

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 63.1-172 and 63.1-174 of the Code of Virginia, relating to adult care residences.

[H 1251]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.1-172 and 63.1-174 of the Code of Virginia are amended and reenacted as follows:

§ 63.1-172. Definitions.

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

"Administrator" means any person meeting the qualifications for administrator of an assisted living facility, pursuant to regulations promulgated by the Board. 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 and (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.

"~~Adult care residence~~ Assisted living facility" means any ~~place, establishment, or institution, public or private, operated or maintained~~ congregate residential setting that provides or coordinates personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for the maintenance or care of four or more adults who are aged, infirm or disabled and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Mental Health, Mental Retardation and Substance Abuse Services, but including any portion of such facility not so licensed; (ii) the home or residence of an individual who cares for or maintains only persons related to him by blood or marriage; ~~and~~; (iii) a facility or portion of a facility serving infirm or disabled persons between the ages of eighteen and twenty-one, or twenty-two if enrolled in an educational program for the handicapped pursuant to § 22.1-214, when such facility is licensed by the Virginia Department of Social Services as a child-caring institution under Chapter 10 (§ 63.1-195 et seq.) of this title, but including any portion of the facility not so licensed; ~~and~~ (iv) any housing project for seniors or the disabled that provides no more than basic coordination of care services and is funded by the U.S. Department of Housing and Urban Development, including but not limited to, U.S. Department of Housing and Urban Development Sections 8, 202, 221(d)(3), 221(d)(4), 231, 236, or 811 housing, by the U.S. Department of Agriculture, or by the Virginia Housing Development Authority. Included in this definition are any two or more places, establishments or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more aged, infirm or disabled adults.

"Assisted living care" means a level of service provided by an ~~adult care residence~~ assisted living facility for adults who may have physical or mental impairments and require at least a moderate level of assistance with activities of daily living.

"Independent physician" means a physician who is chosen by the resident of the ~~adult care residence~~ assisted living facility and who has no financial interest in the ~~adult care residence~~ assisted living facility, directly or indirectly, as an owner, officer, or employee or as an independent contractor with the residence.

"Maintenance or care" means the protection, general supervision and oversight of the physical and mental well-being of the aged, infirm or disabled individual.

"Qualified assessor" means an entity contracting with the Department of Medical Assistance Services to perform nursing facility pre-admission screening or to complete the uniform assessment instrument for a home and community-based waiver program, including an independent physician contracting with the Department of Medical Assistance Services to complete the uniform assessment instrument for residents of ~~adult care residences~~ assisted living facilities, or any hospital which has contracted with the Department of Medical Assistance Services to perform nursing facility pre-admission screenings.

"Residential living care" means a level of service provided by an ~~adult care residence~~ assisted living facility for adults who may have physical or mental impairments and require only minimal assistance with the activities of daily living. ~~This~~ The definition of "residential living care" includes the services provided by independent living facilities that voluntarily become licensed.

"Special order" means an administrative order issued to any party licensed pursuant to this chapter that has a stated duration of not more than twelve months and that may include a civil penalty that shall not exceed \$500 for each inspection resulting in a finding of violation, a restriction or prohibition on

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admission of new residents to any ~~adult care residence~~ assisted living facility, and/or a reduction in licensed capacity of any ~~adult care residence~~ assisted living facility.

§ 63.1-174. Regulations.

A. The State Board shall have the authority to promulgate and enforce regulations to carry out the provisions of this article and to protect the health, safety, welfare and individual rights of residents of ~~adult care residences~~ assisted living facilities and to promote their highest level of functioning. Such regulations shall authorize assisted living facilities to provide safe, secure environments for residents with serious cognitive impairments if such assisted living facilities comply with the Board's regulations governing such placement. Such regulations shall define (i) serious cognitive impairment, which shall include, but not be limited to, a physician assessment and (ii) safe, secure environment. Prior to placing a resident with a serious cognitive impairment in a safe, secure environment, an assisted living facility shall obtain the written approval of one of the following persons, in the specified order of priority, (i) the resident, if capable of making an informed decision; (ii) a guardian or legal representative for the resident; however such an appointment shall not be required in order that written approval may be obtained; (iii) a relative authorized pursuant to the Board's regulations to act as the resident's representative; or (iv) an independent physician if a guardian, legal representative or relatives are unavailable. Such written approval shall be retained in the resident's file.

B. The ~~adult care residence~~ assisted living facility shall have adequate 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. 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.

C. Regulations for medical procedures in ~~adult care residences~~ assisted living facilities shall be developed in consultation with the State Board of Health and promulgated by the State Board of Social Services, and compliance with these regulations shall be determined by Department of Health or Department of Social Services inspectors as provided by an interagency agreement between the Department of Social Services and the Department of Health.

2. That the Board of Social Services, in consultation with the Departments of Social Services, Health, Medical Assistance Services, Mental Health, Mental Retardation and Substance Abuse Services, and Rehabilitative Services and the Department for Rights of Virginians with Disabilities shall promulgate regulations to carry out the purposes of this act within 280 days of enactment. Such regulations shall include, but not be limited to, (i) provisions that distinguish assisted living care from residential living care, (ii) definitions of "serious cognitive impairment," which shall include, but not be limited to, a physician assessment, and "safe secure environment," (iii) programming requirements for residents with serious cognitive impairment requiring a safe, secure environment, and (iv) requirements for any nursing home and assisted living facility with a single administrator to have a management plan which addresses the care and supervision of the residents.

3. That the Code Commission is hereby requested to change all references to "adult care residence(s)" in the Code of Virginia to "assisted living facility(ies)."