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To: licensinglistserv@virginiainteractive.org
Subject: Clarification Regarding Resident Rights

This file is being sent to providers of assisted living facilities from the Virginia Department of Social Services Email Distribution Service.

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The following correspondence provides clarification regarding resident rights in assisted living facilities. The document addresses the rights of both prospective residents and residents.

Clarification Regarding Resident Rights

The purpose of this correspondence is to clarify compliance with a matter relating to § 63.2-1808 of the Code of Virginia (Code). This section of the Code specifies the rights and responsibilities of residents of assisted living facilities. The specific matter we are clarifying pertains to § 63.2-1808 A 8, which states:

A. Any resident of an assisted living facility has the rights and responsibilities enumerated in this section. The operator or administrator of an assisted living facility shall establish written policies and procedures to ensure that, at the minimum, each person who becomes a resident of the assisted living facility:

8. Is free to select health care services from reasonably available resources.

It has recently come to the attention of the Division of Licensing Programs that in some cases, there has been a misinterpretation regarding this right. Certain facilities have been requiring prospective residents to agree to use a particular pharmacy or mental health provider as a condition of admission. Prospective residents are therefore being required to relinquish their right to select health care services from reasonably available resources. The facilities claim that any prospective residents who do not wish to use the particular pharmacy or mental health provider are free to go to another assisted living facility. If a person changes his mind about using the particular pharmacy or mental health provider after becoming a resident, he could be discharged.

The Code clearly states that any resident has the rights specified in § 63.2-1808 and that an assisted living facility must have policies and procedures to ensure that each resident has these rights. An admissions policy that requires waiving any of these rights as a condition of admission is unacceptable as it is in direct conflict with the requirement to ensure these rights.

Because we realize that facilities that are requiring prospective residents to relinquish their rights is based on a misunderstanding of the Code, and because it will take time to revise policies and procedures, resident agreements, disclosure statements, etc., facilities will be given until June 1, 2011 to come into compliance with § 63.2-1808 A 8.

If relinquishment of the right to select health care services was in the resident agreement, it must be deleted and the change must be signed by the licensee or administrator and the resident or his legal representative (or there can be a whole new updated agreement). A facility that has been requiring residents to waive their right as noted above must ensure that each resident is informed of his right to select a pharmacy, mental health provider, or other health care service from reasonably available resources and that this is a change in the facility's policy.

Should you have any questions regarding this correspondence, please contact your licensing inspector. Thank you.