Report of the
Joint Legislative Audit and Review Commission
To the Governor and
The General Assembly of Virginia

# Final Report: Impact of Assisted Living Facility Regulations


HOUSE DOCUMENT NO. 33
2007

# In Brief

## Final Report: Impact of Assisted Living Facility Regulations

The Appropriation Act requires JLARC to report on the impact of new regulations adopted pursuant to 2005 legislation on assisted living facilities (ALFs).

This report provides a "snapshot" of the assisted living industry early in the implementation of the new law and regulations, which phase in between 2005 and 2008. Implementation is on schedule, with one exception.

This report found that most ALFs have no recent history of verified complaints or compliance problems. Twenty percent of all ALFs, however, do have compliance problems and/or an above-average number of verified complaints in the recent past.

While the new law and regulations will strengthen such keys to quality care as medication administration and staff training, low-income residents will continue to have problems accessing ALFs, as 41 localities have no ALFs with auxiliary grant beds.

New costs also stem from the new law and regulations. These costs will be a particular problem for the estimated 200 ALFs that serve mostly low-income residents because the State auxiliary grant rate is low relative to the current market price. Many of these facilities will continue to have difficulty complying with the standards.




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**This report is available on the JLARC website at http://jlarc.state.va.us**

COMMONWEALTH of VIRGINIA

Joint Legislative Audit and Review Commission

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July 11, 2007

The Honorable Thomas K. Norment, Jr.
Chairman
Joint Legislative Audit and Review Commission
General Assembly Building
Richmond, Virginia 23219

Dear Senator Norment:

Item 21E of the 2004-2006 Appropriation Act, as amended by the 2006 General Assembly, requires JLARC to report on the impact of new regulations adopted pursuant to major legislation affecting assisted living facilities. Staff were directed to report on the impact of these regulations on the cost of providing services, residents' access to providers and other services, and tangible improvements in the quality of care delivered. An interim report was produced in 2005 and a status report in 2006. This is the final report and includes the findings of the most recent JLARC review.

On behalf of the Commission staff, I would like to thank the staff at the Department of Social Services, Department of Health Professions, and Department of Mental Health, Mental Retardation and Substance Abuse Services for their assistance during this study.

Sincerely,

Philip A. Leone
Director

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# JLARC Report Summary

## Final Report: Impact of Assisted Living Facility Regulations

## Key Findings

- Implementation of legislation affecting assisted living is on schedule, with one exception (Chapter 1).
- There are 114 assisted living facilities—20 percent of all ALFs—with a recent history of either compliance problems or an above-average number of verified complaints. These "ALFs of concern" are more likely to serve auxiliary grant recipients. (Chapter 2)
- Beds for the 6,000 low-income assisted living residents, paid for by the State's auxiliary grant program, are concentrated disproportionately in the Western and Piedmont Department of Social Services' licensing regions. The Northern and Fairfax licensing regions have relatively few auxiliary grant beds, and 41 localities have no assisted living beds for auxiliary grant recipients. (Chapter 3)
- Statutory and regulatory changes will increase costs. The State's auxiliary grant rate remains well below the current market price. (Chapter 4)

The 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. This is the third report completed in response to this mandate and concludes the JLARC review.

With a capacity of nearly 32,000, Virginia's 583 licensed assisted living facilities (ALFs) provide assistance and care for four or more adults who have limited functional capabilities, including the aged and disabled. The number of ALFs in Virginia has declined somewhat since the peak of 679 in 2001, although their average size is increasing. In 2007, the average size is 55 beds, larger than the average size of 51 beds reported in 2001.

The needs of assisted living residents are also changing. As reported in the 2006 JLARC report *Status Report: Impact of Assisted Living Facility Regulations,* more residents need help with the activities of daily living, such as administering medications. Data for low-income residents shows a trend toward more dependency and more mental disabilities.

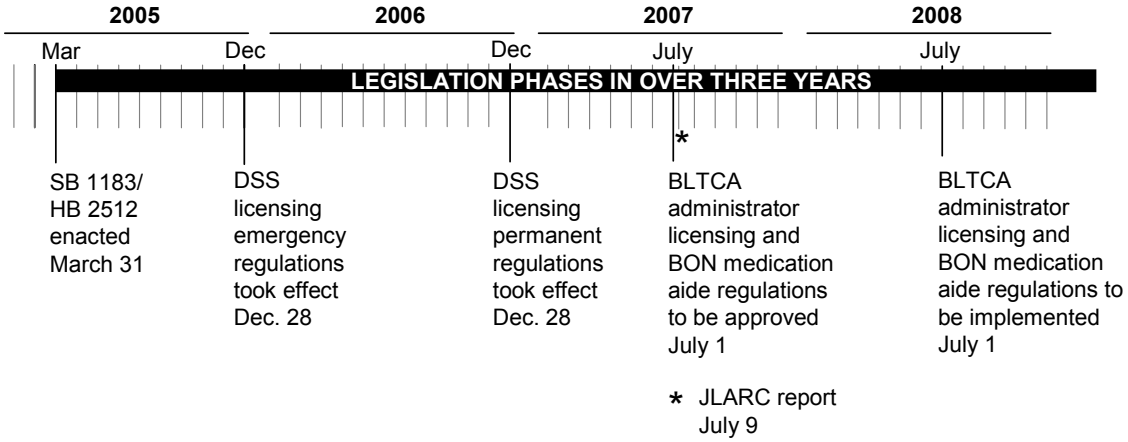
## LEGISLATION PHASES IN OVER THREE YEARS

The 2005 General Assembly passed major legislation affecting ALFs. The new law gave the Department of Social Services (DSS) new enforcement authority, directed the Department of Health Professions to license facility administrators and medication aides, and increased the auxiliary grant rate (a financial subsidy to low-income residents). The legislation established a transition period of three years during which new regulations and licensing requirements would be developed and take effect. The law required three sets of regulations to be developed. A timeline of key events in the implementation of the 2005 legislation is illustrated in the figure below.

New DSS regulations detailing the minimum standards for ALFs were put in place in December 2006, and Board of Nursing regulations concerning the registration of medication aides are set to take effect July 1, 2007. Regulations on the licensing of ALF Administrators are likely to be delayed past the July 1, 2007 timeframe, however, pending resolution of several concerns identified by the Governor about education and training requirements for administrators.

The DSS regulations incorporate several major changes. They strengthen requirements for care and services to residents, staff qualifications, training, and responsibilities; management; physical plant features; coordination with mental health services; disclosure of information; and emergency preparedness. The regulations also require an on-site quarterly review of special diets by a dietitian or nutritionist, as first recommended by the 1979 JLARC

### Milestones Remain in Implementing the 2005 Legislation




Note: DSS: Department of Social Services; BLTCA: Board of Long-Term Care Administrators; BON: Board of Nursing.

report *Homes for Adults in Virginia.* Another new requirement is for air conditioning of the "largest common area used by residents." Many but not all facilities are already air conditioned, so this requirement may add costs at some locations. The impact of the new regulations will also depend on how strongly they are enforced.

## A MINORITY OF FACILITIES HAVE QUALITY CONCERNS

Quality of care is a key concern in assisted living, yet it is difficult to measure. No definition of quality care is found in the *Code of Virginia* or in DSS licensing standards.

As proxies for the quality of care, JLARC staff used measures of facilities' compliance with standards and verified complaints. Of the 583 licensed ALFs, 89 percent have no recent history of compliance problems, and 59 percent have no recent verified complaints.

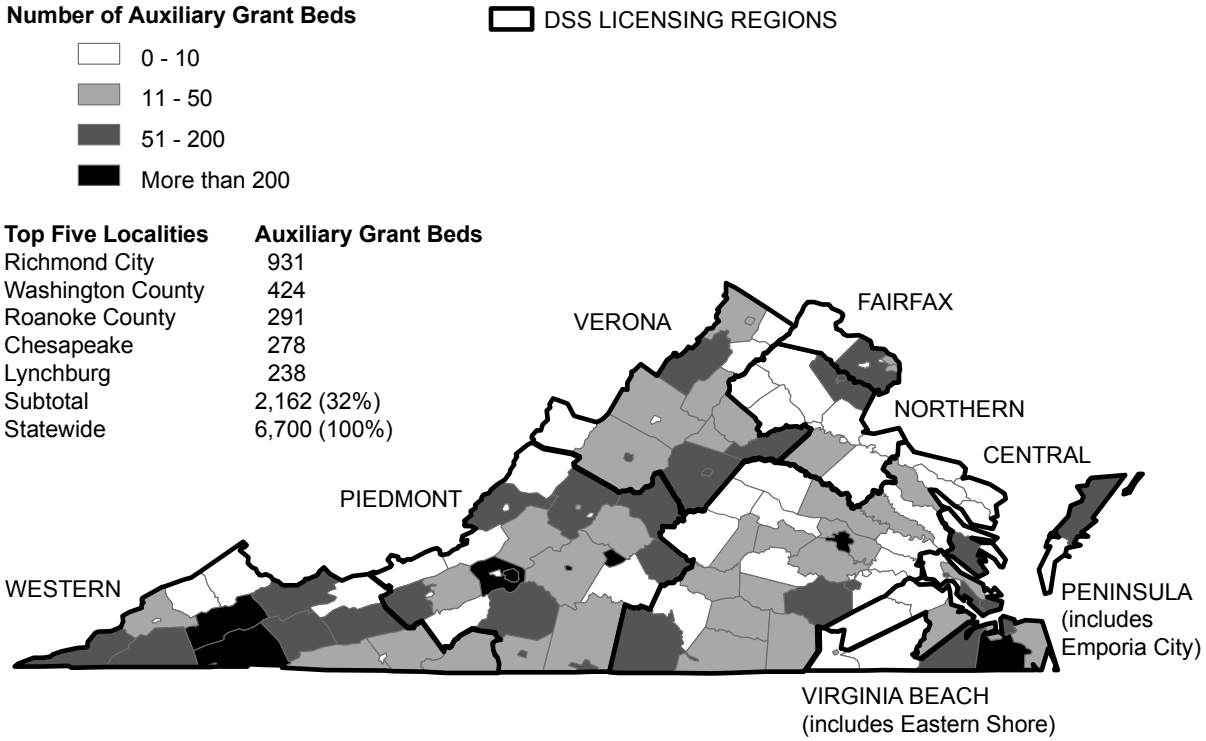
JLARC staff identified 114 “ALFs of concern” (20 percent of all ALFs), however, that do have compliance problems or a relatively high number of verified complaints. ALFs in this group tend to be larger and are more likely to house auxiliary grant recipients.

Medication administration, staffing, and access to mental health services are three keys to quality care in assisted living, and are particularly problematic in ALFs of concern. Medication administration was the most frequent verified licensing complaint and health and safety violation in ALFs in 2006. Further, medication and medical-related violations were commonly found in ALFs on enforcement watch (a means of identifying and monitoring facilities that fail to maintain substantial compliance with standards) and those that faced adverse enforcement actions.

Staff quality and training was the second most frequent verified licensing complaint. Staff quality and training was also a factor in 16 of the 21 adverse enforcement actions taken from November 2005 to December 2006. The new law addresses problems with medication administration by requiring substantial training and the registration of medication aides and licensure of assisted living administrators. The impact of these regulations likely will not be seen until after enforcement begins in July 2008.

Problems accessing assisted living services in Virginia appear to be of most concern for the State's auxiliary grant recipients. While private pay residents may face waiting lists to get into the facility of their choice, auxiliary grant recipients may experience difficulty finding open ALF beds in their community. As shown in the map on the next page, 53 localities have ten or fewer auxiliary grant beds. Of these 53 localities, 41 have no ALF beds for auxiliary

## Auxiliary Grant Beds Are Concentrated in Certain Localities




Source: Analysis of data from DSS Licensing staff and the 2006 JLARC staff survey of assisted living administrators.

grant recipients. Auxiliary grant beds are disproportionately located in the Western and Piedmont DSS licensing regions. In other areas of the State, such as the Northern and Fairfax licensing regions, auxiliary grant beds are less available.

Access to mental health services remains unchanged since the 2006 JLARC *Status Report*, when it was reported to have improved from earlier reviews. Some auxiliary grant recipients with mental disabilities continue to experience ongoing problems accessing needed mental health services, either from the local community services board (CSB) or from their ALF. The final assisted living regulations do not contain significant new provisions that address mental health services for ALF residents.

## NEW LAW AND REGULATIONS WILL INCREASE COSTS

The recent statutory and regulatory changes contain new requirements that will increase the cost of operating an assisted living facility. The cost to an ALF of complying with the new law and regulations will vary based on whether the facility covers employees' costs of licensing and registration, as well as whether the facility is already air conditioned and has access to emergency electrical

power. Initial costs could range from about $440 to as much as $17,500 or more, depending on these factors.

About 80 percent of all ALF residents pay for their care from their own private financial resources, and the ALFs in which they reside are more likely to pass increased costs on to these residents in the form of higher prices. Over half of all ALFs have at least some auxiliary grant recipients, however. Many of these facilities are heavily dependent upon auxiliary grant revenue—data indicates that in 200 facilities or 34 percent of all ALFs, at least 50 percent of the residents are auxiliary grant recipients.

While recent adjustments in the auxiliary grant rate have been substantial, increasing it to $1,061 per month beginning July 1, 2007, the rate remains well below market prices. According to two recent reports, the national average price for assisted living in 2006 was $2,841 per month. The 2006 Virginia average ranged from $1,827 to $2,090 per month, depending on the data source. The average price in the City of Richmond was $2,527 per month; in Northern Virginia, $4,118 per month.

Many facilities serving auxiliary grant recipients have special circumstances that help them cope with operating costs, as discussed in the 2006 JLARC *Status Report*. However, the limited revenue of these facilities will continue to constrain their ability to comply with the new statutes and regulations.

Chapter 1

# Assisted Living in Virginia

## In Summary

This is the third and final report in the JLARC review of the impact of the new law and regulations affecting Virginia's assisted living facilities (ALFs) adopted by the 2005 General Assembly. With a capacity of nearly 32,000, Virginia's 583 ALFs provide assistance and care for four or more adults who have limited functional capabilities, including the aged and disabled. New regulations governing the operation of ALFs have been adopted by the Department of Social Services, and credentialing requirements for key staff positions in ALFs have been established by the Department of Health Professions and the respective boards, although one set of regulations will be delayed beyond the statutory timeframe. It is widely expected that, taken together, the new regulations will lead to substantial improvements in assisted living. Strong enforcement will be necessary to ensure these results.

Item 21E of the Appropriation Act requires the Joint Legislative Audit and Review Commission (JLARC) to report on the impact of new regulations adopted pursuant to major legislation (Senate Bill 1183 and House Bill 2512 adopted by the 2005 General Assembly) affecting assisted living facilities (see Appendix A for a copy of the mandate). This is the third JLARC report completed in response to this mandate and concludes the JLARC review. An interim report was published in November 2005, and a status report was issued in June 2006.

Assisted living facilities (ALFs) provide assistance and care for four or more adults who have limited functional capabilities, including the aged and disabled. These facilities are typically operated by private providers and receive funding from residents and their families as well as from federal, State, and local sources. The facilities are licensed by the Department of Social Services (DSS). As of February 2007, there were 583 ALFs in Virginia with a total licensed capacity of 31,964.

In 2004, a series of articles in the *Washington Post* called attention to serious problems in some of Virginia's ALFs, documenting cases of neglect, abuse, and violence, as well as questioning the State's licensing function. In response, major legislation affecting assisted living was adopted by the 2005 General Assembly. The legislation increased the education and training requirements for key ALF staff, strengthened sanctions and enforcement mechanisms available to DSS, and increased the auxiliary grant (a State subsidy for

low-income ALF residents). Other improvements were also mandated. The General Assembly also directed JLARC to undertake this review.

JLARC has reviewed the licensing, funding, and operation of assisted living facilities in prior reports, beginning with the 1979 *Homes for Adults in Virginia.* In 1990, a follow-up report was issued, and a 1998 report focused on services for adult care residents with mental disabilities. The 2005 *Interim Report: Impact of Assisted Living Facility Regulations* outlined legislative changes, and the 2006 *Status Report: Impact of Assisted Living Facility Regulations* discussed the emergency regulations and funding issues in response to the 2005 law. The current report concludes JLARC staff's assessment of the 2005 statute and the regulatory response of State agencies.

## ASSISTED LIVING INDUSTRY IS IN TRANSITION

The role of the assisted living facility has evolved away from the board-and-care model of the traditional "rest home" toward serving persons with diverse medical needs and problems. Some ALFs continue to provide small, home-like environments, while others are larger, housing up to 500 residents in the largest facilities. Some ALFs are specially built and situated on campus-like grounds, co-located with independent living as well as nursing homes, and provide a "continuous care" environment. Other ALFs are converted older homes and buildings.

Assisted living residents range in age from 18 to more than 100 years of age. Typically, residents cannot live independently but do not need full-time nursing or medical care. Residents include the frail elderly, persons with mental disabilities such as schizophrenia or Alzheimer's, and adults of any age who need help with the routine activities of daily living, such as taking medicine, bathing, or getting dressed.

The number of ALFs in Virginia has declined recently although their average size is increasing. The total number of ALFs peaked in 2001 with 679 licensed facilities. In 2007, there are 583, with an average size of 55 beds, larger than the average size of 51 beds reported in 2001.

A recent trend indicates that the number of facilities providing a minimal or "residential" level of assistance is increasing; in 2006, there were 59 such ALFs (ten percent of all ALFs); in early 2007, there were 87, or 15 percent of all ALFs, according to DSS licensing data. Correspondingly, the number of ALFs licensed to provide a moderate level of assistance with the activities of daily living decreased, from 529 in 2006 to 496 or 85 percent of all ALFs in 2007.

This is an important trend because administrators of ALFs that provide only a residential level of care are exempted from the requirement to become licensed ALF administrators.

Trends in the ALF industry should be viewed in the context of trends in the population. The population eligible for assisted living is likely to continue growing. Older Virginians represent one of the fastest growing, most affected segments of the population and are a key population served in assisted living. The proportion of Virginians over 85 years of age, for example, will more than double between 2000 and 2030, according to the Census Bureau, increasing from 87,000 to about 250,000 persons.

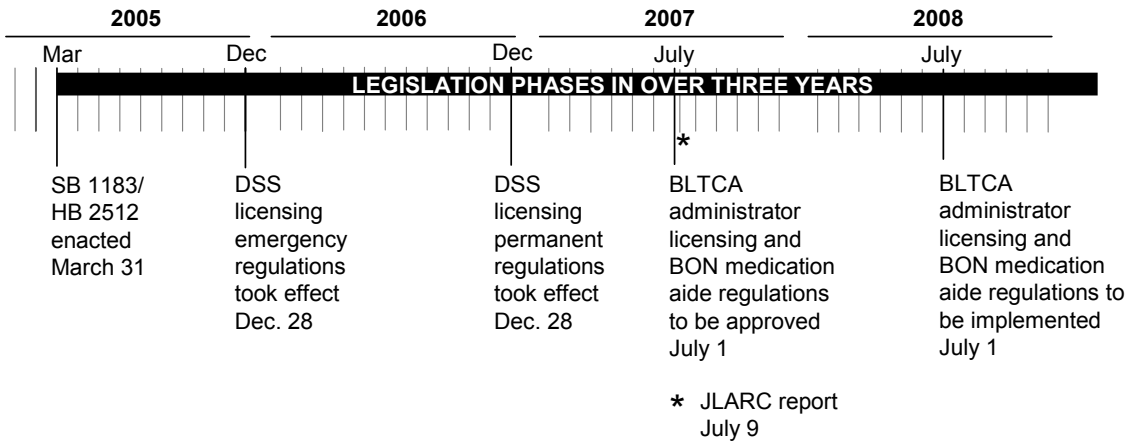
## NEW REGULATIONS ENHANCE STAFF EDUCATION REQUIREMENTS, ENFORCEMENT, SERVICE PROVISION

The 2005 legislation established a transition period of three years during which new regulations and licensing requirements would be developed and take effect. The law required three sets of regulations to be developed. Figure 1 provides a timeline of key events in the implementation of the 2005 legislation.

### Two Sets of Regulations Are On Schedule

The Board of Social Services was required to adopt new regulations governing assisted living within 280 days of the law's enactment. The board and department implemented emergency regulations in December 2005. Permanent regulations took effect in December 2006.

**Figure 1: Milestones Remain in Implementing the 2005 Legislation**




Note: DSS: Department of Social Services; BLTCA: Board of Long-Term Care Administrators; BON: Board of Nursing.

The permanent DSS regulations place new emphasis on staffing and supervision in ALFs, medication management, record-keeping, and emergency preparedness. Enforcement provisions are also stronger, incorporating higher financial penalties as authorized by the law. The regulations incorporate recent statutory provisions, such as a requirement for access to emergency electrical power.

The 2005 legislation also directed the Board of Nursing to establish regulations for the registration of medication aides, and to implement them by July 2007. Medication aides are key staff positions in ALFs—the 2006 JLARC report noted that 94 percent of assisted living residents are dependent on others for help with medication.

Under the statute, the Board of Nursing is to have regulations established by July 2007 and may implement and enforce them beginning in July 2008. The board is currently on schedule to meet these timeframes.

### ALF Administrator Licensing Regulations Will Be Delayed

The third and final set of regulations to affect assisted living is that developed by the Board of Long-Term Care Administrators. The 2005 law charged the board with adopting regulations for licensing assisted living administrators by July 2007. The board developed regulations that include a curriculum for administrator training and specified a test which all administrators will have to pass to be licensed. Following the Administrative Process Act, the board adopted the draft final regulations in October 2006, which were on track to take effect in July 2007, as required by the statute.

In May 2007, the Governor identified several concerns about the education and training requirements in the board's draft final regulations, and asked the Secretary of Health and Human Resources for clarification. These concerns included whether a national and a state exam are both needed, the number of training hours required for the position of administrator-in-training, and whether there would be an adequate pool of persons with the required training and experience who would be available to manage ALFs.

Staff of the Board of Long-Term Care Administrators has indicated that the board will address these matters at its July 10, 2007 meeting. This delay likely means the regulations will not take effect on July 1, 2007, as required by the statute, although they could take effect shortly thereafter. Enforcement will begin 12 months after the final regulations take effect.

## New DSS Regulations Will Enhance Service Provision

The permanent regulations incorporate major changes from the emergency regulations. Several provisions of the emergency regulations proved to be problematic and were dropped, while new provisions were added.

In general, the permanent regulations enhance service provision by strengthening requirements for the following: care and services to residents; staff qualifications, training, and responsibilities; management; physical plant features; coordination with mental health services; disclosure of information; and emergency preparedness. The new standards emphasize resident-centered care and services and include requirements that strive for a more homelike environment for residents, according to DSS. Strong enforcement will be needed to ensure these outcomes.

***Some Provisions of the Emergency Regulations Were Deleted.*** In the process of developing permanent regulations, certain provisions of the emergency regulations were deleted. The Appropriation Act (in Item 337H) required that the following provisions of the emergency regulations be deleted:

- A requirement that ALFs seek assistance from community services boards (CSBs) when residents engage in "high-risk" behavior. The 2006 JLARC report had criticized this regulation as vague and unworkable.
- A requirement that staff at all ALFs stay awake on all shifts. The 2006 JLARC report observed that this provision was not explicitly required by legislation and would be costly for some of these smaller facilities; the report also questioned whether DSS sought to avoid public input by including this provision in the emergency regulations. The new regulation will allow staff at the 182 ALFs with 19 or fewer residents to sleep at night as long as they remain available to residents, through a call system, for example.

Other provisions in the emergency regulations that were dropped from the permanent regulations include the following:

- A proposed requirement for facilities to develop a written risk management plan aimed at minimizing a variety of risks to residents' health and safety, including incidents involving medication errors, aggression, abuse, suicide, wandering, and certain other situations.
- A requirement that facilities develop a written quality improvement plan to evaluate the quality of care and services

provided to residents, and conduct quarterly self-assessments.

***New Requirements Were Added.*** The permanent regulations include the following new requirements:

- An on-site quarterly review of special diets by a dietitian or nutritionist, to be followed by a written report to the administrator (22 VAC 40-72-620). The need for participation by a dietitian or nutritionist was first identified in the 1979 JLARC report *Homes for Adults in Virginia.*
- Air conditioning equipment in the "largest common area used by residents" by June 28, 2007 (22 VAC 40-72-860D), and a requirement to take effect in 2012 that temperatures in any area used by residents not exceed 80 degrees. Previous regulations required "cooling devices" when temperatures in the facility exceeded 85 degrees. The new lower temperature requirement is important because many ALFs care for frail elderly and others with medical conditions for whom extended exposure to high temperatures can be dangerous. The new regulation also marks the first time air conditioning has been specifically required.
- ALFs must submit "incident reports" to DSS licensing staff (22 VAC 40-72-100). These reports are to cover "any major incident that has negatively affected or that threatens the life, health, safety or welfare of any resident." JLARC staff interviewed several licensing staff, however, who noted that, to date, these reports mainly cover residents who fall and are injured. According to these staff members, deaths occurring in the facilities are not always reported. The 2004 *Washington Post* series emphasized, however, that reports of deaths as well as injuries could be used to identify patterns of problems in a facility.

## REPORT ASSESSES QUALITY, ACCESS, COSTS

The study mandate calls for an assessment of how the new regulations impact the cost of providing services, residents' access to providers and services, and tangible improvements in the quality of care delivered to residents. JLARC staff addressed this mandate using a combination of methods, including data analysis, interviews, site visits, and document reviews. Additional information about the methods used in this study may be found in Appendix B.

The approach used in this study was to update the 2006 JLARC *Status Report's* data on ALFs with recent information about compliance problems and verified complaints, and then compare the updated findings with those presented in the 2006 report. This ap-

proach compares two "snapshots" of conditions in the ALF industry early in the implementation of the new law and regulations.

It is important to note that the JLARC review is concluding before the administrator licensing and medication aide registration requirements take effect. Enforcement of these provisions is set by law for July 2008. It is widely expected that these education, training, and enforcement requirements will lead to substantial improvements throughout Virginia's assisted living facilities.

Chapter 2

# Assisted Living Facilities of Concern

## In Summary

Quality of care is a key concern in assisted living, yet it is subjective and difficult to measure. As proxies for quality of care, JLARC staff used measures of facilities' compliance with standards and verified complaints about facilities, updating the data on ALFs of concern discussed in the 2006 JLARC *Status Report*. Of the 583 licensed ALFs in 2007, 89 percent have no recent history of compliance problems and 59 percent have no recent verified complaints about care or services. A minority of ALFs (20 percent) do have compliance problems and/or a relatively high number of verified complaints. Although the number of ALFs of concern appears to have decreased over the last year, discrepancies in the data used to identify ALFs of concern do not allow for direct comparison or conclusions about the decrease. ALFs of concern tend to be larger, have a higher proportion of auxiliary grant recipients, and have problems with medication management and staffing. As previous JLARC reports have noted, medication management and staffing are keys to quality of care. The 2005 legislation addressed these concerns by requiring the licensure of assisted living administrators and the registration of medication aides. However, the impact of these regulations will not be seen until enforcement begins in July 2008 or later.

The study mandate directs JLARC staff to report on "tangible improvements in the quality of care" resulting from the 2005 legislation. The principal strategy for JLARC's recent studies of assisted living was to observe changes in key characteristics at these facilities over several years as the new law and regulations take effect. The 2006 JLARC *Status Report* described the "baseline" of care in assisted living prior to the implementation of the emergency regulations. This report reflects the services provided in assisted living throughout the period that the emergency regulations were in effect (December 2005 to December 2006). Where possible, JLARC staff compared trends from 2006 and 2007, although data available for the two studies differed.

Three keys to quality care identified in the 2006 JLARC report were medication administration, staffing, and access to mental health services. For this report, JLARC staff analyzed ALFs statewide, and particularly ALFs of concern, for changing patterns of verified complaints and violations of high-risk health and safety standards. Analysis of ALFs of concern indicates that these characteristics remain the keys to quality care.

## QUANTITATIVE DATA USED TO IDENTIFY ALFS OF CONCERN

No explicit definition of quality care is found in the *Code of Virginia* or the *Virginia Administrative Code* (VAC). The *Code of Virginia* states that the State Board of Social Services has "the authority to adopt and enforce regulations to...protect the health, safety, welfare, and individual rights of residents...and to promote their highest level of functioning." The VAC defines minimum standards for ALFs but does not define quality care.

JLARC staff reviewed licensing and complaint data to ensure objectivity in identifying ALFs with qualify of care concerns. Of 583 licensed ALFs, JLARC staff identified 114 ALFs of concern, or 20 percent of ALFs statewide. The remaining 80 percent of facilities have no reported compliance problems over the past year and a below-average (less than five) number of verified complaints and critical health and safety violations.

### Most ALFs Had No Verified Complaints or Compliance Problems, But There Are 114 ALFs of Concern

JLARC staff used 2006 data on verified complaints against ALFs and on each facility's compliance with regulations to identify "ALFs of concern." No one criterion was assigned more weight in identifying these ALFs. In addition to the data analysis, JLARC staff made follow-up visits to three of the 29 facilities that were visited in 2006. During these visits, JLARC staff interviewed the administrator, regional licensing staff, and licensing inspectors, and toured each facility.

***Verified Complaints.*** Complaints against ALFs can be reported by residents, family members, employees, visitors, or anyone else (and may be reported anonymously) and may be filed with any of at least three different offices: the Division of Licensing Programs (DOLP) or Adult Protective Services (APS) within the Department of Social Services, or the Office of the State Long-Term Care Ombudsman. The respective agency then investigates the complaint, determines its validity, and takes additional actions when necessary.

Based on this review, 342 ALFs—59 percent of all licensed facilities—had no verified complaints from any of the three sources. For ALFs with at least one complaint, the average number of verified complaints (from all three sources) was five. Twenty-nine percent, or 169 facilities, had one to four verified complaints, and 12 percent, or 72 ALFs, had five or more verified complaints. These 72 facilities are considered "ALFs of concern." Eight facilities had more than 20 verified complaints in 2006.

The number of ALFs with a relatively high (five or more) number of verified complaints increased from 2005 to 2006 (Table 1). The 2006 JLARC *Status Report* found 10 percent of licensed ALFs (61 facilities) were in this category while the 2007 study found 12 percent of licensed ALFs (72 facilities) with an average or above number of verified complaints.

**Table 1: Verified Complaints Against ALFs**

| | 2006 Report[1] | | 2007 Report[2] | |
|---|---|---|---|---|
| **Number of Complaints** | **Number** | **Percent** | **Number** | **Percent** |
| Zero | 374 | 64% | 342 | 59% |
| Below Average (1-4) | 153 | 26 | 169 | 29 |
| Average or Above Average (5 or more) | 61 | 10 | 72 | 12 |
| **Total** | 588 | 100% | 583 | 100% |

[1]The 2006 JLARC *Status Report* used data from 2004 and 2005.
[2] This report uses data from 2006.

Source: Analysis of verified complaints from the DSS Division of Licensing Programs, Adult Protective Services, and Office of the State Long-Term Care Ombudsman.

***Compliance Problems.*** JLARC staff also determined whether each ALF was in compliance with assisted living regulations throughout the emergency regulation period from December 28, 2005, to December 27, 2006. Data from the Division of Licensing Programs was examined to identify non-compliant facilities by one of the following criteria:

- provisional license,
- adverse enforcement action,
- enforcement watch, or
- violation of health and safety standards

Compared to 2004-2005, the percentage of non-compliant ALFs decreased in 2006. Eleven percent or 67 ALFs were found non-compliant according to at least one of these criteria and are considered ALFs of concern. The remaining 89 percent of ALFs statewide do not have a recent history of compliance problems. The number of facilities found to be non-compliant has decreased. The 2004-2005 data reported by JLARC last year indicated that 18 percent or 105 ALFs were found to have compliance concerns by at least one of the criteria mentioned above.

Table 2 shows the number of ALFs of concern based on all the criteria considered by JLARC staff.

**Table 2: Criteria for Identification of ALFs of Concern**

| Criterion | Standard for Inclusion | Number of ALFs Identified | Percent of all ALFs |
|---|---|---|---|
| Total Verified Complaints | 5 or more | 72 | 12% |
| Provisional License | 1 | 26 | 4 |
| Adverse Enforcement Action | 1 | 18 | 3 |
| Enforcement Watch | 1 | 15 | 3 |
| Violation of High-Risk Health & Safety Standards[1] | 5 or more[2] | 24 | 4 |

[1] JLARC staff identified 90 "high-risk" standards from a total of 672 standards provided by the DSS Division of Licensing Programs.
[2] Five violations is two standard deviations above the average number of violations (1.8).

Source: Analysis of data from DSS Division of Licensing Programs, DSS Adult Protective Services, and Office of the State Long-Term Care Ombudsman.

## Decreasing Number of ALFs of Concern May Not Indicate Quality Improvement

The number of ALFs of concern decreased from 137 in 2006 to 114 in 2007. Because of data limitations, it is uncertain whether this change can be attributed to quality of care improvements.

Using complaints and compliance data as indicators of quality of care presents limitations. Because quality of care cannot be measured directly, ALFs that provide poor quality care but have a good compliance record and few complaints may not be identified as of concern. On the other hand, ALFs that are so identified may provide quality care but also may have experienced a one-time problem due, for example, to poor-performing employees who were subsequently dismissed (as JLARC staff confirmed in one case).

Data used for this study covers a shorter timeframe than data used to identify ALFs of concern for the 2006 JLARC *Status Report* (Table 3). The 2006 JLARC *Status Report* identified ALFs of concern by analyzing two years of data (2004 and 2005) prior to the implementation of the emergency regulations. The 2007 study identifies ALFs of concern primarily using one year of data from the period in 2006 when the emergency regulations were in effect.

Less data was available in 2007 than in 2006 because according to DOLP staff, caseload data is no longer archived. Therefore, only current data is available for ALFs on a provisional license or enforcement watch. For example, the 2006 *Status Report* utilized 12 months of enforcement watch data from calendar year 2005. However, as this data is no longer archived, JLARC staff were able to use only three months of enforcement watch data in 2007 (February, March, and April 2007).

## Table 3: Less Data Is Available for 2007 Report

| | Available Data, in months | |
|---|---|---|
| **Verified Complaints** | **2006 Report** | **2007 Report** |
| DSS Division of Licensing Programs | 12 | 12 |
| DSS Adult Protective Services | 7 | 12 |
| Office of the State Long-Term Care Ombudsman | 24 | 12 |
| **Total** | **43** | **36** |
| **Licensing Compliance**[1] | | |
| Provisional License | 21 | 5 |
| Adverse Enforcement Action | 24 | 14 |
| Enforcement Watch | 12 | 3 |
| High-Risk Health & Safety Standards[2] | 29 | 12 |
| **Total** | **86** | **34** |

[1]Licensing compliance data is from the DSS Division of Licensing Programs.
[2]Inspections for the 2006 report were conducted as early as July 2003; therefore, health and safety data for the 2006 report ranged from July 2003 to Dec. 2005.

Source: DSS Division of Licensing Programs, DSS Adult Protective Services, and Office of the State Long-Term Care Ombudsman.

## ALFS OF CONCERN HAVE COMMON CHARACTERISTICS

After identifying ALFs with verified complaints and compliance problems, JLARC staff analyzed them for common characteristics. Problems with medication administration and staffing were found frequently in ALFs of concern in both 2006 and 2007. The size of the ALF and its location also continue to be factors in ALFs of concern. JLARC staff did identify a relationship between ALFs of concern and the pay status (auxiliary grant or private pay) of residents, unlike in the 2006 JLARC *Status Report*.

### Medication Administration and Staffing Are Most Common Problem Areas

ALF employees provide important assistance to residents, including medication administration and help with the activities of daily living. Through analysis of ALFs of concern, JLARC staff identified medication administration and staffing as key factors in quality care in assisted living. Most ALFs do not have problems meeting standards in these areas, although several sources of data show that ALFs of concern tend to have more trouble with these functions.

Medication issues continue to be the most frequent area of verified licensing complaints in all ALFs, followed by staff quality and training (Table 4). The total number of verified licensing complaints increased by six percent from 2005 to 2006, but several

complaint areas increased or decreased by a larger proportion. Verified complaints of physical abuse and neglect yield the greatest percent change with a 65 percent increase, from 23 to 38. Complaints about the structured program offered by ALFs decreased by 50 percent, and complaints about insufficient staffing levels increased by 31 percent.

More than 400 complaints of abuse, neglect, and exploitation were verified in 168 separate facilities in 2006, including 38 licensing complaints and 371 APS complaints. Although 2005 APS data is incomplete, verified licensing complaints in this category increased by 65 percent from 2005 to 2006.

Medication-related violations constitute eight of the ten most frequently violated critical health and safety standards in 2005 and 2006. Nine of the top ten standards are the same in 2005 and 2006. For this study, these ten standards represent 57 percent of the total 3,013 critical health and safety violations during the most recent five inspections of all ALFs during the period of the emergency regulations (12 months). The 2006 *Status Report* identified 4,971 violations over a 29-month period prior to the implementation of the emergency regulations.

Analysis of adverse enforcement actions issued to ALFs in 2006 reveals that medication errors and staff quality and training are the most common reasons for these actions. From November 2005 to December 2006, 21 actions were issued, most of which were the assessment of civil penalties. Poor staff quality and training were factors in 16 adverse enforcement actions, and medication or medical issues was a factor in eight of them.

**Table 4: Medication Errors Are the Most Frequent Verified Licensing Complaints in 2005 and 2006**

| Complaint Areas | Number of Verified Complaints | | |
|---|---|---|---|
| | 2005 | 2006 | Percent Change |
| Medication/Medical Issues | 86 | 77 | -10% |
| Staff Quality/Training | 50 | 54 | 8 |
| Records | 38 | 37 | -3 |
| Supervision (of Residents) | 29 | 30 | 3 |
| Physical Plant | 28 | 32 | 14 |
| Structured Program | 28 | 14 | -50 |
| Physical Abuse/Neglect | 23 | 38 | 65 |
| Admission/Discharge | 20 | 19 | -5 |
| Staff Quantity | 16 | 21 | 31 |
| Other | 79 | 99 | 25 |
| **Total** | **397** | **421** | **6%** |

Source: Analysis of data from DSS Division of Licensing Programs.

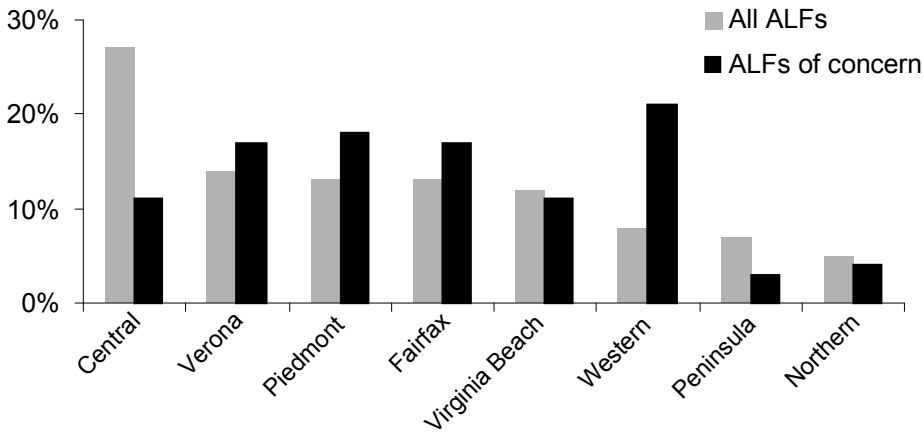
There were 15 facilities on enforcement watch from February to April 2007 for failure to maintain compliance with standards in one or more areas. Medication violations occurred in five of these ALFs, and staffing violations were noted in four. Along with physical plant and recordkeeping violations, these problems are of particular concern to licensing staff because they tend to be repeat violations.

### Size, Location, and Resident Pay Status Also Are Factors in ALFs of Concern

ALFs of all sizes were identified as having a recent history of complaints and compliance problems. However, larger ALFs (20 or more residents) tend to have a larger number of complaints or compliance problems. Large facilities constitute 69 percent of all ALFs; however, they make up 85 percent of ALFs of concern. Further, there is a substantial difference between the bed capacity of ALFs of concern and all other ALFs. The mean capacity of ALFs of concern is 70, while the capacity for all other ALFs is 51.

ALFs of concern continue to be found in all eight DSS licensing regions across the State. ALFs of concern are over-represented in four regions (Western, Fairfax, Verona, Piedmont). Two regions (Central and Peninsula) have relatively few (Figure 2; map showing licensing regions is on p. 23). Twenty-one percent of ALFs of concern are located in the Western region while just eight percent of all ALFs are located there. Conversely, with 27 percent of all ALFs, the Central region has only 11 percent of ALFs of concern.

**Figure 2: ALFs of Concern Are Over-Represented in Four Regions**




Source: Analysis of data from DSS Division of Licensing Programs, DSS Adult Protective Services, and Office of the State Long-Term Care Ombudsman.

**Auxiliary Grant**

Nearly all auxiliary grant recipients reside in a licensed ALF and are eligible for and receive Supplemental Security Income (SSI), a federal program that helps aged, blind, and disabled people who have little or no income.

ALFs of concern serve both private pay and auxiliary grant recipients; however, the residents' pay status appears to be a factor in ALFs of concern. There is a difference between the mean number of auxiliary grant beds in ALFs of concern and all ALFs statewide. ALFs of concern have an average of 23 auxiliary grant beds, while the mean for all ALFs is 11. Also, the ratio of auxiliary grant beds to licensed bed capacity is greater for ALFs of concern than all ALFs statewide. ALFs of concern use an estimated 40 percent of their beds for auxiliary grant recipients. ALFs statewide have an estimated 31 percent of their bed capacity for auxiliary grant recipients.

## NEW REQUIREMENTS MAY IMPACT MEDICATION MANAGEMENT AND STAFFING

Deficiencies in medication administration and staffing were noted in JLARC reports on assisted living published in 1979, 1990, and 1998. In the 2006 JLARC *Status Report* and in this study, medication management and staffing were found to be the primary problem areas in ALFs with verified complaints and compliance concerns.

The 2005 legislation addressed these concerns by requiring the licensure of assisted living administrators and the registration of medication aides. The registration of medication aides will be implemented on July 1, 2007, and enforced on July 1, 2008. The adoption of the administrator licensure regulations has been delayed, as discussed in Chapter 1. Therefore, the impact of these regulations has yet to be seen.

DSS licensing staff note that some administrators and owners have reduced their facility's license to residential level of care out of concern about the licensure exam. The draft regulations would allow administrators who have worked two of the previous four years to be licensed, provided they pass the written exam. However, administrators who provide only residential care are exempt from licensure.

Licensing data supports this observation. In 2006, 59 ALFs provided residential level care, and in 2007, 87 ALFs provide residential care. By 2007, nine facilities that had been licensed to provide the assisted living level of care reduced their licensure level. (The remaining ALFs were new licensees.) Seven of these nine facilities serve primarily auxiliary grant recipients.

## UNLICENSED HOMES MAY BE PROBLEMATIC

House Joint Resolution 710 from the 2007 General Assembly identified several concerns about adult homes with three or fewer resi-

dents. One concern is that statutes provide that up to three adults may be cared for without a license or inspection by any State or local agency. Another concern is that there are no standards for such small providers, so they are not required to provide a minimum level of services yet may receive payment from a resident's Social Security, Veteran's Administration benefits, or other publicly funded source. Under current law, there is little that State or local agencies can do unless there is an allegation of neglect, abuse, or criminal activity. No data is collected on these small facilities.

JLARC staff contacted a sheriff in one locality who expressed concern that there may be an increasing number of these small, unlicensed homes. DSS licensing staff in that same locality also indicated that there seemed to be an increase in unlicensed homes, especially in response to the recent closing of several ALFs that primarily served auxiliary grant recipients. Staff's concern was that the recipients may have relocated into unlicensed homes and may no longer be receiving needed medication or other services. Licensing staff in two other regions, however, said that they had seen no increased trend in unlicensed homes.

The 1990 JLARC report *Follow-Up Review of Homes for Adults in Virginia* identified the "danger some residents may be facing in unlicensed homes" and recommended that DSS use Social Security Administration data to help identify these unlicensed homes. According to the report, such data could be used to identify addresses receiving multiple Supplemental Security Income or Social Security checks. When such homes have three or fewer such recipients, however, there is no requirement for a license.

Chapter 3

# Access to Assisted Living Services

## In Summary

Access to assisted living services in Virginia is problematic primarily for the State's auxiliary grant recipients. While private pay residents may face waiting lists to get into the facility of their choice, auxiliary grant recipients can experience difficulty finding open ALF beds in their community. Auxiliary grant beds are concentrated disproportionately in the Western and Piedmont licensing regions. There are 41 localities with no auxiliary grant beds. Access to mental health services has improved in recent years although some auxiliary grant recipients with mental disabilities experience ongoing problems accessing needed mental health services, either from the local community services board or from their ALF. A recent infusion of State and federal funds may improve housing and services for the mentally disabled, but improvement for auxiliary grant recipients may be minimal.

The study mandate directed JLARC to address residents' access to assisted living providers and services, including mental health and other Medicaid-funded services for ALF residents receiving the auxiliary grant. Assisted living is a critical source of long-term care in Virginia. Access to assisted living services includes access to beds for prospective residents and access to mental health services for residents with mental disabilities. A shortage of available beds in a locality may force individuals in need of assisted living to remain in inadequate care settings or move to a different part of the State where beds are available. Similarly, lack of access to mental health services can prevent ALF residents from functioning at their highest level and may lead to acute psychiatric episodes that could include harm to self or others.

Access to assisted living services appears to be a problem primarily for the State's auxiliary grant recipients. There are no indications that individuals with the financial resources to purchase long-term care face significant barriers to assisted living care. Although there can be waiting lists for private-pay residents, these waiting lists usually reflect strong demand for popular facilities. Generally, the market appears responsive to increases in the demand for private assisted living services, with corporate owners from the hotel and real estate industries expanding their operations into assisted living.

## ACCESS TO MENTAL HEALTH SERVICES REMAINS UNCHANGED SINCE 2006

A substantial number of individuals with mental disabilities resides in ALFs. Data from FY 2003 to FY 2005 indicates that more than half of auxiliary grant recipients have a diagnosed cognitive impairment that requires ongoing treatment. These impairments include serious mental illness, mental retardation, and conditions such as dementia and Alzheimer's.

While ALF administrators and staff are not licensed mental health providers, they play an important role in helping residents with mental disabilities achieve their highest level of functioning. ALFs are responsible for ensuring that residents receive prescribed medication and other needed services. ALF staff are also in a position to identify high-risk behavior among residents and intervene before a crisis occurs. This intervention may involve staff efforts to de-escalate a potential crisis or request assistance from a local community services board (CSB). The 2006 JLARC *Status Report* found that ALFs of concern may not consistently provide necessary services for residents with mental disabilities; however, a majority of ALFs are able to meet these residents' needs.

The Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) is responsible for services for the mentally ill, mentally retarded, and substance abusers, and is the umbrella organization for 40 local CSBs throughout the State. CSBs use public funds to provide services to these populations in the local community, including emergency assistance.

Access to mental health services remains a critical issue for auxiliary grant recipients with mental disabilities and a key to quality care. JLARC studies of assisted living in 1979, 1990, and 1998 found that the mental health needs of some residents were not being met. The 1998 review concluded that inadequate staff supervision in ALFs and poor relationships between ALFs and CSBs were leaving some mentally disabled residents without critical mental health services.

The 2006 JLARC *Status Report* found that some of these problems remained but that they appeared limited to a fraction of ALFs. Results from a 2006 JLARC staff survey of ALF administrators suggested that most facilities do not experience problems accessing mental health services from CSBs, although a small number of ALFs experience ongoing difficulties with CSB services. Complaints about CSB services may have arisen from factors including poor CSB-ALF relationships, inadequate CSB funding, and differing definitions of "emergency."

In 2007, the situation remains largely unchanged. However, additional funding in FY 2007 may help alleviate a shortage of CSB resources. DMHMRSAS was appropriated an additional $187 million in FY 2007 for improved mental health and substance abuse services. The impact on assisted living residents, specifically auxiliary grant recipients, may be limited, however, since ALF residents constitute only two percent of CSB clients.

As discussed in Chapter 1, mental health provisions in the emergency regulations were suspended by the Appropriation Act. The final regulations do not contain new provisions that substantially impact mental health services for ALF residents.

## ACCESS TO AUXILIARY GRANT BEDS IS LIMITED IN SOME AREAS OF THE STATE

The State's auxiliary grant program provides financial assistance for low-income people with disabilities who need moderate assistance with their activities of daily living but cannot afford private assisted living care. These individuals rely on auxiliary grant funds to access long-term care services outside a nursing home setting. Elderly recipients of the auxiliary grant often enter an ALF when they can no longer care for themselves and may remain in a facility for several years.

Auxiliary grant funding also provides housing for individuals with mental health or mental retardation diagnoses. As noted in the 1998 JLARC report *Services for Mentally Disabled Residents of Adult Care Residences*, assisted living has emerged as a significant, though unplanned, component of the State's mental health care system. Virginia has made a concerted effort in recent decades to move individuals with mental disabilities out of State-run hospitals and into the community. According to staff from DMHMRSAS, approximately eight percent of persons discharged from State-run hospitals annually are placed directly in ALFs. More than 4,800 of these discharges have occurred since 1996 (Table 5). Among those patients who were discharged to ALFs from State-run hospitals in FY 2006, almost 50 percent were already residing in ALFs when admitted to the hospital.

These numbers reflect direct placements. DMHMRSAS staff indicate that many persons placed back at home or elsewhere probably relocate to assisted living within a year.

**Table 5: More Than 4,800 Individuals Have Been Discharged From State Hospitals to ALFs Since 1996**

| Fiscal Year | Discharges to ALFs from State Hospitals |
|---|---|
| 1996 | 508 |
| 1997 | 507 |
| 1998 | 457 |
| 1999 | 414 |
| 2000 | 424 |
| 2001 | 307 |
| 2002 | 387 |
| 2003 | 484 |
| 2004 | 467 |
| 2005 | 437 |
| 2006 | 412 |
| **Total** | **4,804** |

Source: Department of Mental Health, Mental Retardation and Substance Abuse Services.

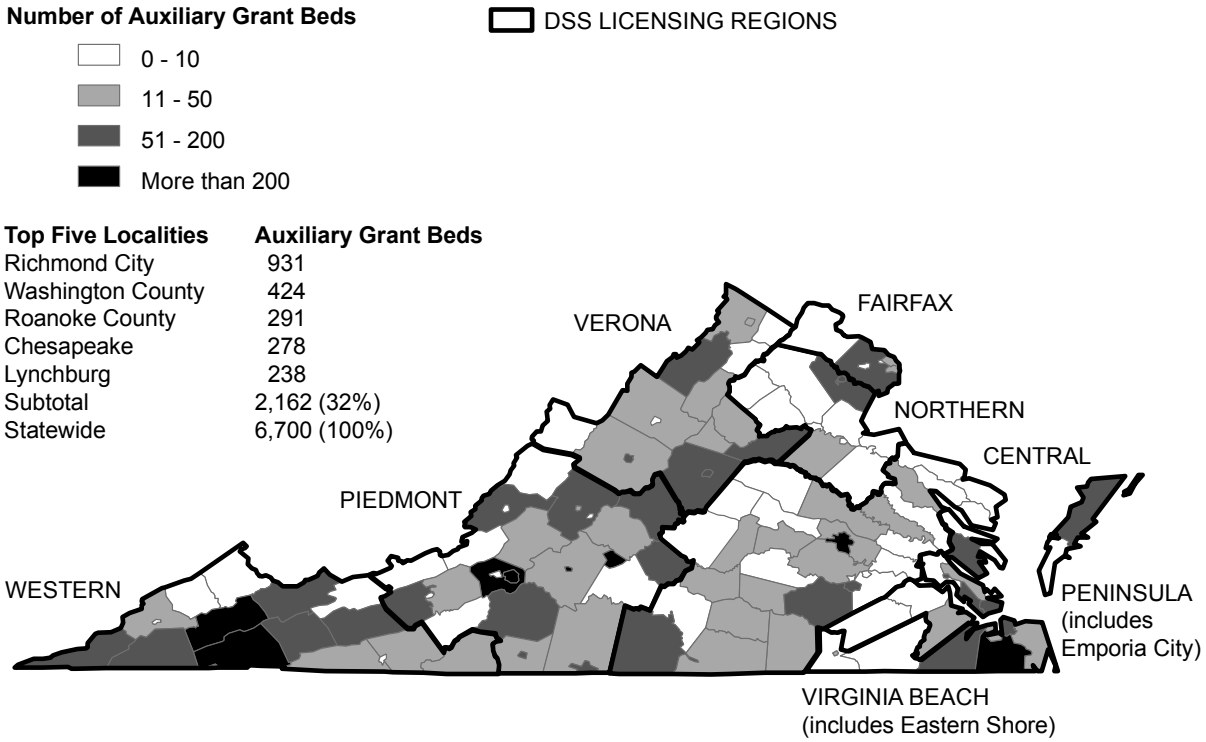
## Certain Regions Lack Beds for Auxiliary Grant Recipients

Although the exact number is difficult to determine, an estimated 6,700 auxiliary grant beds are found in assisted living facilities throughout the State. This estimate is higher than the 2006 average monthly caseload of 5,961 auxiliary grant recipients. According to ALF administrators and licensing staff, ALFs in certain regions either have waiting lists for auxiliary grant beds or so few beds that auxiliary grant recipients must relocate in order to find an available bed. Other regions may have auxiliary grant beds available. For example, staff in the Western licensing region report that some ALF operators recruit residents with mental disabilities from Tennessee in order to keep their auxiliary grant beds filled.

Auxiliary grant beds appear to be concentrated disproportionately in certain areas of the State (Figure 3). An estimated 71 percent of all auxiliary grant beds are located in three DSS licensing regions—Piedmont (28 percent), Central (25 percent), and Western (18 percent). Other regions of the State have disproportionately fewer of the total auxiliary grant beds—Northern (2 percent), Fairfax (3 percent), and Verona (8 percent).

The proportion of auxiliary grant beds compared to all ALF beds is also disproportionate in certain regions of the State (Figure 4). More than half of the assisted living beds in the Western licensing region (55 percent) are auxiliary grant beds. Only three percent of all assisted living beds in the Fairfax licensing region are dedicated auxiliary grant beds.

## Figure 3: Auxiliary Grant Beds Are Concentrated in Certain Localities

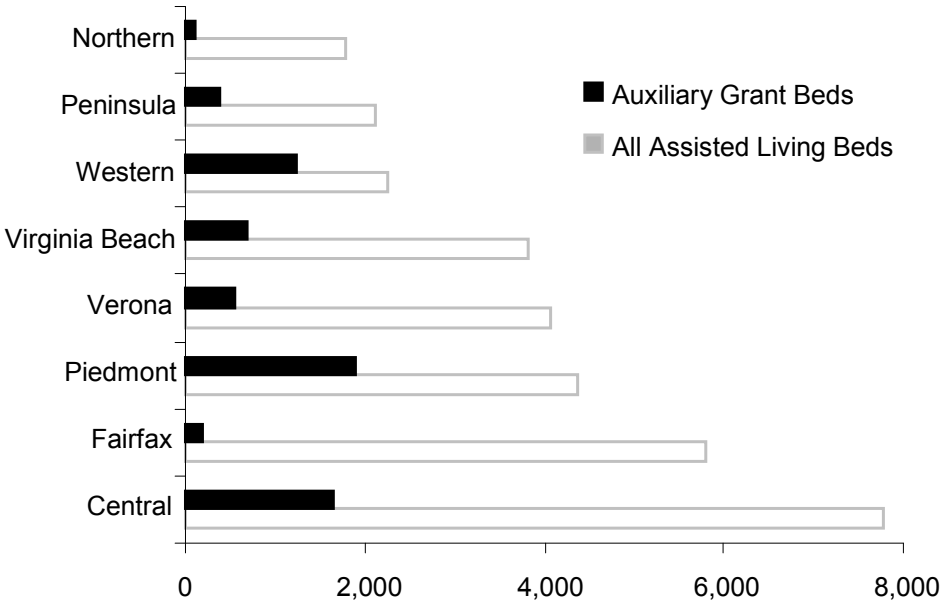



Source: Analysis of data from DSS Licensing staff and the 2006 JLARC staff assisted living administrator survey.

Five localities—Richmond City, Washington County, Roanoke County, Chesapeake, and Lynchburg—account for 32 percent of auxiliary grant beds statewide. Richmond City has the highest concentration of auxiliary grant beds of any locality in the State (approximately 931 beds). This is more than double the number of auxiliary grant beds in any other locality. Washington County has the second highest concentration of auxiliary grant beds (an estimated 424). No auxiliary grant beds are found in 41 localities, and 12 localities have between one and ten auxiliary grant beds.

One result of local shortages of auxiliary grant beds is that some low-income individuals in need of assisted living may have to relocate to a different region of the State to find available beds. Unlike private-pay individuals, who often plan for assisted living care in advance and access alternative services when necessary, housing needs for auxiliary grant recipients are generally more immediate. As a result, local CSB case managers may place their clients in ALFs in a different region of the State. This can pose significant problems for individuals with ties to their community and complicate the provision of services to auxiliary grant recipients.

**Figure 4: Distribution of Auxiliary Grant Beds Is Disproportionate in Certain Regions**




Source: Analysis of DSS licensing data and estimated number of auxiliary grant beds.

## Number of Auxiliary Grant Beds May Be Decreasing in Certain Regions

Analysis of cost reports submitted by ALFs to DSS shows a two percent decrease in the number of "auxiliary grant bed months" from FY 2004 to FY 2005 (one auxiliary grant bed used a month is one auxiliary grant bed month). During this period, the statewide vacancy rate remained the same at 16 percent. Also, the number of ALFs submitting cost reports that had no auxiliary grant revenue for the year increased from 15 in FY 2004 to 24 in FY 2005. Cost reports are submitted voluntarily and represent 58 percent of all ALFs.

Some licensing staff have observed that the number of auxiliary grant beds is decreasing, while others report no change. According to Central region licensing personnel, five ALFs with a total of 45 beds that housed primarily auxiliary grant recipients have closed recently. In Richmond City, estimates of auxiliary grant recipients and beds indicate a 27 percent decrease in the number of beds from 1995 to 2007, with an estimated 1,276 auxiliary grant recipients being housed in 1995 and an estimated 931 in 2007.

Chapter 4

# Cost Impact of the New Law and Regulations

## In Summary

The recent statutory and regulatory changes contain new requirements that will increase the cost of operating an assisted living facility. JLARC staff estimate that initial compliance costs could range from about $440 to $17,500 or more per ALF, depending on several factors. Personnel-related costs that will increase include administrator licensing, medication aide registration, involvement of dietitians, and training for all ALF staff. Facility costs will also increase because of required involvement of dietitians and access to emergency electrical power and air conditioning. These changes will strain the financial resources of some ALFs, especially those serving mainly auxiliary grant recipients. At least half the residents in 34 percent of ALFs receive financial assistance through the auxiliary grant program. The auxiliary grant rate of $1,061 per month (as of July 2007) remains well below market prices for assisted living, which ranges from an average of $1,827 statewide to as much as $4,118 in Northern Virginia. The grant rate may not be sufficient to ensure compliance in facilities that accept auxiliary grant recipients.

The study mandate directs JLARC to consider the impact of new laws and regulations on the cost of services in assisted living facilities. As noted in the 2006 JLARC *Status Report*, new requirements will add to the cost of operating these facilities. The cost of compliance in many cases is likely to increase the cost of assisted living in Virginia.

The majority of assisted living residents—81 percent or about 26,100 residents—pay for their care with their own financial resources, which may include Social Security and other sources of income. The State auxiliary grant program, along with federal Supplemental Security Income (SSI), paid for the care of an average monthly caseload of 5,961 residents in 2006, representing about 19 percent of the licensed capacity of 31,964. DSS data indicates that 310 ALFs (53 percent) have one or more auxiliary grant recipients. The monthly auxiliary grant rate is $1,061 as of July 2007.

### NEW LAW AND REGULATIONS WILL AFFECT COSTS

The 2005 statutory and regulatory changes contain new requirements that will directly affect the cost of operating an assisted living facility. Some of these costs for training, licensing, and certification may be paid by individuals seeking employment in ALFs. Other costs that pertain to staffing patterns and building requirements will likely be paid by the facilities to ensure compliance.

## Staffing and Training Requirements Will Increase Costs

The 2005 law emphasized increased training and education requirements for ALF employees. Administrators will be licensed by the Board of Long Term Care Administrators, and medication aides will be registered with the Board of Nursing. There will be additional training requirements as well as criminal background checks for all ALF employees. The employees themselves will bear the responsibility to be trained and licensed or registered, and the licenses and registration apply to the individual, although in some cases the facility may cover a portion or all of these costs.

The 2006 JLARC *Status Report* found, using then-preliminary cost estimates, that these fees and costs (not counting education and training costs) could total $1,815—$1,890 for an "average" ALF. Adjusting for the finalized fees and costs, including a new requirement for a quarterly review of special diets by a dietitian or nutritionist and other changes, a more likely range of costs per facility will run from $1,291 to $18,371, and possibly higher. Costs range widely because they hinge on whether a facility already has an emergency generator or air conditioning, for example.

***Administrators Must Be Licensed.*** The 2005 legislation requires annual State licensing of ALF administrators by 2008, except for those at ALFs providing only a residential level of care. As noted in Chapter 2, the number of ALFs providing only residential care (and therefore exempted from the licensed administrator requirement) has increased since last year, from 59 to 87.

An important provision of the draft regulations is that persons who have served as an ALF administrator or assistant administrator "of record" for two years between 2003 and 2007 will only have to pass the test and need not take the extensive training. Exhibit 1 indicates the requirements and fees established by the Board of Long-Term Care Administrators. Some of these provisions may change as they have not yet taken effect, as noted in Chapter 1.

***Managers Required in Smaller ALFs***. The DSS regulations require the licensed administrator to be present 40 hours per week in facilities licensed for 19 or fewer residents. The regulations also require a manager to be on duty for any portion of the 40 hours that the administrator is unable to be present. The manager position requires less education and training than the administrator, but still requires either 30 hours of college credit or completion of a DSS-approved training course specific to the management of an assisted living facility and at least one year of experience caring for adults in a group care facility.

Of the 583 ALFs in Virginia, 182 are licensed for 19 or fewer and thus may be subject to the manager requirement. Fewer than this number will likely require a manager position, however, depending on staffing arrangements. For example, if the administrator is present full-time (40 hours per week) at the facility, then a manager position is not required. Completing 30 hours of college credit could cost an individual as much as $2,600 through a Virginia

## Exhibit 1: Administrator Licensing Requirements and Costs

**Statute:** By July 1, 2008, all licensed assisted living facilities within the Commonwealth must be under the supervision of an administrator licensed by the Board (*Code of Virginia* §54.1-3103).

*The Governor has asked for clarification on several points that may lead to further changes and delayed implementation. The following summarizes requirements of the draft final regulations.*

**Exemptions:**

- An administrator of an assisted living facility licensed only to provide residential living care, as defined in *Code* §63.2-100, is not required to be licensed (*Code* §54.1-3102).
- Persons who have served as administrator of record or as an assistant administrator in two of the previous four years (as of July 1, 2007) do not have to take the training, just pass the State test.
- Persons already licensed as a nursing home administrator do not need any additional license to operate an ALF.

**Administrator Licensing Requirements:**

- 30 hours college-level courses, and
- Training in assisted living care, and
- Passage of both a national credentialing exam and a State jurisprudence exam, and
- Reciprocity allowed for persons with comparable credential in another state.

**Administrator-in-Training Requirements:** High school diploma or GED plus:

- 30 semester hours in any subject plus 1,000 hours of supervised experience over a 24-month period, or
- At least 30 semester hours in client/resident care, human resources management, financial management, physical environment, leadership and governance, and 500 hours in an administrator-in-training program within one year, or
- Baccalaureate degree in a field unrelated to health care plus a certificate showing 21 semester hours in a health care-related field that meets the above course content requirements and at least a 320-hour internship under a board-registered preceptor, or
- Meet the requirements for a degree in a health care field with a minimum of 21 hours in the management of health care services.

**Annual renewal:** Requires 20 hours of continuing education in approved courses, ten of which can be through an Internet or self-study course.

**Fees:**

| | |
|---|---|
| Administrator-in-Training application: | $185 |
| Licensure application: | $200 |
| Renewal: | $225 |
| Testing: | Undetermined |

Source: Board of Long-Term Care Administrators, Department of Health Professions, Draft Final Regulations Governing the Practice of Assisted Living Administrators.

community college, while the cost of the DSS-approved training has not yet been established.

***Medication Aides Must Be Registered.*** The 2005 legislation requires that persons who administer drugs in ALFs must be registered with the Board of Nursing. The board's regulations require 68 hours of training and passing a State test unless the person has worked at least a year as a medication aide, in which case the individual must take an eight-hour refresher course and pass the test. Exhibit 2 sets out the new conditions and fees for medication aides.

There are also requirements for staff with direct care responsibilities. Such staff in facilities licensed for the assisted living level of care (496 of the 583 facilities) must receive at least 16 hours of relevant training annually, in addition to required first aid and cardiopulmonary resuscitation (CPR) training. Direct care staff in ALFs licensed to provide residential care must have eight hours of relevant training annually plus first aid and CPR.

## Exhibit 2: Medication Aide Registration Requirements and Costs

**Statute:** A medication aide who administers drugs that would otherwise be self-administered to residents in an assisted living facility licensed by the Department of Social Services must be registered by the Board of Nursing (*Code of Virginia* §54.1-3041):

**Training**: A minimum of 68 hours in the curriculum specified by the board, including

- At least 40 hours classroom instruction, 20 hours of supervised skills practice, and eight hours training on insulin administration, and
- Four hours of continuing training per year in population-specific medication administration.

**Testing:** Mandatory for all persons, including those seeking exemption from training.

**Exemptions:** Persons who have worked at least one year as a medication aide must complete an eight-hour refresher course and then pass the State test.

**Instructors:** Must be an RN, pharmacist, or licensed practical nurse with three years' experience and specific training in teaching the medication aide curriculum.

**Certified Nursing Assistants (CNAs):** CNAs wishing to become medication aides will have to pay fees, take training, and pass tests for the CNA certification as well as the medication aide registration.

**Fees:**

| | |
|---|---|
| Per Test: | $70 |
| Initial Registration: | $50 |
| Annual Registration Renewal: | $25 |
| Instructor application: | $500 |

Source: Department of Health Professions, Board of Nursing, Final Regulations Governing the Registration of Medication Aides.

***Dietitian Required to Review Special Diets.*** One of the new DSS standards (22 VAC 40-72-620G) requires on-site quarterly reviews of special diets by a dietitian or nutritionist and a written report of findings and recommendations to the facility administrator. This requirement will apply almost universally because nearly all ALFs will at least periodically have residents on special diets.

Costs of retaining a qualified dietitian or nutritionist may vary significantly. Regional DSS licensing staff have indicated that ALFs may need to pay a minimum of $40 an hour up to $300 or more for this quarterly visit.

***Employee Background Checks***. Legislation passed in 2006 (SB 421) required a national criminal background check for employees and volunteers at ALFs, beginning in July 2007. This legislation was contingent on an appropriation for the Department of State Police by the 2007 General Assembly, which was not provided. Consequently, background checks are not required.

Although background checks are not statutorily required, ALFs may conduct them on their own initiative, and many do, as authorized by *Code of Virginia* §19.2-392.02. Background checks cost $37 for each employee and $26 for each volunteer. The ALF or the employees and volunteers may pay the fee. The 2006 JLARC *Status Report* found that the average ALF had 23 employees, so this fee could total $851 for a typical facility, at such time as the requirement takes effect. Due to employee turnover, this figure is likely to be higher in a typical facility.

Legislation adopted in 2007 (SB 1229 and HB 2345) requires ALFs to determine, prior to admission, whether a prospective resident is a registered sex offender. This information is available without cost on the Internet.

## Facility Requirements Will Also Be Costly

Recent statutory and regulatory changes apply to ALF operations, the cost of which would most likely be borne by the facility. These include requirements for air conditioning and access to temporary electrical power. The cost impact of these requirements will vary significantly, as many ALFs already meet them and other facilities will have to be retrofitted.

***Temporary Electrical Power Must Be Available.*** A 2004 statute required ALFs with six or more residents to be able to connect, by July 2007, to a "temporary emergency electrical power source for the provision of electricity during an interruption of the normal electric power supply" (*Code of Virginia* §63.2-1732D). This provision was adopted after Hurricane Isabel interrupted power to wide

swaths of Virginia for more than a week. Because ALFs provide care for persons with disabilities and medical needs, they clearly have an increased need for a stable and reliable source of electricity. This population is especially vulnerable during extremes of temperatures such as in an extended power outage caused by an ice storm.

Only 24 of the 583 ALFs are exempted from this requirement by reason of having a licensed capacity smaller than six residents. Although the statute does not require the remaining facilities to have a generator, many already have permanent generators on site. DSS regional licensing staff indicate that most ALFs have found it to be more cost-effective to purchase and permanently install a generator instead of contracting with a local provider of electrical generators to ensure availability during a power outage. It is also not clear that ALFs consistently use the least costly alternative, as illustrated in the following case study.

***Case Study***

*A regional licensing inspector found a source of used electrical generators, which were significantly less expensive than purchasing new generators. She provided contact information to the ALFs in her caseload. None followed up on it, however, apparently preferring to make local arrangements for new generators to be installed.*

Dominion Virginia Power installs 12-kilowatt emergency generators at prices starting around $6,000. Larger ALFs may require substantially higher capacity generators at proportionately higher costs. Ongoing maintenance and operation costs may also be significant.

***Air Conditioning Standards Have Increased.*** A new standard requires cooling devices to be available in areas of buildings used by residents when inside temperatures exceed 80 degrees (22 VAC 40-72-860D), five degrees lower than required by prior standards. The standard also explicitly requires air conditioning equipment for the largest common area used by residents.

The cost of meeting this requirement will vary significantly. Many ALFs are already air conditioned, yet it will be quite costly to retrofit others with adequate equipment. Estimates can easily exceed $10,000 for an older facility. Some ALFs occupy older buildings that have never been air conditioned.

***Total Costs Will Vary.*** The cost to an ALF of complying with the new law and regulations will vary based on whether the facility covers employees' costs of licensing and registration, as well as whether the facility is already air conditioned and has access to

emergency electrical power. As Table 6 indicates, new costs could range from $440 to as much as $17,520 or more, depending on these and other factors.

**Table 6: Typical Costs Imposed by New Law and Regulations**

| Requirement | Cost |
|---|---|
| Administrator Licensing | $200 |
| Medication Aide Testing & Registration | $120 per aide |
| Dietitian Review of Special Diets | $120-1,200/year |
| Temporary Electrical Power | 0-$6,000 or more |
| Air Conditioning | 0-$10,000 or more |
| Total | $440-17,520 or more |

Source: Analysis of statutes and regulations.

## AUXILIARY GRANT RATE HAS NOT ACCOUNTED FOR COST OF NEW REQUIREMENTS

Recent statutory and regulatory changes will result in increased costs in the seven to eight areas identified above. While some of the training, registration, and licensing costs may be paid by individual employees to enhance their careers, the costs of a dietitian's review, access to emergency power, and air conditioning will be paid by the ALF. Most ALF residents are paying for their care from their own private financial resources, so the ALFs in which they reside are more likely to pass increased costs on to these residents in the form of higher prices.

Over half of all ALFs have at least some auxiliary grant recipients. Many of these facilities depend heavily upon auxiliary grant revenue to remain in business. Recent DSS data indicate that 53 percent or 310 ALFs have one or more auxiliary grant residents. In 34 percent of ALFs, a majority of the residents receive financial assistance through the auxiliary grant program.

In the 19 months from December 2005 to July 2007, the auxiliary grant rate will have increased 12 percent, from $944 to $1,061 per month. The 12 percent increase is likely to outpace inflation, which ran about five percent over the 19-month period. These rate increases were not, however, tied to the increased costs imposed under the new statutes and regulations. Instead, the increases have occurred as a result of cost of living adjustments provided by the federal SSI program and action by the General Assembly and DSS.

While the State sets the auxiliary grant rate for persons residing in ALFs, it is only one of three governmental entities funding the program. To receive the grant, an individual first must receive

Supplemental Security Income (SSI). This is a federal program to help aged, blind, and disabled people who have little or no income. The maximum individual SSI benefit is currently $623 per month. The difference between this amount and the auxiliary grant rate of $1,061 per month is $438, which is then split 80-20 between the State and local governments. Consequently, when the State sets the monthly cap at $1,061, the State's contribution toward that amount is typically $350 per month, and the individual's locality contributes $88 per month.

### Auxiliary Grant Rate Is Well Below Market Prices

The recent increases in the auxiliary grant are significant, but the grant remains well below market prices for assisted living, as illustrated in Figure 6. Average market prices run from $1,827 to $4,118 per month, depending on the source of information and the location within the State—from nearly double to nearly four times the auxiliary grant rate of $1,061 per month.

JLARC staff identified market prices for assisted living using several sources:

- Although filing cost reports remains optional and the data is unaudited, 337 cost reports representing 58 percent of all ALFs were submitted to DSS by ALFs in 2006, most of which covered costs from calendar year 2005. Analysis of the reports indicates an average monthly cost per bed of $1,827 and a median monthly cost per bed of $1,384 (these figures include profit and inflation factors, as calculated by DSS). The 2006 JLARC *Status Report* indicated that costs for 2004 (based on 354 cost reports) were an average of $1,674 and a median of $1,255.

- Genworth Financial, Inc., surveys assisted living costs nationwide, contacting at least ten percent of all licensed facilities in each state. The March 2007 *Genworth Financial Cost of Care Survey* found that for Richmond-area facilities, the average monthly cost of a private one-bedroom unit was $2,321 and for the balance of the State (excluding Northern Virginia), the monthly cost was $2,090. Nationwide, the report found a monthly average cost of $2,714.

- The October 2006 *MetLife Market Survey of Assisted Living Costs* surveyed a sample of ALFs in the summer of 2006 and reported that the national average monthly rate for a private room was $2,968. This report found that Richmond-area facilities charged an average of $2,733 per month for a private room, while the Northern Virginia average was $4,118 per month.

Averaging the figures identified by MetLife and Genworth, the national average cost of assisted living is $2,841 per month, as indicated in Figure 5.

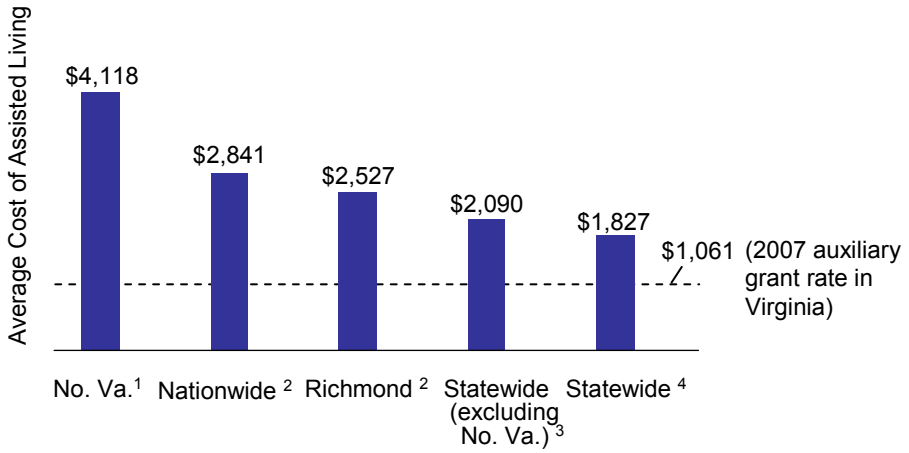
### Auxiliary Grant Rate May Not Be Sufficient for Compliance

Not only is the auxiliary grant rate well below market prices, it appears that it may not be sufficient to ensure compliance with DSS standards. Based on the analysis presented in Chapter 2, ALFs with a majority of auxiliary grant recipients are more frequently on a provisional license, indicating at least a temporary inability to comply with standards. ALFs with mostly auxiliary grant recipients are also more frequently included in the JLARC staff list of ALFs of concern.

Facilities with auxiliary grant revenue have substantially less total revenue, according to the cost reports filed with DSS. Facilities with more than half their annual revenue from auxiliary grant recipients averaged $331,000 in total operating revenue; facilities with more than half their revenue from private pay residents reported $1.55 million in annual operating revenue.

Facilities serving auxiliary grant recipients often have special circumstances that have helped them cope with operating costs, as discussed in the 2006 JLARC *Status Report*. These special circumstances can help reduce costs or supplement a facility's revenue

**Figure 5: Auxiliary Grant Rate Is Below Market Prices**




Sources: 1. *The MetLife Market Survey of Assisted Living Costs* (October 2006).
2. Averaged from the *MetLife* and *Genworth* reports (sources 1 and 3).
3. *Genworth Financial Cost of Care Survey* (March 2007).
4. Analysis of 2006 data from cost reports submitted to DSS.

stream, for example, in cases where owners have inherited the facilities, extended family members assist with staffing a facility and receive below-market wages, or residents leave the ALF for extended periods to attend "clubhouses" and other programs operated by a community services board.

It remains to be seen whether these kinds of special circumstances will enable ALFs serving predominantly auxiliary grant residents to meet the new standards and State law. These facilities' limited operating revenue may continue to constrain compliance, especially as the cost of operating an ALF increases over the next two years because of the new requirements.

Appendix A

# Study Mandate

## Chapter 3, 2006 Acts of the General Assembly

**Item 21E.** 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 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 a final report by June 1, 2007.

Appendix B

# Research Activities and Methods

The goal of this study was to develop a second "snapshot" about licensure, services, and funding in assisted living facilities (ALFs) and then compare this to the "snapshot" reported in the 2006 JLA*RC Status Report*. To accomplish this goal, JLARC staff

- reviewed extensive data on ALFs' compliance with licensing standards and on complaints filed with both the Department of Social Services (DSS) and with the Office of the State Long-Term Care Ombudsman in order to identify ALFs with a recent history of verified complaints and compliance problems,
- conducted follow-up site visits to three ALFs, touring each facility and interviewing the administrator and the licensing inspector,
- reviewed financial data submitted by 337 ALFs to DSS, and
- surveyed and interviewed several groups of people with special knowledge of ALFs.

## IDENTIFICATION OF ALFS WITH A RECENT HISTORY OF VERIFIED COMPLAINTS OR COMPLIANCE PROBLEMS

JLARC staff collected available data on all 583 licensed ALFs in Virginia (Table 1) in 2006 and 2007 from the DSS Division of Licensing Programs, the DSS Adult Protective Services, and the Office of the State Long-Term Care Ombudsman program.

### DSS Licensing Division Provided a Variety of Data

Data from the licensing division helped to characterize facilities throughout the State, including their compliance with standards in 2006 and some from 2007. Analyzing five types of licensing data strengthened reliability of the staff's findings.

***Monthly Caseload Reports.*** The licensing division produces two ALF caseload reports each month, which include the facility name, file number, administrator's name, licensing region and inspector, license type and expiration date, bed capacity, location, and contact information. Caseload reports were used to calculate the statewide distribution of ALFs, inspector caseloads, and frequency of license types, and to identify ALFs with a provisional license.

## Table 1: ALFs of Concern Were Identified Using Verified Complaints and Licensing Compliance Data

| Verified Complaints | Description | Timeframe |
|---|---|---|
| DSS Division of Licensing Programs | Allegation that an ALF is not in compliance with standards or that adults are being abused, neglected, or exploited | Calendar Year 2006 |
| DSS Adult Protective Services | Complaints of abuse, neglect, and exploitation | Calendar Year 2006 |
| Office of the State Long-Term Care Ombudsman | Complaints made by or on behalf of individuals receiving long-term care services | Fiscal Year 2006 |
| **Licensing Compliance**[1] | | |
| Provisional License | License issued to an ALF for six months when the facility is temporarily unable to comply with licensing standards | Jan.-Feb. 2006 & Feb.-April 2007 |
| Adverse Enforcement Action | Sanction against an ALF that violates regulations in ways that negatively impact the health, safety, or welfare of residents | Nov. 2005-Dec. 2006 |
| Enforcement Watch | Monitoring tool used to identify and document monitoring activities and actions taken on an ALF that has failed to maintain substantial compliance with standards | Feb.-April 2007 |
| High-Risk Health & Safety Standards | Subset of 90 high-risk licensing standards identified by JLARC staff | Five inspections between Dec. 28, 2005, & Dec. 27, 2006 |

[1]Licensing compliance data is from the DSS Division of Licensing Programs.

Source: DSS Division of Licensing Programs, DSS Adult Protective Services, and Office of the State Long-Term Care Ombudsman.

The type of license issued to a facility indicates its compliance with licensing standards (Table 2). The license type dictates the duration of the license, which may be, one, two, or three years; and the frequency of mandated inspections. Regional licensing inspectors assign a license based on the ALF's compliance with standards at the time of renewal. In determining license type, inspectors consider the number and nature of violations, adverse enforcement actions, and the quality of the ALF's established policy and procedures. Licensing staff cautioned that the type of license alone does not necessarily indicate problems in a facility or reflect the quality of care provided by the facility.

Caseload data for calendar year 2006 was not available for this study. According to DSS licensing staff, caseload data is no longer archived, so only current data is available. Therefore, JLARC staff requested monthly caseload data throughout the study, from February through April 2007. In addition, JLARC staff utilized caseload data collected from January and February 2006 during the 2006 JLARC study.

**Table 2: ALF Licenses Indicate Levels of Compliance and Inspections by DSS**

| License Type | Level of Compliance | Inspections Required | Number of ALFs | Percent of total |
|---|---|---|---|---|
| Provisional (6-month) | Temporarily unable to comply with licensing standards | 1 every other month | 12 | 2% |
| 1-year | Substantially complies with minimum standards. While there may be violation of one or more standards that pose little risk, compliance exists for nearly all standards | 3 per year | 287 | 49 |
| 2-year | Complies on a sustained basis with minimum standards | 2 per year | 153 | 26 |
| 3-year | Routinely exceeds basic care, programs, and services required by the minimum standards | 1 per year | 92 | 16 |
| Conditional (6-month) | Issued to new ALFs during the first six months of operation. Allows new ALFs to demonstrate compliance | 2 in 6 months | 39 | 7 |
| **Totals** | | | 583 | 100% |

Source: Analysis of licensing data and DSS Division of Licensing Programs standard operating procedures 202 and 301.

***Adverse Enforcement Actions.*** The licensing division provided JLARC staff with copies of all 21 adverse enforcement action letters sent between November 2005 and December 2006. These letters indicate sanctions imposed on an ALF for serious or repeated violations of standards. Types of adverse actions include license revocation, denial of licensure application, probation, reduction of capacity, prohibition on new admissions, mandated training, a civil penalty, and termination of public funding.

***Enforcement Watch***. Enforcement watch is a monitoring tool used by the licensing division to identify and monitor facilities that have failed to maintain substantial compliance with licensing standards. Enforcement watch data from February to April 2007 was used. Enforcement watch data from 2006 is not available because the information is automated and no longer archived. Therefore, only current data is available. JLARC staff requested monthly enforcement watch data throughout the study period, from February through April 2007.

***Health and Safety Violations***. A report developed by the licensing division identifies 672 licensing standards and statutes from the *Code of Virginia* pertaining to the health and safety of ALF residents. Each facility's violations over the five most recent inspections conducted during the period of the emergency regulations are included. JLARC staff selected and analyzed the 90 highest-risk standards and *Code* sections including standards relating to medication administration, nutrition, background checks, adequate staff, abuse and neglect, resident rights, facility

cleanliness, adequate heat and air conditioning, and fire safety, among others.

***Licensing Complaints***. Complaints concerning non-compliance with standards, and abuse, neglect, or exploitation of residents are made to the licensing division. There are 24 categories of licensing complaints including abuse and neglect, food and nutrition, medication, staffing, records, and physical plant. Licensing inspectors investigate complaints and determine their validity.

## Adult Protective Services and the State Long-Term Care Ombudsman Provided Complaints Data

Adult Protective Services (APS) investigates complaints of abuse, neglect, and exploitation of adults age 60 and older and incapacitated adults age 18 and older, and provides services when necessary. APS staff in the 120 local departments of social services receive and investigate complaints. A determination is made within 45 days, and the information entered into a State database. State APS staff maintain the database and provided JLARC staff with data on verified complaints from calendar year 2006.

The ombudsman program is a federally mandated program which responds to complaints made by individuals receiving long-term care services in facilities and the community who may have no one to advocate on their behalf. There are five complaint categories: resident rights, resident care, quality of life, administration, and complaints not against facility. The ombudsman's office provided JLARC staff a report of complaints against ALFs in FY 2006, including the verification status. The data do not include an explanation of the category or type of complaint.

## Identification of ALFs with Complaints and Compliance Problems

A subset of 114 ALFs was identified as having a recent history of verified complaints and compliance problems. No one indicator was key to inclusion in the subset. ALFs in the subset had one or more of the following characteristics during 2006 (and in some cases, 2007):

- a provisional license, an adverse enforcement action, or placement by DSS on its enforcement watch list,
- five or more violations per inspection of the 90 highest-risk health and safety standards across the most recent five inspections (five is two standard deviations above the average number of violations, which is 1.8 violations), or

- five or more verified complaints across all three sources. The average of five complaints was calculated using all ALFs with at least one verified complaint. Those ALFs with zero complaints were not included in the analysis.

The overall approach for identifying the subset was to select facilities that had sufficient performance issues to warrant additional attention and that may be the most likely to change as a result of the new law and regulations. Facilities with a provisional license, an adverse action, or that were on the enforcement watch list have demonstrated problems sufficient to compel DSS staff to pay increased attention. To this list, JLARC staff added "outlier" facilities that had a number of health and safety violations that was at least two standard deviations above the mean (five or more), and an above-average number (five or more) of total verified complaints.

## FOLLOW-UP SITE VISITS TO ALFS

JLARC staff conducted three follow-up site visits in 2007, interviewing the administrator and the DSS licensing inspector and touring each facility. The three facilities were ALFs of concern that the study team visited during the 2006 study and were chosen for site visits in 2007 based on geographic representation. In 2006, JLARC staff visited 29 ALFs during the course of the study, including 18 ALFs with compliance problems and/or complaints, as described above. Eleven additional initial facility visits were for the purpose of generally familiarizing JLARC staff with assisted living.

## AUXILIARY GRANT DATA ANALYSIS

### Auxiliary Grant Financial Reports

For many years, ALFs were required to submit financial reports to DSS to qualify for an auxiliary grant rate. This requirement was repealed in 1998; however, in 2006, 337 facilities voluntarily submitted these reports, covering calendar year 2005 or a more recent 12-month period. The reports include data on the facility's revenue and expenditures. DSS provided JLARC staff with this data.

### Estimated Distribution of Auxiliary Grant Beds

This analysis of the location of auxiliary grant beds is based on a survey of assisted living administrators conducted by JLARC staff in 2006 and estimates from DSS licensing staff. DSS does not collect data on which ALFs receive auxiliary grant payments or

where the auxiliary grant recipients reside. The distribution of auxiliary grant beds also fluctuates. DSS licensing inspectors were able to approximate auxiliary grant beds based on their knowledge of the facilities through licensing inspections, including interviews with ALF administrators. DSS licensing estimates were verified and supplemented by auxiliary grant data provided by ALF administrators on the 2006 survey.

## STRUCTURED INTERVIEWS AND MEETINGS

JLARC staff interviewed

- DSS licensing staff,
- ALF administrators and other employees,
- interest groups such as the Virginia Association of Nonprofit Homes for the Aging, the Virginia Assisted Living Association, the Virginia Health Care Association, and the Alzheimer's Association, and
- staff with other State agencies, including the Department of Health Professions and the Department of Mental Health, Mental Retardation and Substance Abuse Services.

JLARC staff also attended meetings, including public hearings held by DSS on the final licensing regulations and a DSS-sponsored training session on the final regulations for ALF administrators.

Appendix C

# Agency Responses

As a part of the extensive validation process, State agencies and other entities involved in a JLARC assessment effort are given the opportunity to comment on an exposure draft of the report. Appropriate technical corrections resulting from comments provided by these entities have been made in this version of the report. This appendix includes written responses from the Department of Social Services and the Department of Health Professions.

# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF SOCIAL SERVICES

*Office of the Commissioner*

Anthony Conyers, Jr.
COMMISSIONER

June 22, 2007

Mr. Philip A. Leone, Director
Joint Legislative Audit and Review Commission
General Assembly Building, Suite 1100
Richmond, VA 23219

Dear Mr. Leone:

We have reviewed your June 13 Exposure Draft of the report entitled "Final Report - Impact of Assisted Living Facility Regulations."

We have recommended one technical change to your staff, which we understand has been accepted and will be included in the final report. Otherwise, the report is factual. As usual, we appreciate the professionalism of your staff in conducting the review.

Please let me know if you have questions.

Sincerely,

Anthony Conyers, Jr.

c: The Honorable Marilyn B. Tavenner
Wallace G. Harris
Carolynne Stevens

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June 20, 2007

Philip A. Leone
Director
Joint Legislative Audit and Review Commission
Suite 1100, General Assembly Building
Richmond, VA 23219

Dear Mr. Leone:

Thank you for providing copies of the exposure draft for the final report on assisted living facilities in Virginia.

We have reviewed the draft and find it very informative and substantially accurate. We would like to submit two corrections or clarifications that we would encourage staff to include in the report to be presented to the Commission on July 9, 2007. They are as follows:

Page 4, 1st paragraph - States the "the board (LTCA) published the draft final regulations in November 2006,"

*The Board of Long-Term Care Administrators adopted draft final regulations on October 31, 2006, which were then submitted for executive branch review. The draft final regulations have not been published because they are not yet approved for publication in the Register of Regulations or on the Virginia Regulatory Townhall.*

Page 29, under **Instructors:** States that the instructors must be RN's or pharmacists, but licensed practical nurses may be primary instructors if they have three years' experience and specific training in teaching the medication aide curriculum.

*LPN's are included in the list of practitioners who may be primary instructors, all of whom must have 3 years of experience and must have training in teaching the curriculum. See section 50 of the final regulations:*

> ***18VAC90-60-50***
> *A. Primary instructors in an approved program shall be licensed registered nurses, licensed practical nurses or pharmacists who, consistent with provisions of the Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia), are authorized to administer or dispense drugs and have at least three years of experience in such practice.*

*B. Licensed practical nurses, registered nurses, or pharmacists who have not had at least three years of experience in administering or dispensing drugs may be used as secondary instructors for the supervised skills practice hours of the program.*

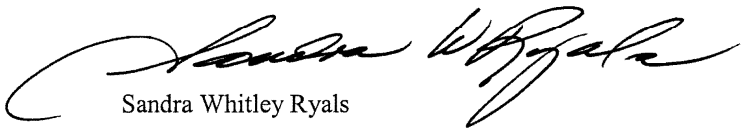
*C. To be qualified as an instructor, a nurse or a pharmacist shall:*

*1. Hold a current, active, unrestricted license or a multistate licensure privilege; and*

*2. Successfully complete a course, including a post-course examination that is designed to prepare the instructor to teach the medication aide curriculum approved by the board for administration of medications to clients in assisted living facilities. The course shall include adult learning principles and evaluation strategies and shall be completed prior to teaching a course in a medication aide program.*

We hope these comments will be helpful. Please congratulate the staff of the Commission on the work that has been accomplished over the past two years.

Sincerely,



Sandra Whitley Ryals

SWR/ejy

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# Recent JLARC Reports

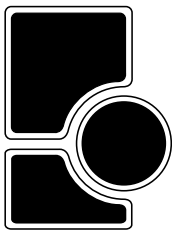
## 2006 Reports

*335. Status Report: Impact of Assisted Living Facility Regulations*
*336. Special Report: Severance Benefits for State Employees*
*337. Semi-Annual VRS Investment Report No. 26*
*338. Special Report: Recent Errors in the Sales Tax Allocation for Local School Divisions*
*339. Evaluation of HB 623: Mandated Coverage for Treatment of Malignant Brain Tumors at NCI Cancer Centers*
*340. Evaluation of HB 657: Mandated Coverage of Habilitative Services for Children With Developmental Delays*
*341. Evaluation of HB 1405: Mandated Coverage of Intensity Modulated Radiation Therapy (IMRT) for Specified Cancer Sites*
*342. Impact of Regulations on Virginia's Manufacturing Sector*
*343. Evaluation of Underground Electric Transmission Lines in Virginia*
*344. Special Report: State Spending on Standards of Quality (SOQ) Costs, FY 2006*
*345. VRS Biennial Status and Semi-Annual Investment Report No. 27*
*346. Evaluation of Children's Residential Services Delivered Through the Comprehensive Services Act*
*347. Virginia Compared to the Other States*
*348. Review of State Spending (2006 Update)*
*349. Options to Extend Health Insurance Coverage to Virginia's Uninsured Population*
*350. Special Report: Recent Federal Changes Affecting Asset Sheltering for Medicaid Long-Term Care*
*351. Performance and Oversight of Virginia's Small Community Drinking Water Systems*

## 2007 Reports

*352. Follow-Up Report: Custody Relinquishment and the Comprehensive Services Act*
*353. Semi-Annual VRS Investment Report No. 28*

**These reports are available on the JLARC website at http://jlarc.state.va.us**



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