.1-479 et seq. of the Code of Virginia).
- B. In addition to the requirements of the Uniform Electronic Transactions Act, the use of electronic signatures shall be deemed to constitute a signature and have the same effect as a written signature on a document as long as the licensee:
  1. Develops, implements, and maintains specific policies and procedures for the use of electronic signatures;
  2. Ensures that each electronic signature identifies the individual signing the document by name and title;
  3. Ensures that the document cannot be altered after the signature has been affixed;
  4. Ensures that access to the code or key sequence is limited;

**22VAC40-73-380. Resident personal and social information.**

- B. The personal and social information required in subsection A of this section shall be placed in the person's record and kept current.

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

- A. At or prior to the time of admission, there shall be a written agreement or acknowledgment of notification dated and signed by the resident or applicant for admission or the appropriate legal representative and by the licensee or administrator. This document shall include the following:
1. Financial arrangement for accommodations, services, and care that specifies:
    - a. Listing of specific charges for accommodations, services, and care to be made to the individual resident signing the agreement, the frequency of payment, and any rules relating to nonpayment;
    - b. Description of all accommodations, services, and care that the facility offers and any related charges;
    - c. For an auxiliary grant recipient, a list of services included under the auxiliary grant rate;
    - d. The amount and purpose of an advance payment or deposit payment and the refund policy for such payment, except that recipients of auxiliary grants may not be charged an advance payment or deposit payment;
    - e. The policy with respect to increases in charges and length of time for advance notice of intent to increase charges;
    - f. If the ownership of any personal property, real estate, money or financial investments is to be transferred to the facility at the time of admission or at some future date, it shall be stipulated in the agreement; and
    - g. The refund policy to apply when transfer of ownership, closing of facility, or resident transfer or discharge occurs.
  2. Requirements or rules to be imposed regarding resident conduct and other restrictions or special conditions.
  3. Those actions, circumstances, or conditions that would result or might result in the resident's discharge from the facility.

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

4. Specific acknowledgments that:

- a. Requirements or rules regarding resident conduct, other restrictions, or special conditions have been reviewed by the resident or the resident's legal representative;
- b. The resident or the resident's legal representative has been informed of the policy regarding the amount of notice required when a resident wishes to move from the facility;
- c. The resident has been informed of the policy required by 22VAC40-73-840 regarding pets living in the facility;
- d. The resident has been informed of the policy required by 22VAC40-73-860 K regarding weapons;
- e. The resident or the resident's legal representative or responsible individual, as stipulated in 22VAC40-73-550 H, has reviewed § 63.2-1808 of the Code of Virginia, Rights and Responsibilities of Residents of Assisted Living Facilities, and that the provisions of this statute have been explained;
- f. The resident or the resident's legal representative or responsible individual, as stipulated in 22VAC40-73-550 H, has reviewed the facility's policies and procedures for implementing § 63.2-1808 of the Code of Virginia;
- g. The resident has been informed that the resident may refuse release of information regarding the resident's personal affairs and records to any individual outside the facility, except as otherwise provided in law and except in case of the resident's transfer to another caregiving facility, notwithstanding any requirements of this chapter;
- h. The resident has been informed that interested residents may establish and maintain a resident council, that the facility is responsible for providing assistance with the formation and maintenance of the council, whether or not such a council currently exists in the facility, and the general purpose of a resident council (See 22VAC40-73-830);
- i. The resident has been informed of the bed hold policy in case of temporary transfer or movement from the facility if the facility has such a policy (See 22VAC40-73-420 B);

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

- j. The resident has been informed of the policy or guidelines regarding visiting in the facility if the facility has such a policy or guidelines (See 22VAC40-73-540 C);
  - k. The resident has been informed of the rules and restrictions regarding smoking on the premises of the facility, including those required by 22VAC40-73- 820;
  - l. The resident has been informed of the policy regarding the administration and storage of medications and dietary supplements;
  - m. The resident, upon request, has been notified in writing that the facility maintains liability insurance that provides the minimum amount of coverage set forth in 22VAC40-73-45 to compensate residents or other individuals for injuries and losses from negligent acts of the facility. The written notification must be on a form developed by the department; and
  - n. The resident has received written assurance that the facility has the appropriate license to meet the resident's care needs at the time of admission, as required by 22VAC40-73-310 D.
- B. Copies of the signed agreement or acknowledgment and any updates as noted in subsection C of this section shall be provided to the resident and, as appropriate, the resident's legal representative and shall be retained in the resident's record.
- C. The original agreement or acknowledgment shall be updated whenever there are changes to any of the policies or information referenced or identified in the agreement or acknowledgment and dated and signed by the licensee or administrator and the resident or the resident's legal representative.

**22VAC40-73-400. Monthly statement of charges and payments.**

The facility shall provide to each resident or the resident's legal representative, if one has been appointed, a monthly statement that itemizes any charges made by the facility and any payments received from the resident or on behalf of the resident during the previous calendar month and shall show the balance due or



**Assisted Living Facility Liability Insurance Statement  
Required by the Virginia Department of Social Services**

Name of Facility: \_\_\_\_\_

Name of Licensee: \_\_\_\_\_

Facility Address: \_\_\_\_\_

Telephone Number: (\_\_\_\_) \_\_\_\_\_

This facility maintains at least (Select amount) in liability insurance coverage to compensate residents or other individuals for injuries or losses from negligent acts of the facility in accordance with licensed capacity amounts required under Virginia Code § 63.2-1805 and 22VAC40-73-45.

<b>Tiers Per Licensed Capacity</b>	<b>Minimum Amount of Liability Insurance</b>
<b>Tier I (1-25 residents):</b>	<b>\$250,000</b>
<b>Tier II (26-75 residents):</b>	<b>\$400,000</b>
<b>Tier III (76-150 residents):</b>	<b>\$500,000</b>
<b>Tier IV (151 or more residents):</b>	<b>\$1,000,000</b>