

**REPORT OF THE  
DEPARTMENT OF SOCIAL SERVICES**

**Regulation of Independent  
Living Communities  
(HJ118, 2018)**

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



**HOUSE DOCUMENT NO. 6**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
2019**





COMMONWEALTH of VIRGINIA  
DEPARTMENT OF SOCIAL SERVICES  
*Office of the Commissioner*

S. Duke Storen  
COMMISSIONER

January 30, 2019

**MEMORANDUM:**

**TO:** The Honorable Ralph S. Northam  
Governor of Virginia  
  
Members, Virginia General Assembly

**FROM:** S. Duke Storen 

**SUBJECT:** Report on Regulation of Independent Living Communities

I am pleased to submit the attached report in response to House Joint Resolution No. 118 (2018), regarding independent living communities. Please contact me should you have any questions.

SDS:kc  
Attachment  
cc: The Honorable Robert B. Bell



# PREFACE

In 2018, the General Assembly adopted House Joint Resolution 118 (HJ 118—See Appendix A) requesting the Department of Social Services (DSS) examine operations and level of services provided in independent living communities and evaluate whether the Commonwealth of Virginia should regulate these communities.

## **Study Scope & Methodology**

The scope of this study is to:

- Examine the operations of independent living communities and the level of services they provide, including residential health care services coordinated through third-party providers.
- Determine whether some or all independent living communities should be regulated by an agency of the Commonwealth, and, if so, the extent to which they should be regulated and the appropriate agency to charge with such regulatory oversight.
- Analyze what regulations should apply on the basis of level of services, such as residential health care services, provided therein, regardless of whether services are provided through a third party.
- Determine whether the Commonwealth should establish the Office of the Independent Living Community Ombudsman to receive, record, and respond to complaints submitted by residents and other citizens regarding the operations of independent living communities.
- Make any other recommendations related to the regulation or licensure of independent living communities that DSS deems appropriate.

To address these goals, DSS conducted the following research:

- Established a working definition of the term “independent living community” to differentiate it from similar senior housing categories and guide the focus of this study.
- Evaluated the similarities and potential overlap between the services that independent living communities and assisted living facilities offer to their residents.
- Analyzed the level of responsibility that communities assume with resident oversight measures like daily check-ins, medical alert pendants and pull cords.
- Examined the different contracting and delivery methods of home care services within independent living communities.
- Evaluated whether the provision of these services necessitates the licensure or regulation of independent living communities.
- Reviewed the oversight of independent living communities and similar senior housing categories in other U.S. states.

DSS staff conducted nearly 100 interviews with stakeholders. These include:

- independent living residents
- family members
- management and staff
- resident council groups
- home health agency management and caregivers
- Adult Protective Services case workers and management
- long-term care ombudsmen
- elder rights and fair housing attorneys
- DSS licensing administrators and inspectors
- licensing consultants from numerous other U.S. states
- local fire and emergency management services personnel
- medical professionals specializing in geriatrics
- long-term care industry association representatives

This report summarizes the insights gained from these interviews as well as from an extensive review of literature on the topic.

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# EXECUTIVE SUMMARY

The 2018 General Assembly adopted House Joint Resolution 118 (See Appendix A) requesting DSS study the regulation of independent living communities.

## Findings Summary

A detailed account of the findings, including interview quotes and background information, is in the section labeled Findings and Observations. VDSS staff made the following observations from this study:

- Within the senior housing market, there is ambiguity surrounding the term “independent living.” Consultants found the term used inconsistently to define everything from age 55-and-older senior apartments to assisted living facilities. This can lead to confusion among consumers looking for a community to meet their individual requirements. Therefore, the department suggests the following working definition of the term independent living community:

*Independent living community means any congregate housing reserved for residents age 55 and older who do not require assistance with activities of daily living from community staff members. Independent living communities provide two or more services, such as meals, transportation, laundry or housekeeping for their residents. However, they do not provide nursing or medical care, medication administration, assistance with medication administration, or assistance with activities of daily living. A resident, or representative acting on his behalf, may contract the above services through third-party providers. Also included in this definition are independent living communities which oversee residents either through daily check-ins or emergency call systems monitored by community staff.*

- The term “independent living” can be misleading in that independent living residents are not required to be physically self-sufficient, but expected to independently manage care needs without involvement of independent living community staff. Furthermore, the Fair Housing Act forbids independent living communities from inquiring about a prospective resident’s physical or mental status as criteria for admission. Independent living communities house an increasing number of residents who meet assisted living level of care criteria. However, they remain in independent living for a number of reasons, including the inability to afford assisted living.
- About three-quarters of independent living communities represented in this study employ at least one method of resident supervision or emergency response beyond the standard landlord-to-tenant obligations. The most common types include daily check-ins, medical alert pendants or bracelets, and pull cord call systems. Residents’ family members often rest assured that 911 is only a button push away, or a responsible staff member will be checking in on their loved ones each day with systems managed by the independent

living community. However, while some communities have very sound procedures for this, others are more lax.

- In interviews, independent living residents expressed support for a “collective voice” and were in favor of establishing an ombudsman program to address concerns within their housing category.
- No other U.S. state regulates independent living communities. Some regulate similar senior housing categories, but no state requires direct oversight.

## **Options**

After considering these findings, VDSS developed a number of options the General Assembly could consider with regard to oversight of independent living facilities. However, many of the changes could be controversial and would require additional state resources to effectively implement. Below are options the General Assembly could consider:

- 1) require independent living communities, as defined in this report’s executive summary, to register with DSS;
- 2) require each independent living community to provide prospective residents with a disclosure statement containing information about its accommodations and services;
- 3) require a written agreement between the independent living community and each of its residents detailing the accommodations and services that the independent living management and staff will provide to that specific resident and what the community will expect from the resident.
- 4) require the resident and representative of the independent living community to sign a document of acknowledgment if a recommendation is made that the resident move to a higher level of care to protect his/her health, safety, and welfare.
- 5) require independent living communities that employ daily check-ins or resident emergency call systems to have written procedures for managing these systems and maintain daily logs of system activity to verify that they are consistently executed, as advertised.
- 6) require each independent living community, with residents who are unable to evacuate independently during an emergency, to develop a method for emergency responders to identify these individuals’ housing units.
- 7) direct DSS to develop regulations governing independent living communities.

- 8) direct Department of Aging and Rehabilitative Services (DARS) to establish and manage the Office of the Independent Living Community Ombudsman and a complaint line to receive, record and respond to concerns by or on behalf of residents.

# OPTIONS

**1) Require independent living communities, as defined in this report's executive summary, to register with DSS.**

Unlike assisted living and skilled nursing facilities, there is no method for documenting of issues or complaints filed at independent living communities and whether they are resolved. In order for the state to identify these communities, better understand their offerings, and determine measures needed to protect residents, communities could be required to register annually with DSS.

**2) Require each independent living community to provide prospective residents with a disclosure statement containing information about its accommodations and services.**

Independent living communities would provide this document to prospective residents in advance of an admission agreement and make it available to legal representatives and family members of prospective residents and the general public upon request. The admission agreement should be written in plain language and include the following information:

- Name of independent living community
- Name of entity that owns the community
- Description of all accommodations and services provided by the community
- List of all fees charged for accommodations and services
- Financial eligibility criteria, if applicable
- Criteria for admissions and restrictions on admissions (for example, non-smoking facility, no pets, etc.)
- Criteria for recommendation of transfer to a higher level of care, if applicable
- Criteria for discharge or eviction
- Types of activities provided for residents
- Types of staff employed by the community

DSS staff found the language used in advertisements and on websites for independent living communities to be ambiguous and likely easy to misinterpret.

**3) Require the implementation of a written agreement between the independent living community and each of its residents detailing the accommodations and services the independent living community will provide to that specific resident and expect from the resident. The following are suggested items to include:**

- Specific charges for accommodations and services to the resident
- Detailed practices and procedures regarding services provided to the resident

The community should retain the signed agreement in the resident's record, provide a copy to the resident and his legal representative, and update it when changes occur.

- 4) **If an independent living community recommends that a resident move to a higher level of care to protect his health, safety, and welfare, require the community and the resident sign a document acknowledging this recommendation.**

The community would retain the signed agreement in the resident's file and provide a copy to the resident and his legal representative.

- 5) **Require independent living communities that employ daily check-ins or resident emergency call systems to have written procedures for managing these systems and maintain daily logs of system activity to verify that they are consistently executed, as advertised.**

VDSS staff found there was ambiguity and lack of follow-through with some independent living communities' check-in procedures, creating a gap between what is advertised and how services are actually delivered. Communities should maintain daily, easy-to-read system documentation and conduct semi-annual staff training with regard to check-ins and resident emergency call systems.

- 6) **Require each independent living community, with residents who are unable to evacuate independently during an emergency, to develop a method for those assisting with evacuations to identify these individuals' housing units.**

Independent living communities must do their part to help emergency professionals reach those who are unable to evacuate on their own in the case of an emergency. Many communities have posted lists of residents who need evacuation assistance. However, VDSS found that in more than one instance, the list was outdated and not in a prominent location.

- 7) **Direct VDSS to develop regulations for independent living communities.**

VDSS manages the licensing and regulation of assisted living facilities and adult daycare centers, which operate in a manner similar to independent living communities. Therefore, VDSS could oversee independent living communities if directed by the General Assembly and given additional resources to manage the program.

- 8) **Establish and manage an Office of the Independent Living Community Ombudsman at DARS, as well as a complaint line to receive, record and respond to concerns by or on behalf of residents.**

DARS manages the state's long-term care ombudsman program, which includes over 30 professionals who advocate for older persons receiving long-term care services in nursing homes, assisted living facilities and their own homes. Therefore, DARS could oversee the independent living community ombudsman program and complaint line if directed by the General Assembly and given additional resources to manage the program.

# FINDINGS AND OBSERVATIONS

## Independent Living Communities within the Senior Housing Category

*\*To protect their privacy, the names of residents interviewed in this study have been changed or omitted.*

Determining the precise meaning of the term “independent living community” was a particular challenge as it is one of several labels within the senior housing realm that tend to be used interchangeably. For example, in performing online searches for independent living communities, it is common to find the same housing complex referred to as 55-and-older apartments, an active adult community, senior apartments and a retirement community.

These terms are also commonly found in marketing materials for assisted living facilities, which offer a higher level of care than independent living. Many “no-frills” apartment complexes that offer no amenities but are designated for residents age 55 and older also employ the term “independent living.” This ambiguity leads to confusion among those searching for a community that fits their individual needs and lifestyles.

After speaking with representatives from nearly 80 independent living communities that vary widely in resident amenities offered, VDSS staff offer the following definition.

### Independent Living Community Definition

*Independent living community means any congregate housing that is reserved for residents age 55 and older who do not require assistance with activities of daily living from community staff members. Independent living communities provide two or more services, such as meals, transportation, laundry or housekeeping for their residents. However, they do not provide nursing or medical care, medication administration, assistance with medication administration or assistance with activities of daily living. A resident, or representative acting on his behalf, may contract the above services through third-party providers. Also included in this definition are independent living communities that provide oversight of residents either through daily check-ins or emergency call systems that are monitored by community staff.*

An independent living community may exist as a stand-alone entity or as part of a life plan community, which is comprised of housing set up for varying levels of resident needs. Life plan communities may include independent living, assisted living, memory care, rehabilitation and skilled nursing. Registered Continuing Care Retirement Communities are also considered life plan communities.

Additionally, many assisted living facilities offer independent living units among their resident suites. These independent living units are covered under the facility’s assisted living license.

While an independent living community may be found within the senior living environments mentioned above, one housing option that does not meet this definition is the age-restricted, 55-and-older apartment complex that offers no amenities beyond typical landlord-to-tenant obligations. To be labeled as independent living, a community must provide two or more services to residents. These may include, but are not limited to, daily meals, transportation, housekeeping, laundry and daily check-ins.

## **Independent Living Residents**

Interview findings reveal independent living communities house a wide cross-section of the senior population, irrespective of an individual's mental and physical capabilities. An active recent retiree seeking freedom from home maintenance responsibilities may live next door to a frail centenarian who would move to assisted living if he were able to afford it. Contrary to what the name implies, a senior does not have to be able to live independently, without assistance from others, in order to reside in independent living.

This disconnect between connotation and reality has many truly independent residents expressing significant concern about their infirm neighbors' safety and quality of life.

## **Perception is Not Always Reality**

A 60-something foursome, enjoying a lively tennis match, smile brightly from the cover of a brochure touting Central Virginia's newest independent living community. The 55+ apartments down the street advertise karaoke and happy hour drink specials. It is easy to get the impression that independent living is for active, healthy seniors who need no assistance with activities of daily living. However, about two-thirds of the independent living residents DSS consultants interviewed had a different story to tell, one that did not match the marketing brochure narrative.

"I'm one of the very few people here who doesn't have wheels attached to me," said Jane S., a Richmond independent living resident. She pointed out that over half of her high-rise's nearly one-thousand residents rely on walkers, wheelchairs and rollators to get around, and catastrophic falls are much too common. "I'd say that the ambulance comes here around a dozen times a day. In fact, my neighbor fell twice last week and EMTs had get him up both times. And this is what they call *independent* living."

Sally C., resident council president at an independent living community in Charlottesville, has noticed an alarming decline in the mental and physical status of new tenants moving into her building. She stated:

"My resident board and many of our residents have begun to be very concerned about what our facility has become. We have had more and more very elderly, fragile and even very confused residents moving into our facility. This is changing an active, social community into a place where many residents never come out of their rooms and are not able to contribute to the vitality of our facility.

There is also the concern that many of these newcomers are using walkers or even wheelchairs and are not able to negotiate the stairs. It is frightening to imagine a fire

when the elevators are closed and these residents must stay in their rooms and be evacuated by the firemen who would carry them to safety. In fact, we had a middle of the night alarm (identifying details redacted). Because it was not a real fire, everyone was eventually evacuated, but it was not an emergency. One resident was overlooked because she had not informed management she had recently moved to a walker. Because this event occurred at night, there was no staff on the premises. (Management says we are an independent living facility and we do not need night, weekend or holiday staff on the premises.)

Management does not require proof of independence from possible residents and in some cases never actually meet the prospect before they move in. They claim that the Americans with Disabilities Act prevents them from doing so and do not have a statement outlining what independence is needed to fully function at this facility.

Personally, I am in my fifth year as a resident and find very much to like about (name of facility redacted) and want to keep it as independent as possible. I should add that there are quite a few people with walkers and electric wheelchairs who do participate and add to the community but it is the many who don't and are not capable of doing so who worry me."

## **An Unintended Consequence of the Fair Housing Act**

Many independent living communities brand themselves as senior housing for the young in body and spirit, but there is no legal way to guarantee that residents will match that description. Though the Housing for Older Persons Act (HOPA, 42 U.S.C. § 3607) permits senior living establishments to enforce age limits, the Fair Housing Act (42 U.S.C. §§ 3601-3619) forbids setting physical and mental health criteria for prospective residents. Specifically, the Fair Housing Act protects individuals with disabilities that are defined as any physical or mental impairment that substantially limits one or more life activities, a record of having such an impairment, or being regarded as having such an impairment.

"We're not allowed to ask questions about whether they can live on their own, or use anything about an applicant's health status to determine whether they qualify to move in. It's considered discrimination," explained an independent living marketing director who preferred to remain anonymous.

"Our independence is the most important thing to us," assured an independent living resident council member at a large life plan community. "We're willing to tolerate the risks that go along with remaining in independent living as long as we can. No one wants to be told that they have to move to assisted living."

Independent living communities house some residents who would be better served in assisted living. Many community managers interviewed stated that some of their residents utilize third-party home health or caregiver services to assist with activities of daily living. Most of these managers emphasized that home care services were contracted by residents or their family

members and that the community had no interaction or communication with the caregiver regarding the resident.

According to interviews with Adult Protective Services and state ombudsmen, individuals have the autonomy to choose their own living conditions, even those conditions that might be considered less than ideal by well-meaning family members and neighbors. As long as a senior adult has decisional capacity, he has the right to decide where to call home.

“Independent living is just like any other apartment complex in terms of the kinds of tenants we rent to. There is no medical or health questionnaire....no evaluation beyond determining whether the potential resident can afford the rent. It is *independent* living and we make sure people understand that before they move in,” stressed an administrator interviewed for this study.

A longtime assisted living administrator, interviewed for this study, said she has noticed an increase in the level of care needs of residents moving into her facility.

“Initially when assisted living first started, it definitely followed a clear social model of residents wanting to move in there, but they still had the ability to drive and needed only limited services. They came more for convenience and social interaction. Now the trend seems to be more of a medical model where residents are moving in with multiple chronic disease states and need a significantly higher level of care, many of which are closer to skilled nursing facility level. One of the reasons is that people are living longer; they’re receiving better medical treatment and they are waiting until they are much older to move into assisted living. Many people don’t want to give up their perceived independence, even though the care in assisted living would meet their needs more appropriately.

Whether a resident is coming from an independent living community or from home, they have a tendency to wait too long, to the point where they are not able to receive the benefits of assisted living. They can be isolated for too long and not receive as much social interaction. And, in independent living, they don’t always have someone who is available to coordinate their medical treatments and to make sure that their care is being approached from a biopsychosocial-spiritual perspective.”

In spite of the Fair Housing Act discouraging any language or actions that could be perceived as discriminatory, many independent living administrators, especially those within life plan communities, do speak to residents and their responsible parties when they begin to notice decline to the point where they begin having concerns about the resident’s quality of life in independent living. It is standard for management and staff to meet anywhere from weekly to monthly to share their observations about residents who are having more frequent falls, emergency calls, hospitalizations or are requiring increased assistance in common areas of the community.

As these events become more commonplace for a resident, an independent living administrator will meet with the resident, or his responsible party, to share concerns about his ability to

continue living safely in independent living. They may make a recommendation for the resident to transfer to an assisted living facility. Whether the resident accepts this advice is another matter altogether.

One community social worker explained that they never require their independent living residents to move to assisted living, regardless of their physical and mental decline. “We do not make residents change levels of care. We only offers suggestions.”

While consultants found that some independent living community resident agreements do not make mention of self-sufficiency expectations, others are quite explicit. Below is an example of one such agreement.

**Capacity for Residential Living:** The Community consists of residential apartments with convenience services designed for persons capable of providing for their own medical, nursing or healthcare needs. The Community is not intended as, is not licensed as, and does not function as, an assisted living community or nursing home. The Resident may utilize third-party providers or contractors to provide services to the Resident in accordance with the provisions set forth in Section IV.C. of this Agreement. You represent that you satisfy these criteria necessary for living in the Community as set forth herein. You further agree that, if at any time you no longer satisfy the criteria necessary to reside in the Community, or if a physical or mental condition develops that creates a danger to yourself or others, you will promptly move from the Community to other accommodations of your choice that satisfy your needs. All costs associated with such move will be the responsibility of the Resident.

## **When Independent Living is the Only Affordable Option**

Not every independent living resident is doggedly clinging to his independence. VDSS staff found an overwhelming number of frail, neglected seniors who remain in independent living apartments because they cannot afford the higher price tag of assisted living. The average monthly assisted living rate in Virginia is \$4,508. Independent living communities, by contrast, are less than half that cost, at \$2,155 per month.

Seniors must pay for assisted living themselves or find a facility that accepts the Auxiliary Grant (AG). The AG is a financial supplement for recipients of Supplemental Security Income (SSI) and certain other aged, blind, or disabled individuals residing in an assisted living facility (ALF) licensed by the Virginia DSS (VDSS) or in an adult foster care (AFC) home approved by a local DSS (LDSS) or in Supportive Housing (SH) approved by the Department of Behavioral Health and Developmental Services (DBHDS). This assistance is available through local departments of social services to ensure that AG recipients are able to maintain a standard of living that meets a basic level of need. DARS administers Virginia’s AG program.

Many assisted living facilities do not accept the AG because of its low reimbursement rate of \$1,271 for most of Virginia and \$1,462 in Northern Virginia Planning District 8. If the Commonwealth were to increase the AG rate to cover the cost of care, more assisted living

facilities would likely accept residents utilizing the AG. This change would enable more seniors to attain the level of care and supervision they need.

## **The Prevalence and Practices of Third-Party Home Care Providers in Independent Living Communities**

Independent living communities are not supposed to offer home care services, such as rehabilitation or assistance with activities of daily living, to residents, or they risk subjectivity to licensure as an assisted living facility. Since there are no self-sufficiency requirements for a person to reside in independent living, the use of third-party home health and personal care services is quite prevalent. In fact, every senior community that consultants visited houses at least a few residents who are currently utilizing or have previously utilized home care in some manner.

The level and nature of these third-party services are wide ranging. Meal preparation, companionship, assistance with bathing and personal hygiene, medication management, physical rehabilitation and wound care are only a few examples. Even hospice care, reserved for those with a life expectancy of six months or less, is commonly employed in an independent living setting.

The manner in which residents contract these services varies from community to community. However, VDSS staff found that as far as home care protocol and relationships go, most fall into one of the following categories.

**Referral Lists:** Community management provides a list of caregiver agencies from which residents may choose. Sometimes these are providers that have been vetted and approved by the community. Others may simply make suggestions of reputable, local agencies. A resident has complete control over which home care provider he chooses. Some communities require private caregivers to submit to background checks before they are allowed to work on the premises, while others don't consider it their role to police the providers that tenants hire.

One community instituted a strict background check policy after learning that one of their resident's home care providers had an active warrant out for her arrest.

**The Corporate Umbrella:** A frequent arrangement is that a home care agency owned by the same parent corporation as the independent living will have an office located within the community.

Both independent living residents and the home care agency benefit from having caregivers close by and available when needed. Several community managers shared with consultants how they refer residents to their on-campus providers.

One stated that when she observes a resident she believes would benefit from home care services, she tells the agency's client care coordinator, who will then go and meet with the resident about setting up services.

Other on-site home care agencies take advantage of print marketing. For example, a flyer found in the resource guide of one Richmond independent living could lead residents to assume that services are being provided by independent living community staff directly. (Incidentally, this particular community and its on-site caregiver agency are not owned by the same company.)

When terms such as “personalized living” and “private duty services” appear at the top of marketing flyers distributed by independent living community management, residents have no way of knowing that the flyer represents a separate business.

The following services and rates are from a flyer that consultants were given by a resident in an independent living that frequently markets its on-site caregiver agency.

Concierge/Private Companion Hourly Services	\$20 per hour (1 hour minimum)
Concierge Ala Carte Services	\$26 per hour (30 minute minimum)
Medication Reminders	1 x per day \$10
	2 x per day \$12
	3 x per day \$16
	4 x per day \$21
Personalized Care Management	\$40 per hour (30 minute minimum)
Laundry Services	\$25 per visit (2 bag max)
Stand By Shower/Bath Assistance	\$22 per hour (1 hour minimum)

In contrast, plenty of independent living managers with on-site home care agencies throughout the state told consultants that they make a point to be objective, keep the two businesses separate and assure residents that choosing a care provider is their decision to make.

“We let them know that there is a home care agency here on our campus, but we would never limit anyone to just that choice,” stressed a community CEO in the Piedmont region.

**Caregivers from Assisted Living:** In some life plan communities that consultants visited, independent living residents receive home care services from staff members of the community’s assisted living wing. One sales representative pointed out that people in independent living really benefit from the assisted living facility nurse being able to take care of their minor medical concerns.

NOTE: If any assisted living facility staff member provides services to an independent living resident while he is on duty at the assisted living facility, this could make part or all of the independent living subject to assisted living facility licensure, according to 22 VAC 40-73-10 of the Standards for Licensed Assisted Living Facilities.

**Resident Service Coordinators:** While it is not standard operating procedure for independent living communities to employ a person to coordinate home care services for their residents, at least one independent living housing category does just that. And community managers say this position is indispensable to the population they serve.

Roughly half of the U.S. Department of Housing and Urban Development (HUD) Section 202: Supportive Housing for the Elderly communities employ grant-funded resident services coordinators. Many property managers that consultants spoke with feel that these employees are invaluable in linking elderly, disabled residents to much-needed services that enable them to continue living independently.

The HUD Section 202 program helps expand the supply of affordable housing with supportive services for the elderly. It provides very low-income elderly with options that allow them to live independently but in an environment that provides support activities such as cleaning, cooking, transportation, etc. It is funded by HUD, the U.S. Department of Agriculture, or the Virginia Housing Development Authority, and is not subject to licensure as an assisted living facility.

**Task-Based Home Care Services:** VDSS staff learned that some Northern Virginia counties have contracts with particular home care agencies to provide services at discounted rates to qualifying residents in lower income senior housing. These agencies charge residents per task, rather than per hour. Many of the standard activities that seniors need help with take less than an hour. Several agencies set a minimum visit length of three hours or more, which keeps home care out of reach for lower income seniors. However, this task-based model delivers much-needed services to independent living residents who normally cannot afford them.

## **Service Coordination Protocol**

Aside from HUD's Section 202 affordable housing resident services coordinators, independent living staff members are not permitted to coordinate third-party personal and healthcare services for residents. However, VDSS staff found that they sometimes do, usually as a favor to residents unable to do it themselves.

Possible consequences of this informal practice are:

- Lack of record keeping;
- An increased risk of miscommunication;
- Confusion about what services are and are not provided; and
- Unmet resident expectations.

NOTE: Services coordinated for four or more residents would make the independent living subject to licensure as an assisted living facility.

## **Resident Supervision/Safety Measures in Independent Living Communities**

“None of us want to lose our independence, however— we are not always aware of when we need assistance. Safety is a big issue especially with regard to tripping over area rugs, unsteady on one's feet, needing a cane or walker, forgetting to eat, losing keys, to name but a few.”--- excerpt from an email sent to consultants by an independent living resident

Throughout this study, nearly every community manager with whom VDSS staff spoke iterated that independent living is just that...independent. Despite this approach, about three-quarters of the independent living communities represented here employ at least one method of resident supervision or emergency response that goes beyond the standard landlord-to-tenant obligations.

**Daily Check-Ins:** Around half of independent living communities contacted utilize a daily check-in system to ensure that residents are fine, or at least are not suffering from a life-threatening emergency. This often-advertised amenity can be quite attractive to both residents and their adult children who relish the reassurance that a responsible staff member will be looking in on Mom or Dad each day.

Communities carry out daily check-ins in a number of ways. One community employs a method similar to “do not disturb” door hangers found on hotel room doors. Here, each resident must flip over the hanger on the outside of his apartment door by 10:00 a.m. each day. Shortly afterward, staff make rounds to check door hangers and then reset them for the following day. If staff members notice an unflipped hanger, they will then knock on the apartment door. If there is no answer, they will enter the apartment in search of the resident.

Another community uses their resident mailboxes as a means of daily checks. Since these particular mailboxes are open in the back for inserting mail and are all grouped together in the lobby, it is easy for staff members to see who has and has not been retrieving their mail. If a resident has not notified management that he will be away and a phone call goes unanswered, then community security will pay a visit to the resident’s apartment or cottage.

Many independent living communities opt for more high tech monitoring where residents verify their well-being by pressing a button next to their toilet every morning. After the cut-off time, a report listing those who did not activate their check-in buttons is automatically generated and sent to the staff member in charge of physically following up.

Another popular check-in technique eliminates the hassle of a trip to the bathroom or the front door. VDSS staff found a dozen or so communities with motion sensors installed in their apartments. Residents simply need to make a movement in the sensed area to be marked present and accounted for each day. One manager did admit that an apartment dwelling pet, while walking around, can trigger the sensor and inadvertently check its owner in.

How far does a community go in search of a resident who does not check in and is not found in his apartment? Responses to this question varied. Some detailed comprehensive searches for missing tenants, questioning neighbors and phoning emergency contacts, while others, upon finding the resident’s apartment empty, would assume he had decided to go out for the day and forgotten to check-in before leaving.

VDSS staff interviewed some independent living community management whose daily check-in protocol is a fine-tuned system in which everyone completes their responsibilities like clockwork. Others took a more casual approach. One manager was not sure whose job it was to follow up with residents whose names wound up on the “failed to check in” report. Another,

when asked if there was a back-up person in case the primary check-in person was absent, said, “I think someone from assisted living does it.”

**Medical Alert Pendants and Bracelets:** A second resident safety measure commonly offered by independent living communities is the medical alert pendant or bracelet. The type, coverage area and response to calls varies widely from community to community. Many communities have their own staff respond when a resident presses his or her pendant’s emergency call button. If, after checking on the resident, the staff member determines that the resident is having a true emergency, he or she will call 911. Many communities have checks and balances set up where a staff member and a member of management are both notified of emergency calls. Others provide pendants with call buttons that skip community staff and connect directly with 911. This safety measure is not mandatory. A resident has the right not to wear a medical alert pendant of any kind if he so chooses.

**Pull Cord Call Systems:** In independent living apartment bathrooms, pull cords are about as prevalent as sinks and toilets. As with other safety measures in this report, the ways that they are implemented and responded to vary widely. While many are there to connect with 911 for resident emergencies only, some communities utilize pull cords for general communication, such as summoning maintenance personnel to change a lightbulb.

## **In Case of an Emergency Evacuation**

Unlike assisted living and skilled nursing facilities, independent living communities are not required to develop emergency evacuation plans. This can leave the most vulnerable of independent living populations, those who are dependent on wheelchairs, walkers, scooters, rollators or bedbound, to rely on firefighters and EMS professionals to assist them during emergency evacuations, which are often high-rises. A couple of independent living communities that VDSS staff visited use brightly colored stickers to help firefighters identify the apartment doors of disabled, upper floor residents. However, these stickers, which may be considered a potential violation of privacy and confidential health information, are not mandatory. VDSS staff heard from multiple wheelchair and rollator-bound residents who, during false alarm emergency evacuations, were inadvertently left behind in their apartments with no way to escape.

## **The Need for Independent Living Resident Advocates and Complaint Documentation**

One sentiment echoed repeatedly among independent living residents is that they do not have a collective voice or an advocate to act on their behalf. Several in life plan communities expressed feeling ignored in comparison to assisted living and skilled nursing facility residents, who have access to long-term care ombudsmen.

“If administration would put in place a system, that any caring resident who has a concern about a fellow resident can report that concern, and have it acted upon, making sure everyone knows who to contact with their concerns,” expressed a resident in a council meeting that consultants attended.

Another resident lamented, “The problem, as I see it, is with those residents living far away from family. My experience tells me that families expect life plan communities to keep an eye on their loved ones. They expect them to be safe. Yet, too often we hear, ‘Oh, he or she is in independent living so we cannot do anything.’”

In addition, there is no official data documenting how many issues or complaints are filed at independent living communities and whether they are resolved. Therefore, it is important to develop a system of oversight to track issues and improve accountability.

## **ADDITIONAL RESEARCH NEEDS**

During the course of this study, consultants identified additional areas within independent living and life plan community operations that warrant research. Since these issues are outside of the current study's scope of review, consultants did not examine them, but made note to recommend follow up by the appropriate agency.

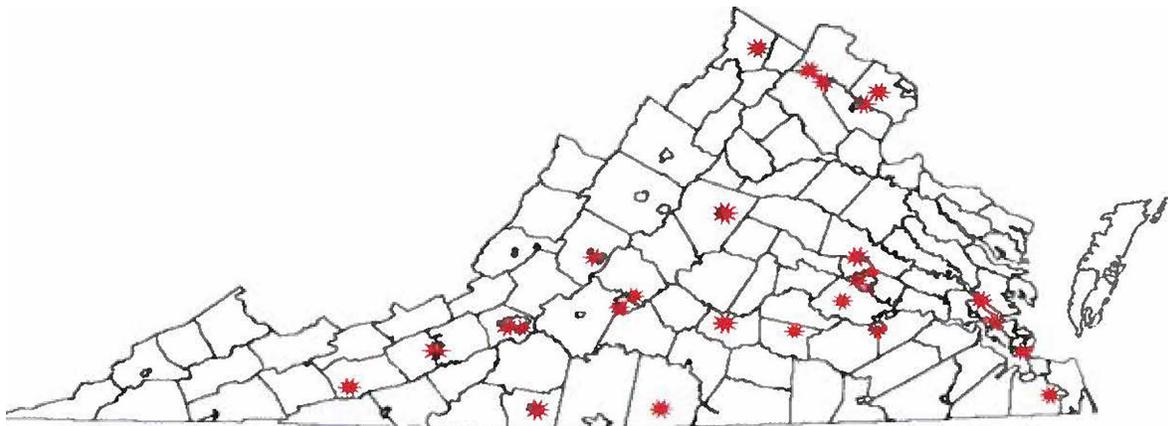
These research needs include:

- Building and community safety issues that arise from disrepair, which can negatively affect residents' quality of life.
- Whether resident liaisons and volunteer coalitions working to assist an independent living community's more vulnerable population can have a significant positive impact on the quality of life for primarily these residents, but also the community as a whole. This topic comes from the 2004 United Hospital Fund study titled "A Good Place to Grow Old: New York's Model for NORC Supportive Service Programs."
- Whether a community should be allowed to solicit funds from their resident association members under the guise of employee appreciation monetary gifts.
- Whether senior housing referral agencies, which receive referral fees from the communities they recommend, should be required to disclose these financial relationships up front to their clients, as Arizona recently enacted with House Bill 2529 – Assisted Living; Referral Agency Disclosure.

# INDEPENDENT LIVING COMMUNITIES SURVEYED

In gathering insights into the day-to-day operations of specified independent living communities throughout Virginia, consultants employed a variety of data collection methods. These included resident, family member, management and staff conversations; industry association member conference calls; resident association roundtables; general inquiries; and reviews of consumer marketing materials.

Consultants reached out to 77 independent living communities representing a wide cross-section of the market and made in-person visits to 55 of them. This sample consists of stand-alone independent living communities, those within life plan communities, 55-and-older apartment complexes, HUD, Section 202 affordable housing and assisted living facilities with independent living wings.



Carrington Place	IL AL	Wytheville
Warm Hearth Village	LP	Blacksburg
The Crossings at Blacksburg	IL AL	Blacksburg
Ridgefield - Ridgecrest	LP	Salem
Hermitage, Roanoke	LP	Roanoke
Brandon Oaks	LP	Roanoke
Elm Manor	SA	Roanoke
McCray's Court	SA	Roanoke
King's Grant	LP	Martinsville
Chastain Home for Gentlewomen	AL	Halifax
Commonwealth Senior Living	AL	South Boston
The Summit	LP	Lynchburg
Liberty Ridge	LP	Lynchburg
Westminster Canterbury	LP	Lynchburg

Bentley Commons	LP	Lynchburg
The Independence	LP	Charlottesville
Martha Jefferson House	IL AL	Charlottesville
Commonwealth Senior Living	IL AL	Charlottesville
The Colonnades	IL AL	Charlottesville
Our Lady of Peace	IL	Charlottesville
Kendal at Lexington	LP	Lexington
Bridgewater	LP	Bridgewater
Westminster Canterbury Shenandoah	LP	Winchester
The Woodland	LP	Farmville
Parc Crest at Poplar Forest	AH SA	Farmville
Hickory Hill	AL	Burkeville
Petersburg Home for Ladies	AL	Petersburg
Claiborne Square	AH SA	Petersburg
Cavalier Senior Apts	AH SA	Petersburg
Chester Village	AH SA	Chester
Courthouse Senior Apts	SA	Chesterfield
Springdale at Lucy Corr Village	LP	Chesterfield
Rockwood Village	SA	Chesterfield
The Atlantic at Charter Colony	SA	Midlothian
Chesterfield Heights	IL	Midlothian
Brandermill Woods	LP	Midlothian
The Crossings at Bon Air	IL AL	Richmond
The Renaissance	AH SA	Richmond
Norcroft Townhomes	AH SA	Richmond
Charnwood Forest	AH SA	Richmond
Little Sisters of the Poor	AH IL AL	Richmond
Dogwood Terrace	IL	Richmond
The Park at Ridgedale	AH SA	Richmond
The Arbors at Forest Hill	AH SA	Richmond
Heritage Oaks	IL	Richmond
The Virginian	IL	Richmond
Beth Shalom	AH SA	Richmond
Masonic Home of Virginia	IL AL	Richmond
Guardian Place	AH SA	Richmond
The Towers	IL AL	Richmond
Imperial Plaza	IL AL	Richmond
Lakewood	LP	Richmond
Acclaim at Carriage Hill	SA	Richmond
The Atlantic at Twin Hickory	AH SA	Glen Allen
Verena at the Glen	IL	Glen Allen
Covenant Woods	LP	Mechanicsville
WindsorMeade	LP	Williamsburg

Williamsburg Landing	LP	Williamsburg
Commonwealth Senior Living	IL AL	Williamsburg
Verena at the Reserve	IL	Williamsburg
Lighthouse Pointe	IL	Chesapeake
The Reserve at Greenbrier	SA	Chesapeake
The Talbot on Granby	IL	Norfolk
Harbor's Edge	LP	Norfolk
Westminster Canterbury at the Beach	LP	Virginia Beach
Russell House	AH, SA	Virginia Beach
Westminster Lake Ridge	LP	Lake Ridge
Hermitage NoVa	LP	Alexandria
Goodwin House Alexandria	LP	Alexandria
Goodwin House Bailey's Crossing	LP	Falls Church
The Lewinsville	AH, SA	McLean
Vinson Hall	LP	McLean
The Chamberlin	IL	McLean
Cascades Village	SA	Sterling
Falcon's Landing	LP	Potomac Falls
Ashby Ponds	LP	Ashburn
Fellowship Square	AH, SA	Reston

**LP - Life Plan** denotes senior living campuses comprised of housing set up for varying levels of resident needs. They may include independent living, assisted living, memory care, rehabilitation and skilled nursing. Registered Continuing Care Retirement Communities are listed within this category.

**IL - Stand-Alone Independent Living** communities may provide amenities such as meals, housekeeping, laundry and transportation, but are not part of a larger senior living campus where residents are able to transfer to a higher level of care within the same community when the need arises.

**SA - Senior Apartments**, also known as 55-and-older communities, are apartment complexes that offer no amenities for residents beyond the standard landlord-to-tenant obligations.

**AL - Assisted Living Facility**, within the listings above, refers to any assisted living facility which houses an independent living wing or independent living resident rooms that are covered under its assisted living facility license.

**AH - Affordable Housing**, funded by the HUD, Section 202 program, are senior apartments for low-income, elderly residents. These communities provide very few amenities, but often do employ a services coordinator to assist residents with setting up medical, personal care and home helper services.

# INDEPENDENT LIVING COMMUNITY DEFINITIONS AND SIMILAR OPTIONS IN OTHER STATES

*\*To read specific definitions of the senior housing models mentioned in the following paragraphs, please refer to the state grid below.*

Currently, no U.S. state oversees independent living communities in the same scope that DSS consultants recommend in this report. However, some similar housing categories do receive oversight in other states. In spite of lack of regulation nationwide, with the increasing number of vulnerable senior adults residing in independent living communities, especially those providing resident supervision, consultants believe that regulations are warranted at this time in Virginia. Furthermore, they are confident that within the next few years, more states will be conducting their own studies regarding the oversight of this growing housing category.

Montana has provided oversight of “retirement homes” since 1996. What the Department of Public Health and Human Services Licensure Bureau refers to as a retirement home, in Subchapter 37.106.25 in the Montana Administrative Rules, is very similar to the housing model that Virginia DSS consultants have defined as independent living in this report. Montana’s retirement home regulations focus on areas such as food service, housekeeping, laundry service, water quality, sewage and building codes. There are no rules regarding resident emergency or safety measures and none addressing the coordination of personal care services.

According to Chapter 89 of the DHS Policy Manual, the Wisconsin Department of Health Services regulates a type of senior housing called residential care apartment complexes (RCACs), a hybrid of independent living and assisted living. This model provides an attractive alternative for those who need some assistance with activities of daily living but are unable to afford an assisted living facility.

Similar to Wisconsin’s RCACs, Minnesota has what it calls “housing with services,” another senior living option that helps fill the gap between independent and assisted living.

Though the state of Tennessee does not regulate independent living, their legislature did create statutory language officially defining the term independent living facility in §68-11-201 of the Tennessee Code. This definition was established to assist with the identification of unlicensed assisted living facilities in that state. DSS consultants reviewed Tennessee’s independent living definition in creating the working definition in this report.

<b>STATE</b>	<b>INDEPENDENT LIVING DEFINITION OR SIMILAR HOUSING OPTIONS</b>	<b>CONTACT</b>
Alabama	Assisted Living, Affordable Senior Housing-HUD	Dept. of Public Health, Licensure and Certification
Alaska	Assisted Living, Affordable Senior Housing-HUD	Dept. of Health and Social Services, Senior and Disabilities Services
Arizona	Assisted Living, Affordable Senior Housing-HUD	Bureau of Residential Facilities Licensing
Arkansas	Assisted Living, Affordable Senior Housing-HUD, Care Home	Dept. of Human Services, Community Services Licensure and Certification
California	Congregate Living Health Facility, Affordable Senior Housing-HUD	Dept. of Social Services Community Care Licensing
Colorado	Assisted Living, Affordable Senior Housing-HUD	Dept. of Public Health and Environment, Health Facilities and Emergency Medical Services Division
Connecticut	Assisted Living, Affordable Senior Housing-HUD, CCRC, Care Home	Dept. of Public Health, Facility Licensing and Investigation Section
Delaware	Assisted Living, Affordable Senior Housing-HUD	Dept. of Health and Social Services, Division of Long-Term Care Resident Protection
Florida	Assisted Living, Affordable Senior Housing-HUD, CCRC, Care Home	Agency for Health Care Administration, Bureau of Long-Term Care Services
Georgia	Assisted Living, Personal Care Home, Affordable Senior Housing-HUD	Dept. of Community Health, Healthcare Facility Regulation Division
Hawaii	Assisted Living, Care Home, Affordable Senior Housing-HUD	Dept. of Health, Office of Healthcare Assurance
Idaho	Assisted Living, Affordable Senior Housing-HUD	Div. of Health and Welfare, Licensing and Certification
Illinois	Assisted Living, Affordable Senior Housing-HUD	Dept. of Public Health, Division of Assisted Living
Indiana	Residential Care Facility, Affordable Senior Housing-HUD	Dept. of Health, Division of Long-Term Care
Iowa	Assisted Living, Elder Group Home, Affordable Senior Housing-HUD	Dept. of Inspections and Appeals, Health Facilities Division
Kansas	Assisted Living, Boarding Home, Congregate Housing, Affordable Senior Housing-HUD	Dept. for Aging and Disability Services

Kentucky	Assisted Living, Personal Care Home, Affordable Senior Housing-HUD, CCRC	Cabinet for Health and Family Services, Dept. for Aging and Independent Living
Louisiana	Assisted Living, Personal Care Home, Shelter Care Home, Affordable Senior Housing-HUD	Dept. of Social Services, Bureau of Licensing
Maine	Assisted Living, Affordable Senior Housing-HUD, Residential Care Facility	Division of Licensing and Regulatory Services
Maryland	Assisted Living, Affordable Senior Housing-HUD, CCRC	Dept. of Health and Mental Hygiene
Massachusetts	Assisted Living, Affordable Senior Housing-HUD, Rest Home, CCRC	Office of Health and Human Services, Dept. of Public Health
Michigan	Assisted Living, Adult Foster Care, Affordable Senior Housing-HUD	Dept. of Licensing and Regulatory Affairs
Minnesota	Assisted Living, Affordable Senior Housing-HUD  Housing with Services - provides sleeping accommodations to one or more adult residents, at least 80 percent of whom are seniors (55 years of age or older). They also offer or provide, for a fee, one or more regularly scheduled health-related services or two or more regularly scheduled supportive services, whether offered or provided directly by the establishment or by another entity arranged for by the establishment.	Dept. of Health, Licensing and Certification Program
Mississippi	Personal Care Home, Affordable Senior Housing-HUD	Dept. of Health, Health Facilities Licensure and Certification
Missouri	Assisted Living, Affordable Senior Housing-HUD	Dept. of Health and Senior Services
Montana	Assisted Living, Affordable Senior Housing-HUD  Retirement Homes (independent living) includes a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence. To be licensed, these facilities must offer residents at	Dept. of Public Health and Human Services

	least one meal per day, laundry and housekeeping services.	
Nebraska	Assisted Living, Affordable Senior Housing-HUD	Dept. of Health and Human Services
Nevada	Home for Individual Residential Care, Affordable Senior Housing-HUD	Dept. of Health and Human Services, Bureau of Healthcare Quality and Compliance
New Hampshire	Assisted Living, Affordable Senior Housing-HUD, Assisted Living/Residential Care	Dept. of Health and Human Services, Health Facilities Administration
New Jersey	Affordable Senior Housing-HUD, CCRC Assisted Living Residence/Facility	Department of Health & Senior Services Long-Term Care Systems Development and Quality Long-Term Care Licensing Program
New Mexico	Assisted Living, Affordable Senior Housing-HUD	Health Facility Licensing and Certification Bureau
New York	Enriched Housing Program, CCRC, Affordable Senior Housing-HUD, Assisted Living	Dept. of Health, State Commission on Aging
North Carolina	Homes for the Aged, Affordable Senior Housing-HUD, CCRC	Dept. of Health and Human Services, Div. Health Service Regulation
North Dakota	Basic Care Facility, Affordable Senior Housing-HUD	Dept. of Human Services
Ohio	Residential Care Facility, Affordable Senior Housing-HUD	Dept. of Health Division of Quality and Assurance
Oklahoma	Assisted Living, Affordable Senior Housing-HUD	Dept. of Health
Oregon	Assisted Living, Affordable Senior Housing-HUD	Dept. of Health and Human Services
Pennsylvania	Assisted Living, Affordable Senior Housing-HUD, CCRC  Regular Session 2017-2018, HB 2291 Independent Senior Living Privacy Act: An act amending the act of June 13, 1967 (P.L.31, No.21), known as the Human Services Code, in departmental powers and duties as to licensing, further providing for definitions and for right to enter and inspect.	Dept. of Human Services, Bureau of Human Services Licensing

Rhode Island	Assisted Living, Affordable Senior Housing-HUD	Dept. of Health, Dept. of Elderly Affairs
South Carolina	Community Residential Care, Care Home, Affordable Housing-HUD	Dept. of Health and Environmental Control
South Dakota	Assisted Living, Care Home, Residential Living Center, Affordable Senior Housing-HUD	Dept. of Health Licensure and Certification
Tennessee	<p>Assisted Living, Home for the Aged, Affordable Senior Housing-HUD</p> <p>Independent Living is not licensed, but is defined. "Independent living facility" means a single-family residence, building, establishment, or complex used as a boarding home; an active adult community; a 55+ community; senior apartments; a retirement community; or a retirement home that provides housing for adults who are fifty-five (55) years of age or older. An independent living facility may provide meals, housekeeping services, and social activities for the entertainment of its residents, but does not provide any nursing or medical care, including medication administration or assistance with medication administration, and each resident is able to live independently, though a resident may independently contract for medical or nursing care with a home health agency or similar service</p>	Office of Healthcare Facilities, Division of Health Licensure and Regulation
Texas	Assisted Living, Affordable Senior Housing-HUD	Health and Human Services
Utah	Assisted Living, Affordable Senior Housing-HUD	Dept. of Health Bureau Licensing
Vermont	Assisted Living, Care Home, Affordable Senior Housing-HUD	Agency of Human Services Dept. of Aging & Disabilities
Washington	Assisted Living, Boarding Home, Care Home, Affordable Senior Housing-HUD	Dept. of Social and Health Services

West Virginia	Assisted Living, Affordable Senior Housing-HUD, Residential Care Home	Dept. of Health and Human Resources, Office of Health Facility Licensure and Certification
Wisconsin	<p>Community-Based Residential Facility, Affordable Senior Housing-HUD</p> <p>RCAC - Residential Care Apartment Complex: a place where five or more adults reside that consists of independent apartments, each of which has an individual lockable entrance and exit, a kitchen, including a stove, and individual bathroom sleeping and living areas, and that provides to a person who resides in the place, not more than 28 hours per week of services that are supportive, personal and nursing services. The term "residential apartment complex" does not include a nursing home or community-based residential facility, but may be physically part of a structure that is a nursing home or community-based residential facility.</p>	Dept. of Health Services, Bureau of Assisted Living, Division of Quality Assurance
Wyoming	Assisted Living, Affordable Senior Housing-HUD, Boarding Home	Dept. of Health, Healthcare Licensing and Surveys
District of Columbia	Assisted Living, Community Residence Facility, Affordable Senior Housing-HUD	Dept. of Health, Health Regulation and Licensing Administration

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**HOUSE JOINT RESOLUTION NO. 118**

*Requesting the Department of Social Services to study regulation of independent living communities. Report.*

Agreed to by the House of Delegates, March 10, 2018

Agreed to by the Senate, March 10, 2018

WHEREAS, the provision of residential health care services within independent living communities through third-party providers is becoming more commonplace; and

WHEREAS, such independent living communities, which are not regulated by the Department of Social Services, are sometimes providing services to residents that are substantially similar to the care provided in assisted living facilities, which are regulated by the Department of Social Services and subject to licensure; and

WHEREAS, these differences in oversight may not be recognized by consumers, who are dependent on these services for safety and health; and

WHEREAS, a study by the Department of Social Services regarding potential regulations and oversight may help to ensure that residents of such independent living communities are adequately protected; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Department of Social Services be requested to study regulation of independent living communities.

In conducting its study, the Department of Social Services shall (i) examine the operations of independent living communities and the level of services provided therein, including residential health care services coordinated through third-party providers; (ii) determine whether some or all independent living communities should be regulated by an agency of the Commonwealth and, if so, the extent to which they should be regulated and the agency or agencies that should be charged with such regulatory oversight; (iii) analyze what regulations should apply on the basis of the level of services, such as residential health care services, provided therein, regardless of whether such services are provided through a third party; (iv) determine whether the Commonwealth should establish the Office of the Independent Living Community Ombudsman to receive, record, and respond to complaints submitted by residents and other citizens regarding the operations of independent living communities; and (v) make any other recommendations related to the regulation or licensure of independent living communities that the Department of Social Services deems appropriate.

All agencies of the Commonwealth shall provide assistance to the Department of Social Services for this study, upon request.

The Department of Social Services shall complete its meetings by November 30, 2018, and shall submit to the Governor and the General Assembly an executive summary and a report of its findings and recommendations for publication as a House or Senate document. The executive summary and report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports no later than the first day of the 2019 Regular Session of the General Assembly and shall be posted on the General Assembly's website.

