



Impact of Assisted Living Regulations

Commission Briefing
June 12, 2006



Study Mandate

- Item 21F of the Appropriation Act directs JLARC to report on the impact of new regulations adopted pursuant to 2005 legislation
- New law phases in 2005-2008
 - Requires administrators to be licensed and medication aides to be registered
 - Strengthens enforcement tools, public disclosure
- JLARC report due by June 30, 2006



In This Presentation

- Assisted Living in Virginia
- New Law and Its Implementation
- Assisted Living Facilities of Concern
- Quality of Care Problems
- Limited Access to Assisted Living Services
- Cost Impact of New Law and Regulations



Assisted Living at a Glance

- Non-medical residential settings provide personal and health care services and 24-hr supervision
- Licensed by Department of Social Services if 4 or more residents
- 588 licensed facilities: 4 to 595 beds
Average size: 56 beds
33,000 statewide capacity
80% private pay
- JLARC has completed 3 prior studies



Most JLARC Recommendations Have Been At Least Partially Implemented

DSS should make unannounced license renewal inspections	✓
Staff should be at least 18 and literate	✓
Fire marshals should have authority to inspect all licensed ALFs	✓
Stronger DSS enforcement of standards needed	○
Strengthen administrator education and experience requirements	○
Staff should have more training in caring for mentally disabled residents	○
Auxiliary grant rate should be increased and linked to services provided	○
Standards should be established for care levels that match the types of residents	○
Certified dietician should review menus and special diets	*
Statutory authority needed for staffing standards	*
Each community services board with minimum number of clients in ALFs should be funded for more staff to focus on services for these clients	*

✓ = Generally Implemented ○ = Partially Implemented * = Not Implemented



ALF Population & Facility Size Increasing

- Capacity more than tripled from 1979 to 2006 – from 10,420 to 32,985
 - State population grew 42% during same period
 - Growth in ALF capacity outpaced growth in population
- Number of Virginians 85 and older expected to double between 2000 and 2030



Variety of Physical Structures Licensed for Assisted Living









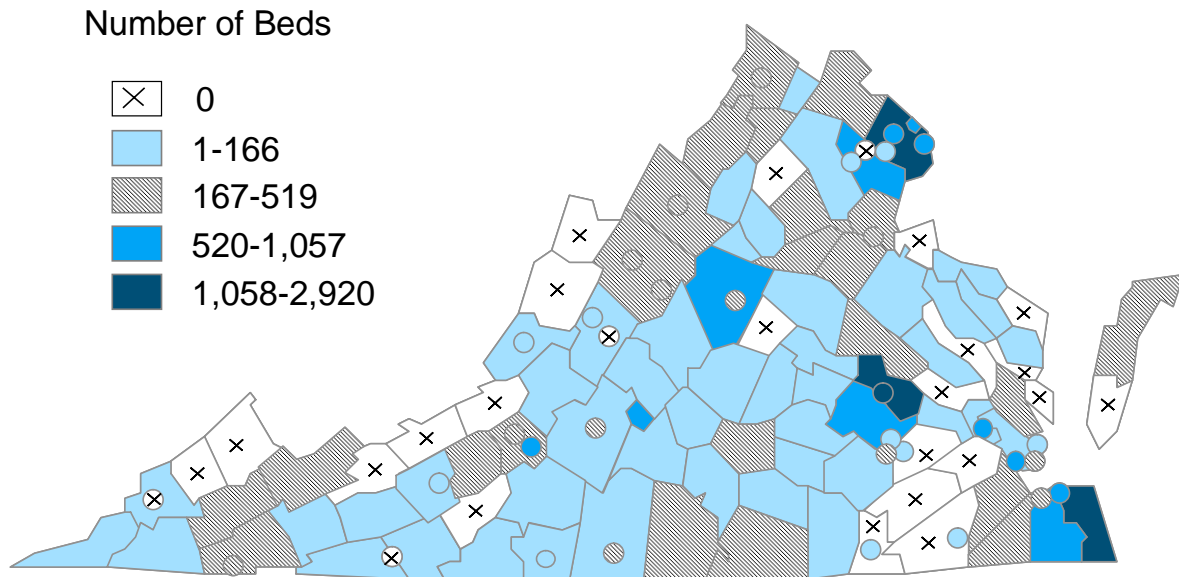
ALF Population Is Diverse

- Age range from 18 to more than 100 years
- Typical resident has one or more disabilities, can not live independently but does not need full-time nursing care
- Increasing numbers of low-income residents have mental disabilities

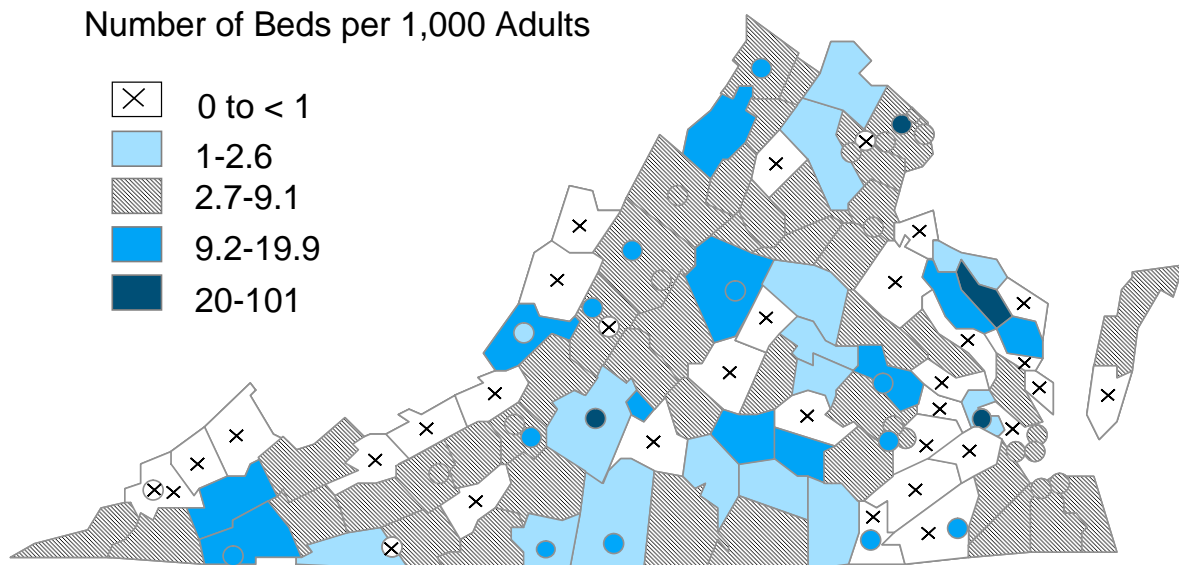
	1997	2003-2005
Need Help With Medication	80%	94%
Mental Health Diagnosis	47%	65%
Need Help with Activities of Daily Living	NA	60%



Assisted Living Not Available in 26 Localities



33 Localities Have Less Than 1 Bed per 1,000 Adults



State and Local Officials Oversee Assisted Living

- DSS establishes standards, enforces compliance, sanctions non-compliant facilities, administers auxiliary grant program
- Health Department sanitarians inspect food preparation facilities
- Local fire officials inspect for fire safety
- Local building officials enforce building code requirements



State and Local Officials Oversee Assisted Living (cont'd.)

- DMAS handles Medicaid reimbursements for medical and mental health services for auxiliary grant population
- DMHMRSAS and local community services boards serve low-income residents with mental disabilities



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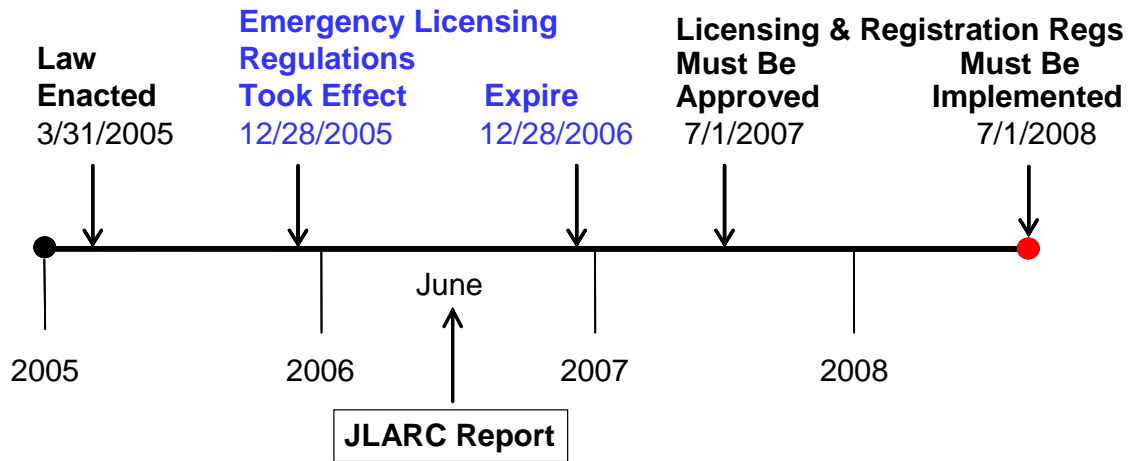


2005 Legislation Phases in Over 3 Years

- **Enhanced DSS authority**
 - Increased maximum fine to \$10,000
 - Streamlined license suspension
- **Licensing requirements**
 - ALF administrators must pass State exam and be licensed by Board of Long-Term Care Administrators by July 2008
 - Medication aides must pass State exam and register with Board of Nursing by July 2008
 - ALFs must develop medication management plans
 - Standardized information to be provided to consumers
 - Required DSS to issue emergency regulations
- **Other legislative requirements**
 - Generators, national criminal background checks
 - Suspended three of DSS's emergency regulations



Agencies Are Generally On Schedule, But Milestones Remain



Finding

- DSS training on emergency regulations did not adequately prepare ALF staff



Training for ALF Staff Occurred Within Days of Effective Date of December 28, 2005

2005 Training Date	DSS Licensing Region
December 2	Verona
December 6	Virginia Beach
December 7	Peninsula
December 8	Virginia Beach
December 8	Piedmont
December 12	Piedmont
December 14	Western
December 15	Fairfax
December 15	Northern
December 19	Central
December 21	Central



Delayed Guidance

- DSS staff were not able to answer many specific questions at the December training
- Written response provided in April 2006
- Meanwhile, ALFs were expected to comply with the new standards



Finding

- Several provisions of the regulations may be unworkable



Provisions That Appear Unworkable

- ALFs to seek CSB assistance even when residents have their own mental health professional
- “High-risk” behavior vaguely defined, which requires emergency assistance and intervention plans (suspended by caboose bill)
- ALFs to ensure physicians specify diagnosis or condition in orders and documentation



Finding

- “Awake at Night” regulation for small ALFs is not required by law



Exemption for Small ALFs Ended with Emergency Regulations

- Small ALFs previously exempt if staff were “available” to residents
- By including this costly requirement in the emergency regulations, DSS created perception that it sought to avoid public input on the matter
- Caboose bill temporarily restores overnight exemption for small facilities



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Finding

- 137 or 23% of all ALFs had significant compliance problems and/or verified complaints

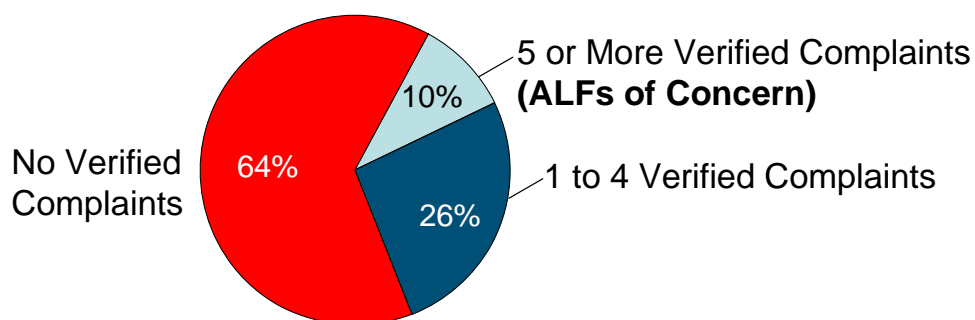


“Quality” Not Defined in Statute or Regulation

- JLARC used data on compliance with standards and verified complaints to identify facilities of concern
 - DSS staff inspect and monitor ALFs for compliance
 - Complaints filed with and investigated by
 - Long-Term Care Ombudsman in Area Agencies on Aging
 - DSS Adult Protective Services
 - DSS Division of Licensing Programs



1 in 10 ALFs Had 5 or More Verified Complaints in 2004 or 2005

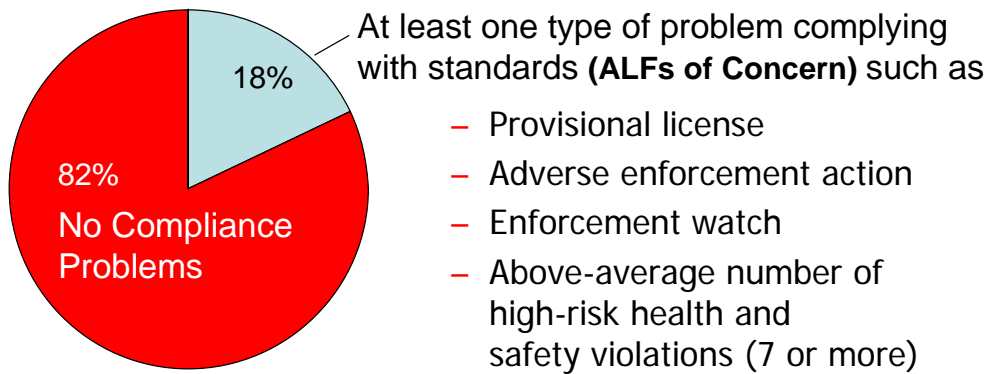


N = 588

5 = Average number of verified complaints, for ALFs with complaints



1 in 5 ALFs Had a Recent History of Problems Meeting Standards



Finding

- ALFs of concern have some common characteristics



Important Characteristics Are Size, Staff Turnover, and Location

- More important characteristics
 - Larger (capacity of 20 or more)
 - Higher staff turnover
 - Tend to be in Western, Fairfax, Piedmont, Northern DSS regions
- Less important characteristics
 - How residents pay (with private resources or State auxiliary grant)
 - Age or type of building



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Finding

- The quality of several key services continues to be a problem
 - Medication administration
 - Staffing
 - Access to mental health services



ALFS Have Difficulty With Medication Administration

- 22% of verified complaints in 2005 were medication-related
- Of 57 ALFs on enforcement watch, 21 had repeated medication violations
- 8 of 10 most frequently cited high-risk health and safety violations were medication-related
- Most frequent problems
 - Failure to follow physicians' prescriptions and orders
 - Inadequate documentation
 - Inadequate staff training
- Registration of medication aides, required by 2005 law, aims to improve medication administration



Adequacy of Staffing and Training Problems Remain a Concern

- Staff quality and training was second-most frequent type of licensing complaint in 2005
- Of 57 ALFs on enforcement watch, 20 had repeated staffing problems: inadequate supervision, insufficient numbers
- 23 verified cases of resident abuse or neglect by ALF staff
- Staff turnover is higher in ALFs of concern: 29% in past six months, compared to 20% in all ALFs



Staffing Standard May Be Inadequate

- DSS standards require “sufficient staff to implement the approved fire plan” but provide no basis for requiring more staff

One DSS inspector described an ALF where one direct-care staff member covered 3 floors with 60 residents. The inspector felt this level of staffing was inadequate yet also believed the standards were vague enough to permit it.



DSS Emergency Regulations Increased Annual Training Requirements

- Each direct-care staff must now be certified in both first aid and CPR
- Training for staff at assisted-living level of care increased to 16 hours annually, after initial 40 hours
 - Training quality sometimes questionable
 - Costs can be significant



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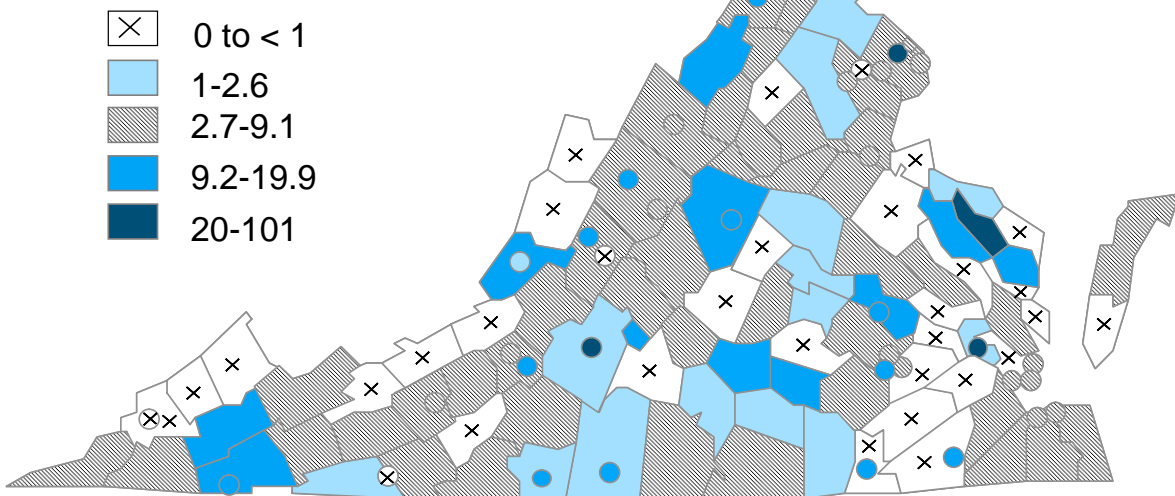
Finding

- Access to assisted living services is problematic in many areas



33 Localities Have Less Than 1 Bed per 1,000 Adults

Number of Beds per 1,000 Adults

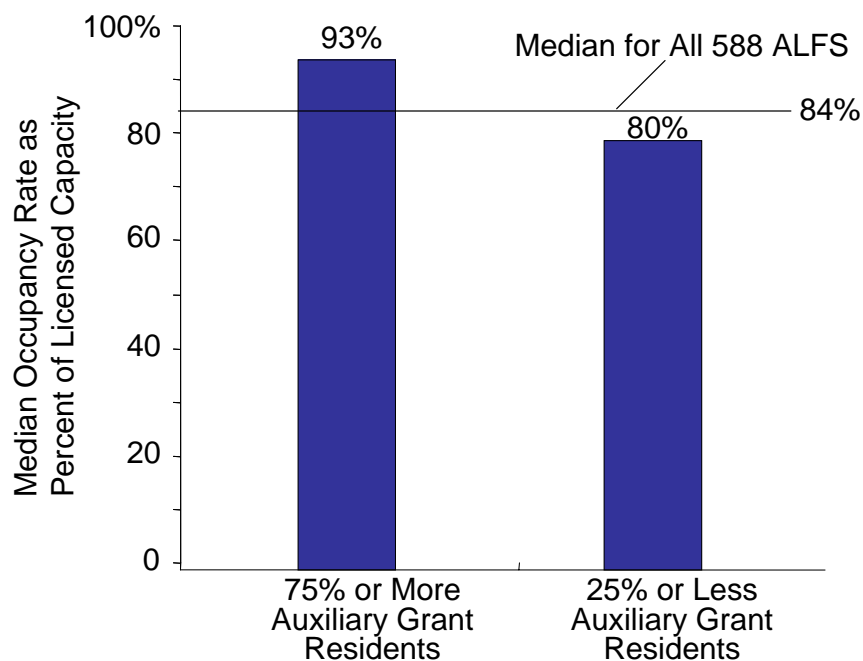


Access to Beds for Low-Income Auxiliary Grant Recipients Is Problematic

- In JLARC's survey of CSB case managers
 - 39% reported problems finding ALF beds for their auxiliary grant clients
 - 49% reported difficulty finding auxiliary grant beds in ALFs that could meet clients' needs



ALFs Serving Primarily Auxiliary Grant Recipients Have Higher Occupancy Rates



Finding

- Access to mental health services has improved overall but remains problematic for low-income residents

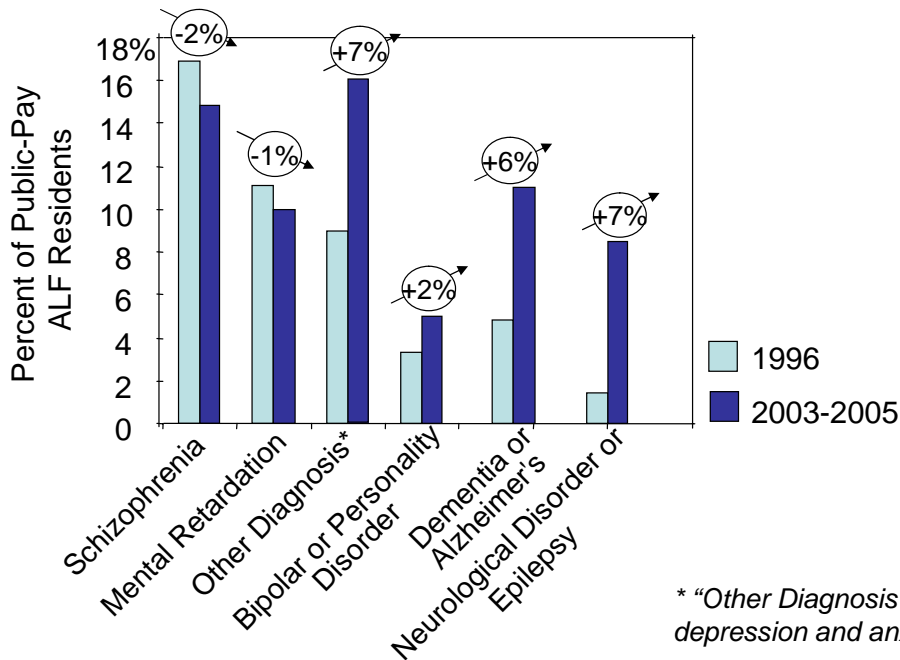


Auxiliary Grant Residents' Access to Mental Health Services Has Improved

- Most ALFs (57%) reported in JLARC survey that CSBs are responsive to calls for assistance
 - 18% expressed dissatisfaction with CSB assistance
 - 36% of ALF administrators who sought CSB emergency services said they were “never” or “rarely” provided in a timely manner
- Survey of CSB case managers found smaller caseloads and more frequent client visits than in 1997



Percentage of Auxiliary Grant Residents With Cognitive Impairments Has Increased



Residents With Mental Disabilities Are Younger With Greater Care Needs

	Auxiliary Grant Recipients with MH/MR Diagnosis	All Auxiliary Grant Recipients
Median Age	59	66
Median Number of Medications	7	4
Abusive/Aggressive/Disruptive Behavior (Less than weekly)	13%	8%
Abusive/Aggressive/Disruptive Behavior (Weekly or more)	11%	6%



Concerns Remain With Mental Health Services in Some ALFs

- Of CSB case managers surveyed
 - 38% said ALF activities do not help clients reach highest level of functioning
 - 32% said ALF staff are not adequately trained to work with residents who have mental disabilities
 - Comments included

My clients typically are engaged in very little activity that stimulates cognitive or physical functioning. Most are generally in bed and rarely out of their rooms except to eat or smoke.



Impact of New Mental Health Regulations Depends on ALF Staff and CSB Assistance

- Medication management
- Mental health evaluations
- Training of ALF staff
- CSB resources
 - Model programs and best practices involve close partnerships between ALFs and CSBs
 - Appropriation Act provides additional resources to some CSBs to work collaboratively with one or more ALFs



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Finding

- New law and regulations will require new fees and increase costs



Fees and Training Costs Increasing

- Draft standards for ALF administrator licensing require a fee (proposed \$200-\$225 annually), a State exam, and education
 - 4-year degree in health-care field and 320-hour internship, or
 - Completion of a certificate program (4-year degree plus a supervised internship), or
 - 30 semester hours in certain content and 500 hours in an administrator-in-training program, or
 - 30 semester hours in any content plus 1,000 hours in an administrator-in-training program, plus
 - 20 hours per year continuing education



Training Costs Increasing

- Managers are required in ALFs with 19 or less capacity, if the administrator serves more than one ALF
 - 184 ALFs have capacity of 19 or less (31% of all ALFs)
 - Managers required by DSS emergency regulations to have at least one year of experience plus either 30 hours of college courses or completion of DSS-approved training



Training Costs Increasing (continued)

- Medication aides must be registered with Board of Nursing
 - Draft regulations require 68 hours of training and application fee
- DSS emergency regulations require at least one staff member at all times must have CPR and first aid training and certification
 - Training typically costs \$40-\$65/person
- National criminal history checks required for all ALF employees and volunteers
 - \$15/person fee



Training Costs Increasing (continued)

	Minimum Number of Employees	Cost per "Average" ALF
Administrator Licensing	1	\$200 + training
Medication Aide Registration	2	\$150 + training
CPR Certification	1 per shift	\$120-\$195
First Aid Certification	All direct care staff	\$1,000
National Criminal Background Check	All employees	\$345
Total Training Costs		\$1,815 - \$1,890 +



Finding

- New law and regulations will increase facility costs



Facility Costs Increasing

- Statute requires emergency generators in all ALFs by July 2007
 - 12-KW generators start at \$6,000, installed. Larger ALFs will require larger generators
 - Ongoing maintenance may also be significant
- DSS emergency regulations require overnight staff of smaller ALFs (capacity of 19 or fewer) to remain awake
 - Some small ALFs already comply; others say they would have to hire staff, costing \$1,253-\$2,433/month in wages alone
 - Suspended by amendments to 2004-2006 budget



Finding

- Auxiliary grant increases did not account for cost of new requirements and the rate remains below market prices

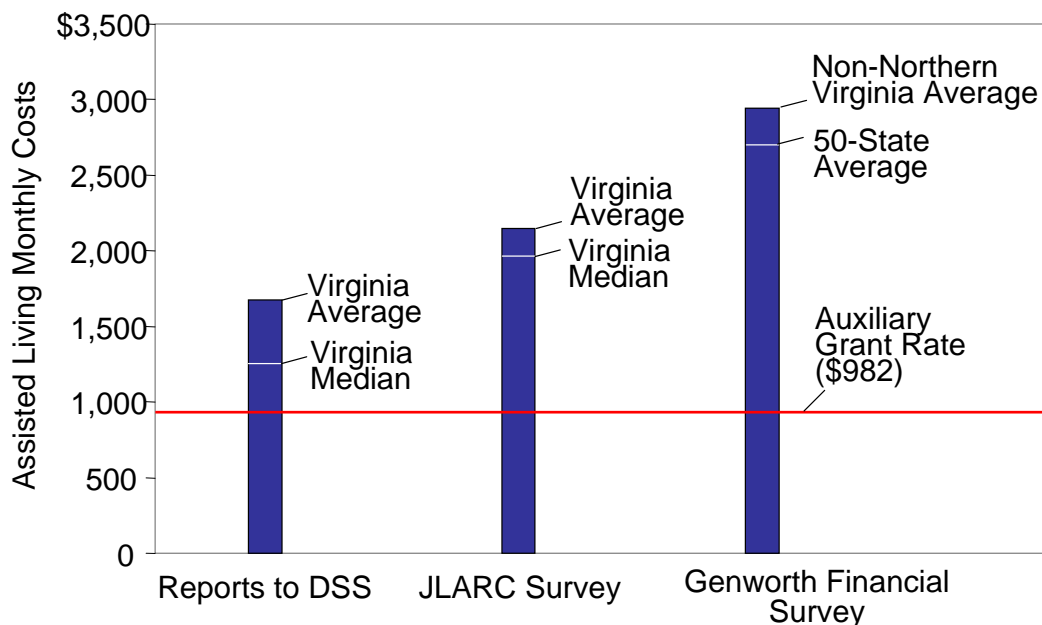


Auxiliary Grant Has Increased

- At least 171 ALFs (29%) are partly or totally dependent on State auxiliary grant funding
 - Auxiliary grant rate set in the Appropriation Act at \$982 per month, with \$70 personal allowance
 - Rate is not tied to the cost of care
- Over the long term, the grant rate has kept up with inflation
 - Adjusted for inflation, 1979 monthly rate of \$372 would be \$1,001
 - 1997 rate of \$695 would be \$846 in 2006 dollars



Auxiliary Grant Rate Is Below Market Prices



Three Neighboring States Pay More For Assisted Living

- North Carolina: \$1,118 per month
- Maryland: \$1,737 and up per month, using Medicaid waiver
- West Virginia: \$1,028 per month
- Virginia: \$982 per month



Circumstances That Facilitate Low-Cost Operations

- Accepting some private-pay residents
- Owner/administrator may have inherited facility
- Family members working together in an ALF
- Subsidies from local agencies
- Communities with extensive programs



Key Findings

- As the new law and regulations phase in, some ALFs continue to experience problems
 - Medication administration, staffing, and mental health services
- Case management services for public pay residents with mental disabilities appear to have improved
- The new law and regulations impose added costs on ALFs and ALF staff, although adequate adjustments to auxiliary grant rate have not been made



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