

**REPORT OF THE
JOINT LEGISLATIVE AUDIT
AND REVIEW COMMISSION**

**Interim Report: Impact of
Assisted Living Facility Regulations**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



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**COMMONWEALTH OF VIRGINIA
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In Brief...

Interim Report: Impact of Assisted Living Facility Regulations

The 2005 General Assembly adopted major legislation affecting assisted living facilities as a result of continued concerns about the welfare of residents. The new law provides enhanced regulatory and enforcement powers to the Department of Social Services. Additional licensing inspector positions were provided to better implement the new requirements, and increased auxiliary grant funding was provided for eligible residents. The new law also requires that facility administrators be licensed by the Board of Long-Term Care Administrators and that medication aides be registered by the Board of Nursing. The law's provisions are to be phased in over several years, from 2005 to 2008.

The 2005 Appropriation Act directs JLARC to complete a review of the impact of the new regulations for assisted living facilities, with a final report by June 2006. The General Assembly may wish to extend the deadline for the final report because key provisions of the new law will not take effect until after June 2006.

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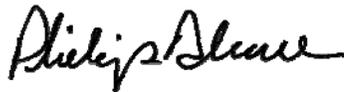
Preface

Item 21F of the 2004-2006 Appropriation Act requires the Joint Legislative Audit and Review Commission (JLARC) to report on the impact of new regulations affecting assisted living facilities that were adopted pursuant to HB 2512/SB 1183 of the 2005 General Assembly. Item 21F directs JLARC staff to assess the regulations' effects on the cost of providing services, on residents' access to providers and other services, and on the quality of care delivered to residents.

This document is an interim status update for the JLARC review of the impact of the new regulations. It provides a summary of previous JLARC reports concerning assisted living facilities and services for residents with mental disabilities, and background information on the assisted living industry, including major industry changes. The report also provides a summary of the 2005 legislation, of the agencies' plans for and progress in implementing the legislation, and of JLARC staff analysis.

The report recommends that the final reporting deadline be extended. The final report is due in June 2006; however, key provisions of the new legislation will not take effect until mid-2007, and enforcement cannot begin until mid-2008. Extending the final reporting date would allow JLARC staff to better assess the impact of the new regulations.

On behalf of the JLARC staff, I would like to thank the Department of Social Services and Department of Health Professions staff for the information and assistance provided for this review.



Philip A. Leone
Director

November 21, 2005



Interim Report: Impact of Assisted Living Facility Regulations

In Summary...

The 2005 General Assembly adopted major legislation affecting assisted living facilities. The new law gives the Department of Social Services enhanced enforcement powers, directs the Department of Health Professions to license facility administrators and register medication aides, and requires administrators to provide consumers with basic information about the services and costs. An increase in monthly auxiliary grant rates was also funded, and 11 new licensing staff were approved for the Department of Social Services. The law's provisions phase in over several years, from 2005 to 2008. JLARC is required to issue an interim report, and provide a final report on the impact of the new law and regulations by June 2006. The General Assembly may wish to extend the deadline for the final report because key provisions of the new law will not take effect until after June 2006.

Assisted living facilities (ALFs) are non-medical residential settings that provide or coordinate personal and health care services, 24-hour supervision, and assistance for the care of four or more adults who are aged, infirm or disabled. These facilities have been regulated in Virginia since 1954. The Department of Social Services (DSS) is responsible for regulation through licensure and monitoring of the facilities.

Item 21F of the 2004-2006 Appropriation Act requires the Joint Legislative Audit and Review Commission (JLARC) to report on the impact of new regulations adopted pursuant to major legislation affecting assisted living facilities, HB 2512/SB 1183 from the 2005 General Assembly. Item 21F directs JLARC to assess the regulations' effects on the cost of providing services, on residents' access to providers and other services, and on the quality of care delivered to residents.

This document provides the interim report mandated by Item 21F. The interim report summarizes trends and findings from the three previous JLARC reports on assisted living, and summarizes the legislation adopted in 2005 and the agencies' plans for implementation. The document concludes with a discussion of the proposed JLARC staff analysis.

PRIOR JLARC REPORTS

JLARC has reviewed the licensing, funding, and operation of assisted living facilities in three reports, beginning with the 1979 *Homes for Adults in Virginia*. In 1990 a follow-up report was issued, and a 1997 report focused on services for residents with mental disabilities.

Several themes recur in the JLARC reports. One theme is the growth of the industry. Another theme is the changing nature of the populations served by the facilities. All three reports have also found some facilities that easily exceeded State standards, and others which struggled to meet them. The reports also identified concerns at some facilities about the health and safety of the residents, the effectiveness of State licensing and monitoring, and the adequacy of State funding through the auxiliary grant program.

The 1997 report noted a background of substantial change in the industry. These changes included legislation establishing two levels of licensed care into which residents were to be placed, based on assessments conducted by outside parties; a requirement that the facility provide assurances it could meet the residents' documented needs; revised and expanded regulations; and increased State funding for auxiliary grant recipients.

The current review was triggered by some of the same factors at work in the mid-1990s: major legislative changes, including increased auxiliary grant funding and additional State licensing staff, and impending revisions to the assisted living regulations.

Growth in the ALF Industry

Significant growth has occurred in both the number of licensed facilities and the number of persons residing in the facilities. As shown in Table 1, in 1979 there were 314 licensed facilities located throughout the State containing 10,420 beds. The number of licensed facilities has doubled since then, and the bed capacity has more than tripled. Although the growth in the number of facilities has slowed recently, the average size of a facility has grown by two-thirds over the longer period.

Table 1
Growth in Assisted Living Facilities

Source: Prior JLARC Reports; Virginia Department of Social Services, *Information Resource Book 2005*.

<u>Fiscal Year</u>	<u>Number of Licensed Facilities</u>	<u>Bed Capacity</u>	<u>Average Size</u>
1979	314	10,420	33
1990	470	22,538	48
1997	612	27,537	45
2004	629	34,725	55
Percent Growth	100%	233%	67%

The population served by ALFs is growing as well. The proportion of Virginia’s population that is 60 years of age or older is a growing segment of the population, as noted in the recent JLARC report, *The Impact of an Aging Population on State Agencies*. Older Virginians (persons of age 60 and older) are expected to account for 18 percent of the population by 2010 and 22 percent by 2020 – nearly twice their percentage in 1970. Substantial increases are also expected in the age 85 or older population. From 2000 to 2030, the number of people 85 and older is expected to more than double, from about 87,000 to about 250,000 persons.

Assisted living facilities provide a residential option for persons with disabilities, and the need for assistance with some of the activities of daily living is likely to increase with population growth. The number of people with disabilities, for example, has increased as a result of population growth. For example, 10.1 percent of Virginians over 65, or 76,135 persons, reported a self-care disability in the 2000 census. If this share remains constant (although there is mixed evidence about whether disability rates among older persons are changing), then by 2020 there could be 140,000 Virginians over 65 with a self-care disability due solely to projected growth in this age cohort.

Changes in the Population Served by ALFs

The role of ALFs as providers of care has evolved away from the board and care model of the traditional adult home toward that of serving persons with diverse medical needs and problems. Historically, these facilities often served as “rest homes” for the elderly. By the time of the 1979 JLARC report, homes for adults, as they were called then, represented a primary source of housing for persons discharged from State institutions for the mentally ill and mentally retarded. As many as

2,000 residents, almost 20 percent of all residents, were in these categories, the report noted.

The 1990 report found at least three distinct populations residing in the facilities: residents who were moderately impaired with a need for supervision, residents with significant mental disabilities, and residents with physical disabilities requiring medical care and treatment. The report recommended that State standards be established for accommodating these three populations.

The 1997 JLARC report found that:

the State has in effect encouraged the development of the ALF industry as a major, though unplanned, component of housing and treatment for persons with mental disabilities. ALFs are a major placement option for Virginia's State-operated mental health facilities.

As evidence for this finding, the report noted that 47 percent of all public pay residents had a mental health diagnosis, with schizophrenia and mental retardation the two diagnoses most frequently noted.

Today, residents of ALFs are often described as having greater "acuity" – meaning they tend to be sicker, taking more medications, with a wider range of disabilities than in the past. The JLARC final report will provide a more complete description of ALF residents.

Identified Concerns with ALFs

Each of the prior reports indicated that licensed facilities offered a wide range of settings, services, staffing, and other factors. While many facilities were found to provide high-quality services and lifestyles, all three prior JLARC reports also noted quality of life concerns in a number of facilities. These concerns were most often found in facilities predominantly serving auxiliary grant recipients. Concerns included residents' access to services, the level of supervision provided by the facility, and the need for stronger enforcement of State standards. The reports also found problems in State management of inspections, licensing, and funding.

Quality of Life Issues. Problems were noted in all three reports with the services and supervision provided to residents in a number of facilities. The 1979 report found significant shortcomings in the health and safety of residents. Specific problems were noted in a number of facilities with food service, sanitation, and fire safety inspections. Based upon the report's findings, the Commissioner ordered "crash" inspections

of 144 facilities, which provided the department with the formal basis to take corrective actions and issue official sanctions. Many of the recommendations made in the 1979 report were at least partly implemented, resulting in a “noticeable improvement” in many services, according to the 1990 report.

The 1997 report found improvements in determining residents’ needs for services, partly in response to a 1993 law which established a method for assessing the needs of auxiliary grant recipients (a recommendation of the 1990 JLARC report) and for ensuring that those needs could be met by the facility in which they reside. However, the report also noted that in a survey, half of the community services board (CSB) case managers said that residents with mental disabilities were being placed wherever there was a bed instead of being matched with a facility appropriate to their needs. Problems were also identified in linking individual residents with CSB services. Several recommendations were made to bolster State standards and to encourage the adoption of best practices.

Access to Services. The three previous JLARC reports found that some facilities ensured their residents had the services they required, but that residents in other facilities, often the facilities with predominantly public pay residents, had problems accessing services. The 1979 report, for example, found problems with basic food service at some facilities, such as poorly planned menus and a lack of sufficient food. The report also noted that licensees were “generally unprepared to deal with the special mental health needs” of the residents.

The ability of facilities to assess and meet the needs of residents was also found to be problematic in the 1990 JLARC report. The report recommended that, due to the growth and diversity of the population in the facilities, State standards should be revised to recognize the different levels of care needed by residents and being provided in the facilities.

The 1997 report found continuing problems in several key service areas. The report noted that residents were sometimes placed in facilities that were not appropriately staffed to accommodate their needs. Problems with administering and monitoring medications were frequently noted in facilities visited by JLARC staff. Some CSB case managers were not regularly visiting their clients who resided in the facilities, according to facility administrators surveyed for the report.

State Oversight. The prior JLARC reports noted a variety of problems with licensing and supervision of the facilities. All three reports recommended substantive changes to State standards and licensing procedures. Like the earlier reports, the 1997 report found that training for State licensing staff was

limited and oversight of the State's licensing activities was weak. Annual license renewal inspections were still not consistently performed on an unannounced basis, a recommendation made in 1979 and repeated in 1990.

The 1997 report also noted that the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) and the CSBs have a role in ALFs. DMHMRSAS policy, for example, required CSBs to regularly assess the appropriateness of placements in ALFs of persons who received services from the CSB. The report also noted that 71 percent of CSB staff surveyed for the report indicated that their clients who resided in ALFs were not being provided the opportunity to achieve their highest level of functioning, a goal set out in the *Code of Virginia*.

State Funding. A combination of federal, State, and local funds sustains many residents of ALFs, especially individuals with mental disabilities. Funding sources include federal Supplemental Security Income (SSI) and Medicaid, and the State auxiliary grant as well as a personal allowance paid to grant recipients by the State. Many residents also receive services from the locally supported CSBs as well as from other community programs.

In FY 2004, the auxiliary grant was \$854 per month (Table 2). The auxiliary grant is intended to pay for a variety of basic board and care services for recipients. The auxiliary grant is a supplement to income for recipients of SSI and certain other aged, blind, or disabled individuals residing in licensed assisted living facilities. DSS expends about \$19 million annually on the auxiliary grant program.

The 1997 JLARC report found that about 375 (62 percent) of the then-licensed facilities had at least one auxiliary grant resident. DSS staff estimated that about 200 facilities exclusively housed public pay or auxiliary grant residents. The report also found that facilities in five localities (City of Richmond, Washington County, City of Roanoke, City of Petersburg, and Roanoke County) housed 35 percent of all auxiliary grant recipients.

The prior reports also called attention to the personal allowance received by auxiliary grant recipients. The allowance is a monthly payment set in the Appropriation Act which is intended to cover a wide range of items and services for residents. In 1997 the allowance was \$40 per month; currently it is \$62 per month.

Table 2
Auxiliary Grant Caseload and Payment Trends

Source: Prior JLARC Reports; Virginia Department of Social Services, *Information Resource Book 2005*.

<u>Fiscal Year</u>	<u>Average Monthly Recipients</u>	<u>Monthly Rate</u>	<u>Expenditures (millions)</u>
1979	2,281	\$372	\$4.4*
1990	5,761	\$602	\$15.5
1997	6,840	\$695	\$19.2
2004	6,386	\$854	\$19.1
Percent Growth	180%	130%	334%

*Appropriation

MAJOR PROVISIONS OF THE 2005 LEGISLATION

In 2005 the General Assembly enacted major legislation affecting assisted living facilities. The legislation was designed to improve the quality of care provided by ALFs and strengthen the State's regulatory framework. The new law, developed with input from a variety of stakeholders, passed both chambers of the General Assembly unanimously and was signed into law by the Governor. The law's provisions phase in over several years, from 2005 to 2008.

The legislation gives the Department of Social Services enhanced enforcement powers, directs the Department of Health Professions to license facility administrators and register medication aides, and requires facilities to provide consumers with basic information about their services and costs. Several provisions also address emerging problems related to the care of residents with mental health, mental retardation, and substance abuse issues. The major elements of the legislation are detailed below.

Enhanced Enforcement Provisions

In an effort to improve the regulation of ALFs in the Commonwealth, the General Assembly sought to strengthen the enforcement authority available to the Department of Social Services (DSS). The department will now have greater enforcement powers and more flexibility in responding to facilities with a history of regulatory violations.

\$10,000 Maximum Fines. The legislation allows DSS to assess civil penalties for each day a facility is out of compliance with its license and the health, safety, and welfare of its residents are threatened. The aggregate amount of financial pen-

alties for a facility is limited to \$10,000 over any two-year period. The previous maximum fine was \$500 per facility inspection.

The State Board of Social Services is required to develop criteria for the use of penalties based on four factors: the severity, pervasiveness, duration, and degree of risk of a violation. DSS also has the authority to accept a plan of correction from the facility and adjust the penalty amount if the plan is met. The proceeds from civil penalties will be directed to a special non-reverting fund and used for training ALF staff and providing the facilities with technical assistance.

Summary Suspensions. DSS now has the authority to issue a summary suspension of a facility's license when the health, safety, and welfare of its residents are threatened. Although DSS already had authority to revoke a facility's license for a variety of offenses, the summary suspension provision was included to improve the department's ability to close facilities in a timely fashion. The law also requires the Virginia Supreme Court to establish a protocol for the expedited appointment of hearing officers in the case of certain appeals.

The new legislation authorizes DSS to suspend only a portion of a facility's operating license. DSS already had the authority to reduce a facility's licensed capacity or prohibit new admissions to protect the health and safety of residents. However, a growing number of assisted living facilities are jointly owned and operated alongside adult day care centers, nursing homes, and other long-term care settings within a single "continuous care" facility. In addition, some ALFs may include different wings that provide different service levels to specific populations, such as mental health or Alzheimer's patients. The new provision gives DSS the flexibility to suspend a portion of a facility's license while leaving its remaining operations intact.

Licensing and Training Provisions

The 2005 legislation included several provisions to improve the qualifications of ALF staff, including new licensing, registration, and training requirements. Prior to the legislation, standards for facility administrators, medication aides, and other direct care staff were addressed primarily through regulatory provisions. A summary of actions required to be taken by various agencies is in Exhibit 1.

Exhibit 1

Actions Required by 2005 Assisted Living Facility Legislation

Source: Chapter 610 (SB 1183), Chapter 924 (HB 2512), and Chapter 951, 2005 General Assembly

Board and Department of Social Services: The Board is required, within 280 days of April 6, 2005, to develop regulations to implement new enforcement and sanctioning provisions (§63.2-1709.2C and §8 of HB 2512). Also required to develop regulations for facility medication management plans; determine in regulations the number of facilities for which an administrator may serve as administrator of record; develop a format for consumer information (fees, services, etc.), develop a training module for inspectors by October 1, 2005; and submit a progress report to the Governor, the Joint Commission on Health Care, and standing committees by November 1, 2005.

Board of Nursing: Required to develop regulations to register medication aides, a new class of personnel (§54.1-3041). To consult with the Board of Social Services in developing regulations for facility medication management plans (§63.2-1732). To convene a task force to develop medication aide regulations and submit a progress report to the Joint Commission on Health Care by December 1, 2005. Final regulations are required to take effect no later than July 1, 2007. Enforcement, however, cannot occur prior to 12 months after the effective date of the regulations (see §4 of HB 2512).

Board of Long-Term Care Administrators: Expands duties of the Board of Nursing Home Administrators (a policy board) to include assisted living facility administrators, a new class of licensees (§54.1-3101 & 3102, 63.2-1803). Board to convene a task force to develop ALF administrator regulations and submit progress report to the Joint Commission on Health Care by November 1, 2005, with a follow-up report by November 1, 2006. Final ALF administrator regulations are required to take effect by July 1, 2007. Enforcement, however, cannot occur prior to 12 months after the effective date of the regulations (see §7 of HB 2512).

Board of Pharmacy: To consult with the Board of Social Services in developing regulations for facility medication management plans (§63.2-1732).

Department of Mental Health, Mental Retardation, and Substance Abuse Services: To consult with the Department and Board of Social Services to ensure appropriate care for residents with mental disabilities.

Executive Secretary, Supreme Court: To establish a protocol for expedited appointment of hearing officers (§12 of HB 2512).

Related: Auxiliary Grant increased from \$894 to \$944 per month, plus \$62 per month personal care allowance effective July 1, 2005. A 15-percent differential is provided for facilities in Planning District 8 (Chapter 951, Item 359.1).

Facility Administrators. The legislation builds on existing regulations of ALF administrators by requiring that they receive and maintain a license from the Department of Health Professions beginning in July 2007. Facility administrators providing only the residential level of care will not have to hold a license, according to the new legislation. This would exclude facilities that provide only minimal or limited assistance with residents' activities of daily living, according to *Code of Virginia* §63.2-100. Under the new legislation, the Board of Social Services will determine more precise criteria for this exemption.

The new law reconstituted the Board of Nursing Home Administrators and renamed it the Board of Long-Term Care Administrators (BLTCA). The Board is charged with developing curriculum standards and licensure criteria. Because many smaller facilities around the State are jointly owned and managed by a single administrator, the new law specifically allows individuals to serve as the administrator of record for more than one facility. The Board of Social Services is to determine the number of facilities one administrator can oversee.

Medication Aides. One of the most common personal care services ALFs provide is administering medication to residents. In recent years, the medication needs of ALF residents have grown increasingly complex, making a skilled staff critical to a facility's operation.

To address this issue, the General Assembly mandated that facility staff responsible for administering medication be registered by the Board of Nursing, beginning in July 2007. The legislation requires the Board to develop regulations governing the registration process, including a training curriculum, continuing education requirements, competency evaluations, and professional conduct standards.

Direct Care Staff. An additional provision related to facility staff requires the Board of Social Services to develop training and qualifications standards for all direct care employees. Direct care staff help residents with daily living activities such as bathing, eating, and walking. Staff affected by this provision include aides, assistants, and supervisors.

Public Information Provisions

The General Assembly also took steps to help consumers make better informed decisions about assisted living facilities. Prior to the legislation, there were few requirements that administrators publish information about their facilities or post notices of regulatory violations.

Disclosure Forms. ALFs are now required to provide consumers, upon request, with basic information about the facility. Facilities will use a standardized disclosure form developed by DSS to list key information that consumers need to properly evaluate their long-term care options, including:

- the circumstances in which residents can be admitted, transferred, or discharged,
- basic services and fees,
- supplemental services and fees,
- general information about facility staff and their qualifications,
- recreational activities provided for residents, and
- ownership structure of the facility.

Posting Requirements. DSS already had the authority to issue provisional licenses, effective for six months, to facilities temporarily unable to meet all regulatory requirements. Under the new law, an ALF operating under a provisional license is required to post a copy of that license at each public entrance to the building. The notice also must state that a description of the facility's violations of State standards is available in writing or on its website. In addition, facilities are now required to post notices when DSS attempts to revoke or deny the renewal of its operating license. Prior to the legislation, these posting requirements were left to the discretion of the department.

Quality Improvement Provisions

As discussed earlier, the personal care needs of many ALF residents have grown increasingly complex in recent years. The General Assembly included two additional provisions aimed at addressing this trend, one designed to improve the screening of mental health needs, the other to better manage the medication needs of residents.

Mental Health Screenings. Since 1993, State law has required ALFs to assess residents' needs with the Uniform Assessment Instrument (UAI), a tool designed to measure an individual's need for personal care services. The UAI is the primary way ALFs identify individuals with mental health or behavioral needs. However, a 1997 JLARC report found deficiencies in the UAI's ability to detect such needs.

The legislation addressed these concerns by requiring facilities to ensure that residents whose behavior is suggestive of mental illness, mental retardation, or substance abuse are evaluated by a qualified mental health professional. If further mental health services are needed, the facility must notify the resident's legal representative and the local CSB.

Medication Management Plans. In addition to mandating the registration of medication aides, the General Assembly also took steps to improve the delivery of medication in ALFs. The legislation requires facilities to write management plans describing their procedures for administering medication to residents. Plans should demonstrate an understanding of the responsibilities involved in managing medications and must be approved by DSS. The new law identifies the required elements of medication plans, including:

- standard operating procedures,
- record-keeping procedures for documenting the medications delivered each day, and
- staff responsible for administering medication and their qualifications.

Facilities are also responsible for developing procedures to monitor their compliance with their medication management plan.

AGENCIES' PLANS FOR IMPLEMENTING THE LEGISLATION

The Department of Social Services (DSS) and the Department of Health Professions (DHP) are primarily responsible for implementing the provisions of HB 2512/SB 1183. DSS is responsible for various provisions in enforcement, public information, and quality improvement, as discussed above. DHP is responsible for registration of medication aides and administrator licensure. This section describes the agencies' plans and actions to date for implementing the regulations and presents a timeline of significant dates.

Department of Social Services

Enactment clauses of the 2005 legislation require DSS to:

- develop regulations to address the enforcement, public information, and quality improvement provisions in consultation with relevant State agencies, including DMHMRSAS,
- develop a training module on regulations and statutes and train licensing inspectors by October 1, 2005, and
- establish a protocol for the expedited appointment of hearing officers in summary suspension appeals with the Executive Secretary of the Supreme Court of Virginia.

An additional enactment clause requires the State Board of Social Services (SBSS) to promulgate the regulations to implement the provisions within 280 days of the legislation's en-

actment, permitting the adoption of emergency regulations. The activities of DSS and the SBSS to address these requirements are discussed below.

Development of Regulations. In August 2005, the SBSS approved emergency and proposed replacement regulations as well as criteria for civil penalties developed by DSS. The emergency regulations take effect on December 28, 2005, and expire on the same date in 2006. DSS tentatively plans to hold public hearings from January through March 2006. The comments will then be used to revise the proposed replacement regulations and associated documents. Pending SBSS approval, the replacement regulations should take effect December 28, 2006.

Throughout the development of the emergency and replacement regulations, DSS solicited comments and suggestions from various stakeholder organizations, for example:

- In April 2005, DSS submitted relevant sections of the proposed regulations to DMHMRSAS and met with representatives from the agency to review and discuss concerns. The agency's written recommendations were incorporated into the emergency and proposed regulations.
- From April to July 2005, DSS met with various stakeholder organizations and discussed potential revisions to the regulations.
- From May 10, 2005, to June 30, 2005, DSS posted a public website and received 133 comments and recommendations for the proposed emergency and replacement regulations.
- DSS and the Executive Secretary of the Supreme Court of Virginia have been in contact regarding a protocol for expedited hearing officers for summary suspensions.

Key Provisions of Emergency Regulations. The emergency regulations, which take effect in December 2005, include various changes to the Virginia Administrative Code (VAC), sections 22 VAC 40-71-10 through 22 VAC 40-71-700. Many of these changes are required by the 2005 legislation, while others are not. Key provisions include:

- criminal background checks for ALF licensees,
- requirement for ALFs to make available a statement of public disclosure containing relevant information for prospective residents including fees, services, and accommodations offered,

- issuance of summary and partial license suspensions when the health, safety, and welfare of residents are imminently and substantially threatened,
- criteria for the assessment of increased civil penalties up to \$10,000 depending upon the risk, severity, duration, and pervasiveness of the violation,
- development of a medication management plan by the ALF to establish operating and record-keeping procedures for medication administration,
- increased training hours for direct care staff and a shorter time frame in which to complete the hours, and
- additional services for residents with mental health, mental retardation, and substance abuse disorders, further training for direct care staff on working with such residents, and additional documentation and assessment requirements by the ALF for such residents.

Inspector Hiring and Training. The 2005 Appropriation Act allocates 11 new ALF licensing inspectors to the Division of Licensing Programs in DSS. Currently, DSS is recruiting nurses and mental health professionals to serve the positions throughout the State. The new inspectors will be trained on the new regulations and three additional modules within 60 days of employment. In addition, all staff will be trained on assessing civil penalties based on the new criteria.

As required by the legislation, DSS developed a training module on the emergency and proposed regulations and statutes and presented it to all licensing inspectors in the fall of 2005. The inspectors are also required to attend other relevant training including UAI training, individualized service plan training, and adult protective services mandated reporter training.

Department of Health Professions

The Board of Nursing (BON) and the Board of Long-Term Care Administrators (BLTCA), both of the Department of Health Professions, are responsible for the licensing provisions contained in the 2005 legislation. Enactment clauses require:

- the BON to convene a task force to develop regulations for the registration of medication aides and adopt final regulations on or before July 1, 2007, and
- the BLTCA to administer and regulate the licensure of ALF administrators and to adopt final regulations on or before July 1, 2007.

The Boards' activities in response to the enactment clauses are described below.

Board of Nursing. The BON established a task force to develop criteria for the certification of medication aides in July 2005. As required by statute, a Notice of Intended Regulatory Action (NOIRA) was published in July and the public comment period closed in August 2005. Adoption of the proposed regulations is scheduled for November 2005.

The BON intends to hold a 60-day comment period, including a public hearing in the late spring of 2006. Adoption of the final regulations is tentatively scheduled for September 2006, and they become effective July 1, 2007. Once the regulations become effective, the Board is not permitted to implement or enforce them for 12 months, or not before July 1, 2008.

Board of Long-Term Care Administrators. The BLTCA was newly established to administer and regulate the licensure of ALF administrators. The first meeting was held in August 2005 when a task force was appointed to develop the curriculum and criteria for licensure. A NOIRA was published in October 2005 and public comment will close in early November 2005.

Adoption of the proposed regulations is tentatively scheduled for January 2006. The BLTCA expects to publish the proposed regulations and hold a 60-day comment period and public hearing in late spring 2006. Adoption of the final regulations is planned for fall 2006, and they become effective July 1, 2007. Implementation and enforcement of the regulations are not permitted until 12 months after they become effective, or not before July 1, 2008.

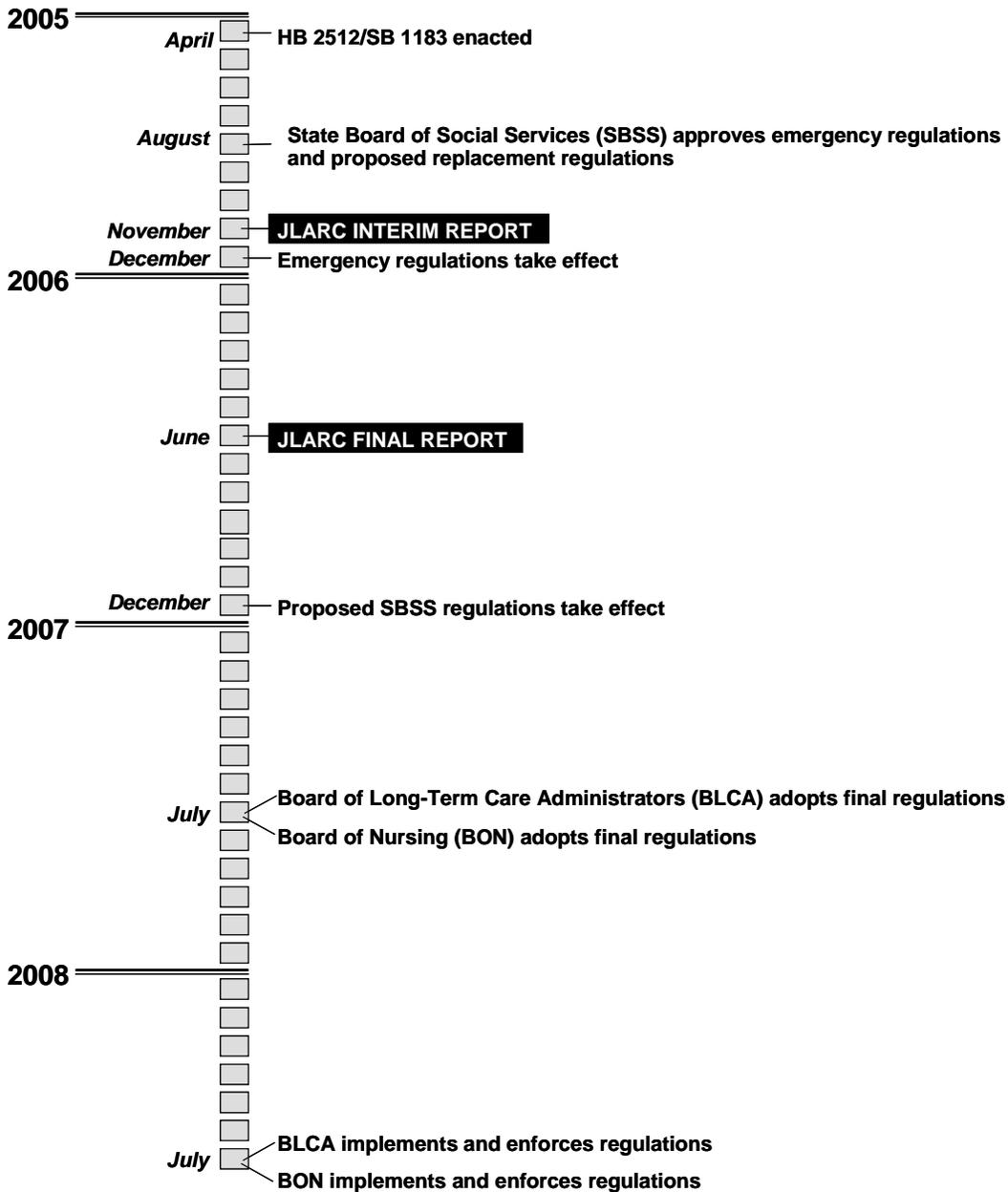
Implementation Timeline

Various significant dates are found in the enactment clauses of the ALF legislation. The timeline in Exhibit 2 shows implementation of the new regulations and mandated JLARC reporting dates. The final JLARC report is due in June 2006, prior to the implementation and enforcement of several provisions.

The time frame of the final JLARC report thus appears somewhat premature: the new regulations will be adopted, based on current agency plans, in mid-2007, and enforcement can not begin until mid-2008 (Exhibit 2). Consequently, if the General Assembly desires to have the benefit of JLARC staff's assessment of the impact of the new law and regulations, the reporting deadlines should be extended until at least 2008.

Exhibit 2 Timeline of Implementation of ALF Regulations and JLARC Study

Source: JLARC staff analysis of HB 2512 / SB 1183.



JLARC STAFF ANALYSIS

The study mandate directs JLARC to assess the impact of the new law and regulations on the quality of care, costs, and access by residents to services in assisted living facilities. Staff are in the process of developing a detailed workplan for the 2006 report.

JLARC staff are currently meeting with a variety of agencies and other parties interested in the legislation and regulations. These meetings will include not only State agencies but also representatives of various interest groups and facility operators. Staff also plan to visit a range of ALFs during the orientation stage of the project, including large and small facilities; facilities located in urban, suburban, and rural areas; and facilities housing mostly private pay residents as well as facilities housing mostly auxiliary grant recipients. JLARC staff will also be attending the task forces and other meetings planned for the development and finalization of regulations and standards required under the legislation.

Under the current reporting deadline of June 2006, JLARC staff cannot provide the General Assembly with a complete assessment of the impact of the changes made by the 2005 legislation. By mid-2006, the DSS emergency regulations will have been in effect only a few months. JLARC staff may be able to identify some preliminary effects of the regulations, although the impact of the emergency regulations on the quality of services and residents' access to care will likely take longer to appear. Regulations for the credentialing of medication aides and facility administrators will not take effect until July 2007, with enforcement beginning one year later. The effects of these provisions will occur well after the current reporting deadline.

Extending the final reporting date through 2008 would allow JLARC staff to better assess the impact of the new regulations. By 2008, the emergency regulations and their successor "replacement" regulations will have been in effect for over two years, allowing ALFs time to adjust their practices and meet the new standards. Although the credentialing provisions will not be enforced until July 1, 2008, final regulations must be promulgated by July 1, 2007. DHP staff expect medication aides and facility administrators to meet the new credentialing requirements during this period. With a final reporting deadline of mid-2008, JLARC staff will have up to a full year to evaluate the impact of these provisions on the ALF industry in the Commonwealth.

Lengthening the study timeline to 2008 would also enable JLARC staff to examine changes in the cost, quality, and ac-

cess to assisted living care over time. This approach would be particularly useful in assessing the costs of complying with the law. Many provisions, including medication management plans and credentialing requirements, will likely involve higher up-front costs and some ongoing costs to facilities. Similarly, the quality and availability of assisted living care may change as facilities adapt to the new regulations.

Staff anticipate using a range of research activities to track the effects of the legislation both within specific facilities and across the State. These activities may include surveys, site visits, structured interviews, analysis of data from State agencies and ALFs, and document reviews.

Recommendation. The General Assembly may wish to extend the deadline for the final report because key provisions of the new law will not take effect until after the current deadline of June 2006.

CHAPTER 951, 2005 ACTS OF THE GENERAL ASSEMBLY

Directing the Joint Legislative Audit and Review Commission to evaluate the impact of new assisted living facility regulations.

Item 21 F. The Joint Legislative Audit and Review Commission (JLARC) shall report on the impact of new assisted living regulations on the cost of providing services, residents' access to providers and other services, including Medicaid-funded mental health and other services, and tangible improvements in the quality of care delivered. The Department of Social Services, the Department of Mental Health, Mental Retardation, and Substance Abuse Services, and the Department of Medical Assistance Services shall cooperate fully as requested by JLARC and its staff. JLARC shall submit an interim report by November 1, 2005 and a final report by June 30, 2006.

Glossary of Acronyms

ALF	Assisted living facility
BLTCA	Board of Long-Term Care Administrators
BON	Board of Nursing
CSB	Community Services Board
DHP	Department of Health Professions
DMHMRSAS	Department of Mental Health, Mental Retardation and Substance Abuse Services
DSS	Department of Social Services
NOIRA	Notice of Intended Regulatory Action
SBSS	State Board of Social Services
SSI	Supplemental Security Income
UAI	Uniform Assessment Instrument
VAC	Virginia Administrative Code



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