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**Subject:** Information on 2010 Legislation

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June 25, 2010

**TO:** Assisted Living Facility and Adult Day Care Center Licensees and Applicants  
**FROM:** Lynne Williams, Director, Division of Licensing Programs  
**SUBJECT:** 2010 Legislation

The Virginia Department of Social Services has developed the following information regarding legislation passed in the 2010 General Assembly session that affects assisted living facilities and/or adult day care centers. Also, we have attached the relevant bills and the Risk Assessment Matrix. If you have any questions, please contact your licensing inspector. Thank you.

**2010 Legislation  
Affecting Assisted Living Facilities and Adult Day Care Centers  
Licensed by the Virginia Department of Social Services**

**SB 339**

Senate Bill 339 was passed in the 2010 General Assembly session and becomes effective July 1, 2010. The bill results in changes to §§ 63.2-1706 and 63.2-1728 of the Code of Virginia. Although the focus of the bill is on assisted living facilities, almost all of the facilities licensed by the Division of Licensing Programs (Division) will be affected in one way or another. A summary of the legislation and the Division's implementation procedures follows. A copy of the bill is attached.

§ 63.2-1706 A Interviews

The bill specifies that the representative of the Virginia Department of Social Services (Department) must obtain the permission of a resident or participant or his legally authorized representative prior to interviewing the resident or participant.

Implementation: The licensing inspector will ask the resident or participant for permission to interview. If oral permission is given, the inspector may proceed with the interview. If the person refuses to be interviewed, an interview will not take place. If the person grants permission for the interview, but the inspector is aware that the person

has been adjudicated incompetent, the inspector will also obtain oral permission from the person's guardian or conservator.

In addition, the bill requires that the interview be limited to discussion of issues related to the facility's compliance with laws and regulations.

Implementation: The licensing inspector will restrict questions during the interview to those regarding the facility's compliance with laws and regulations. The inspector may, however, discuss anything that the resident or participant has initiated discussion on and wishes to discuss.

The requirements noted above apply whether a facility is licensed or is an applicant for licensure. They also apply to interviews with children in children's facilities.

#### §63.2-1706 B Inspections in Assisted Living Facilities

The legislation specifies that any assisted living facility issued a license for a period of six months must have at least two inspections during the six-month period, one of which is unannounced. This is not a change, but the language was moved to a new paragraph in the section.

The bill requires that for any assisted living facility with a one, two, or three year license, the number of inspections must be at least one per year, which is unannounced, and as needed based on the facility's compliance with applicable laws and regulations.

Implementation: For an assisted living facility on a one, two, or three year license, the inspector will conduct at least one unannounced inspection each year. The inspector will follow the Inspection Protocol. If during the inspection, a violation is cited that has a risk rating of B-2 or greater, the inspector will conduct a second inspection that year to review the previous violations and follow the Inspection Protocol. If during the second inspection, a violation is cited that has a risk rating of B-2 or greater, the inspector will conduct a third inspection that year to review the previous violations and follow the Inspection Protocol. A description of risk rating levels may be found in the Risk Assessment Matrix, which is attached. Also, the matrix and additional information may be found in the Risk Assessment Guidance Manual (matrix is Appendix C in the manual) under Guidance Documents on the Department's public website at: [http://www.dss.virginia.gov/facility/alf\\_regulations.cgi](http://www.dss.virginia.gov/facility/alf_regulations.cgi).

#### §63.2-1728 Incident Reports

The legislation specifies that an incident report filed by an assisted living facility as required in the regulations is not to be considered a complaint. However, the Department may investigate facility-reported incidents and may implement a plan of correction. Although the legislation only addresses assisted living facilities, the policy of the Division is that facility-reported incidents for all licensed child and adult facilities will not be considered complaints.

Implementation: When a licensee, the facility administrator/director, or his designee reports an incident involving the facility (facility-reported incident), the report will not be considered a complaint by the inspector and will not be posted on the website as a complaint. Although a facility-reported incident is not considered a complaint, the

inspector may initiate an investigation depending upon the seriousness of the incident and the nature of any response to the incident. Based on the investigation, there may be a plan of correction.

#### Enactment Clause - Criteria for Licensure Periods

The legislation includes an enactment clause that mandates that the Department develop specific criteria for the issuance of one, two and three year assisted living facility licenses by November 1, 2010. The bill specifies that this be done in consultation with key stakeholder groups. Data is currently being collected.

#### **SB 338 and HB 967 (Identical Bills)**

Senate Bill 338 and identical House Bill 967 were passed in the 2010 General Assembly session and become effective July 1, 2010. The bills result in changes to § 15.2-2291 of the Code of Virginia that relate to assisted living facilities. Although the bills relate to zoning ordinances and not state licensing matters, the information is included here so that you are aware of the legislation. The bills specify that zoning ordinances will consider an assisted living facility with no more than eight residents as residential occupancy by a single family, and that no conditions more restrictive than those imposed on residences occupied by related persons may be imposed on such facility. Copies of the bills are attached.

**SCROLL DOWN TO VIEW ATTACHMENTS**

# VIRGINIA ACTS OF ASSEMBLY -- 2010 SESSION

## CHAPTER 603

*An Act to amend and reenact §§ 63.2-1706 and 63.2-1728 of the Code of Virginia, relating to licensure of a facility; interview with residents or participants.*

[S 339]

Approved April 11, 2010

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 63.2-1706 and 63.2-1728 of the Code of Virginia are amended and reenacted as follows:**  
§ 63.2-1706. Inspections and interviews.

A. Applicants for licensure and licensees shall at all times afford the Commissioner reasonable opportunity to inspect all of their facilities, books and records, and to interview their agents and employees and any person living or participating in such facilities, or under their custody, control, direction or supervision. *Interviews conducted pursuant to this section with persons living or participating in a facility operated by or under the custody, control, direction, or supervision of an applicant for licensure or a licensee shall be (i) authorized by the person to be interviewed or his legally authorized representative and (ii) limited to discussion of issues related to the applicant's or licensee's compliance with applicable laws and regulations, including ascertaining if assessments and reassessments of residents' cognitive and physical needs are performed as required under regulations of the Board.*

B. For any ~~assisted living facility~~ or adult day care center issued a license or renewal thereof for a period of six months, the Commissioner shall make at least two inspections during the six-month period, one of which shall be unannounced. For any ~~assisted living facility~~ or adult day care center issued a license or renewal thereof for a period of one year, the Commissioner shall make at least three inspections each year, at least two of which shall be unannounced. For any ~~assisted living facility~~ or adult day care center issued a license or a renewal thereof for a period of two years, the Commissioner shall make at least two inspections each year, at least one of which shall be unannounced. For any ~~assisted living facility~~ or adult day care center issued a three-year license, the Commissioner shall make at least one inspection each year, which shall be unannounced.

*For any assisted living facility issued a license or renewal thereof for a period of six months, the Commissioner shall make at least two inspections during the six-month period, one of which shall be unannounced. For any assisted living facility issued a license or renewal thereof for a period of one, two, or three years, the Commissioner shall make at least one inspection each year, which shall be unannounced, and as needed based on compliance with applicable laws and regulations.*

C. All licensed child welfare agencies shall be inspected not less than twice annually, and one of those inspections shall be unannounced.

D. The activities, services and facilities of each applicant for renewal of his license as an assisted living facility, adult day care center or child welfare agency shall be subject to an inspection or examination by the Commissioner to determine if he is in compliance with current regulations of the Board or Child Day-Care Council, whichever is applicable.

E. For any licensed assisted living facility, adult day care center or child welfare agency, the Commissioner may authorize such other announced or unannounced inspections as the Commissioner considers appropriate.

§ 63.2-1728. Establishment of toll-free telephone line for complaints; investigation on receipt of complaints.

With such funds as are appropriated for this purpose, the Commissioner shall establish a toll-free telephone line to respond to complaints regarding operations of assisted living facilities, adult day care centers and child welfare agencies. Upon receipt of a complaint concerning the operation of an assisted living facility, adult day care center or child welfare agency, regardless of whether the program is subject to licensure, the Commissioner shall, for good cause shown, cause an investigation to be made, including on-site visits as he deems necessary, of the activities, services, records and facilities. The assisted living facility, adult day care center or child welfare agency shall afford the Commissioner reasonable opportunity to inspect all of the operator's activities, services, records and facilities and to interview its agents and employees and any child or other person within its custody or control. Whenever an assisted living facility, adult day care center or child welfare agency subject to inspection under this section is determined by the Commissioner to be in noncompliance with the provisions of this subtitle or with regulations adopted pursuant to this subtitle, the Commissioner shall give reasonable notice to the assisted living facility, adult day care center or child welfare agency of the nature of its noncompliance and may thereafter take appropriate action as provided by law, including a suit to enjoin the operation of the assisted living facility, adult day care center or child welfare agency.

*An incident report filed by an assisted living facility, pursuant to regulations adopted by the Board, for any major incident that negatively affects or threatens the life, health, safety, or welfare of any resident of the facility shall not be considered a complaint for purposes of this section and shall not be posted by the Department on a website maintained by the Department. However, upon receipt of an incident report for any major incident that negatively affects or threatens the life, health, safety, or welfare of any resident of an assisted living facility, the Commissioner may initiate an investigation including an on-site visit to the facility if the Commissioner finds, for good cause shown based upon the seriousness of the incident and the nature of any response to the incident, including any implementation of a plan of correction to address the situation giving rise to the incident, that an investigation is required to protect the life, health, safety, or welfare of a resident of the assisted living facility.*

**2. That by November 1, 2010, the Department of Social Services shall, in consultation with key stakeholder groups, develop specific criteria by which the Department issues one-, two-, and three-year assisted living facility licenses. Such criteria shall be separately stated for each licensure period and shall be unambiguously communicated to all entities seeking initial and renewal licenses.**

# VIRGINIA ACTS OF ASSEMBLY -- 2010 RECONVENED SESSION

## CHAPTER 796

*An Act to amend and reenact § 15.2-2291 of the Code of Virginia, relating to assisted living facilities and group homes.*

[S 338]

Approved April 21, 2010

**Be it enacted by the General Assembly of Virginia:**

**1. That § 15.2-2291 of the Code of Virginia is amended and reenacted as follows:**

§ 15.2-2291. Assisted living facilities and group homes of eight or fewer single-family residence.

A. Zoning ordinances for all purposes shall consider a residential facility in which no more than eight individuals with mental illness, mental retardation, or developmental disabilities reside, with one or more resident counselors or other staff persons, as residential occupancy by a single family. For the purposes of this subsection, mental illness and developmental disability shall not include current illegal use of or addiction to a controlled substance as defined in § 54.1-3401. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed on such facility. For purposes of this subsection, "residential facility" means any group home or other residential facility for which the Department of Behavioral Health and Developmental Services is the licensing authority pursuant to this Code.

B. Zoning ordinances ~~in the Counties of Arlington and York~~ for all purposes shall consider a residential facility in which no more than eight aged, infirm or disabled persons reside, with one or more resident counselors or other staff persons, as residential occupancy by a single family. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed on such facility. For purposes of this subsection, "residential facility" means any ~~group home~~ *assisted living facility* or residential facility in which aged, infirm or disabled persons reside with one or more resident counselors or other staff persons and for which the Department of Social Services is the licensing authority pursuant to this Code.

C. Zoning ordinances ~~in the Cities of Lynchburg and Suffolk~~ for all purposes shall consider a residential facility in which no more than four aged, infirm or disabled persons reside, with one or more resident counselors or other staff persons, as residential occupancy by a single family. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage or adoption shall be imposed on such facility. For purposes of this subsection, "residential facility" means any group home or residential facility in which aged, infirm or disabled persons reside with one or more resident counselors or other staff persons and for which the Department of Social Services is the licensing authority pursuant to this Code.

# VIRGINIA ACTS OF ASSEMBLY -- 2010 RECONVENED SESSION

## CHAPTER 847

*An Act to amend and reenact § 15.2-2291 of the Code of Virginia, relating to assisted living facilities and group homes.*

[H 967]

Approved April 21, 2010

**Be it enacted by the General Assembly of Virginia:**

**1. That § 15.2-2291 of the Code of Virginia is amended and reenacted as follows:**

§ 15.2-2291. Assisted living facilities and group homes of eight or fewer single-family residence.

A. Zoning ordinances for all purposes shall consider a residential facility in which no more than eight individuals with mental illness, mental retardation, or developmental disabilities reside, with one or more resident counselors or other staff persons, as residential occupancy by a single family. For the purposes of this subsection, mental illness and developmental disability shall not include current illegal use of or addiction to a controlled substance as defined in § 54.1-3401. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed on such facility. For purposes of this subsection, "residential facility" means any group home or other residential facility for which the Department of Behavioral Health and Developmental Services is the licensing authority pursuant to this Code.

B. Zoning ordinances ~~in the Counties of Arlington and York~~ for all purposes shall consider a residential facility in which no more than eight aged, infirm or disabled persons reside, with one or more resident counselors or other staff persons, as residential occupancy by a single family. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed on such facility. For purposes of this subsection, "residential facility" means any ~~group home~~ *assisted living facility* or residential facility in which aged, infirm or disabled persons reside with one or more resident counselors or other staff persons and for which the Department of Social Services is the licensing authority pursuant to this Code.

C. Zoning ordinances ~~in the Cities of Lynchburg and Suffolk~~ for all purposes shall consider a residential facility in which no more than four aged, infirm or disabled persons reside, with one or more resident counselors or other staff persons, as residential occupancy by a single family. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage or adoption shall be imposed on such facility. For purposes of this subsection, "residential facility" means any group home or residential facility in which aged, infirm or disabled persons reside with one or more resident counselors or other staff persons and for which the Department of Social Services is the licensing authority pursuant to this Code.

# Risk Assessment Matrix and Enforcement Options

<b>OCCURRENCE</b> Step 1: Potential for violation to result in harm?	C) High	<b>C-1</b> 10	<b>C-2</b> 16	<b>C-3</b> 18
	Harm is imminent or has occurred			
	B) Medium	<b>B-1</b> 8	B-2	<b>B-3</b> 14
	Harm is likely to occur		12 B-2	
	A) Low	<b>A-1</b> 2	<b>A-2</b> 4	A-3
	Harm is not likely to occur, but possibility exists			6 A-3
<b>SEVERITY</b> Step 2: Potential or actual degree of harm from violation?		<b>1) Moderate</b> A violation could or did cause minor harm to a consumer but would or did not require intervention(s) beyond the knowledge, skills, and abilities of direct care staff, teachers, or aides to address the problem, e.g., for one medication administration, a staff failed to give a high-blood pressure med on a single occasion to a resident who currently is medically stable. There are no indications of a medication administration problem in the facility.	<b>2) Serious</b> A violation could or did cause significant harm to a consumer and would or did require professional intervention(s) such as from medical or mental health professionals to address the problem, e.g., the lack of supervision resulted in a child breaking her arm after gaining access to a piece of playground equipment that was not age appropriate.	<b>3) Extreme</b> A violation could or did cause harm to a consumer resulting in a life-threatening (if not actual death), or a permanent partial or total disability in the area of physical, emotional and/or psychological functioning, e.g., a teacher gave a child peanut butter and crackers in spite of there being a visible notice on the child's file indicating the life-threatening allergy to peanut products.

**The assessment of risk will be influenced by the following conditions:**

1. Whenever harm has resulted from a violation, the likelihood of occurrence rating must always be assessed as a "C."
2. Whenever the degree of severity from an actual injury is less than the degree of severity expected under the violated conditions, the rating must always be assessed at the degree of severity expected and not the actual severity that resulted.
3. Whenever the degree of severity from an actual injury is greater than the degree of severity expected, the rating must always be assessed at the degree of severity that actually occurred and not the expected severity.
4. Variables that may affect the risk rating:
  - (a) Exacerbating characteristics of violations to consider: nature (or type); repetition (rare, episodic, or frequent); pattern (isolated, scattered, or systemic); duration of exposure (length of impact); speed (acceleration of impact), etc.
  - (b) Exacerbating characteristics of the affected individual or population: physiological development, status of mental, emotional and physical health, etc.
  - (c) Mitigating variables: enhanced physical safety features or surveillance of building or landscape, staffing above required number, training above required KSA's, annual skills proficiency test requirement, etc.

The assessment of risk must always be based on professional experience and, whenever needed, on consultation with field or home office staff, review of research, or expert(s) from a relevant field of study or practice.

## TABLE OF ADVERSE ENFORCEMENT OPTIONS

<b>At Minimum, Consultation Is Provided</b> A-1=2 A-2=4 A-3=6	<b>Intermediate Sanctions Must Be Considered</b> A-3=6 B-1=8 C-1=10 B-2=12
<b>Revocation/Denial Must Be Considered</b> B-2=12 B-3=14 C-2=16 C-3=18	
<p>Must consider the following variables before recommending an enforcement option: history of demonstrated prevention-based compliance, resourcefulness in problem resolution, consistency of enforcement actions for similar violations.</p>	

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