



## Proposed Regulation Agency Background Document

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| <b>Agency name</b>                                 | State Board of Social Services     |
| <b>Virginia Administrative Code (VAC) citation</b> | 22VAC40-775                        |
| <b>Regulation title</b>                            | Adult Services Standards           |
| <b>Action title</b>                                | Establish Adult Services Standards |
| <b>Date this document prepared</b>                 | February 15, 2012                  |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.*

This regulatory action incorporates adult services language and guidance from 22VAC40-800, Family Based Social Services, into a new regulation 22VAC40-775, Adult Services Standards. Family Based Social Services is being repealed as part of another regulatory action.

In addition to incorporating content from Family Based Social Services, the regulatory action adds language that more fully articulates the principles and actions associated with the provision of services to elderly individuals and adults with an impairment.

### Acronyms and Definitions

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.*

AS-Adult Services  
LDSS-Local Departments of Social Services

**Legal basis**

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

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Sections 63.2-217, 63.2-1600, and 63.2-1602 of the Code of Virginia provide the authority for this regulatory action. Section 63.2-217 of the Code of Virginia provides the general authority for the State Board of Social Services to promulgate regulations to operate social service programs. Section 63.2-1600 describes the provision of home-based services. Section 63.2-1602 describes LDSS' participation in activities such as conducting nursing facility and home and community-based waivers pre-admission screenings and assisted living facility assessments.

**Purpose**

*Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.*

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The new regulation describes the provision of services to elderly individuals and adults with an impairment. Services provided by LDSS AS workers promote the safety of elderly individuals and adults with an impairment and help prevent adult abuse, neglect and exploitation from occurring or recurring. Many of the services outlined in the regulation also strengthen adults' family and social support systems.

The regulation addresses services that help adults maintain self-sufficiency and support their wishes to live in community-based settings for as long as possible. The regulation outlines the principles and philosophy of adult services and underscores the importance of an adult's right to self-determination and independence.

This regulatory action updates and clarifies regulation content. Clarity in regulation content is essential to ensuring that the individual's health, safety and services needs are most appropriately met.

**Substance**

*Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the "Detail of changes" section.)*

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This new regulation includes regulatory language from 22VAC40-800. Content taken from 22VAC40-800 includes definitions of services; the principles inherent in the provision of Adult Services; a description of intake services; individuals to be served; and types of services that may be provided.

The regulatory action adds definitions of services; clarifies the philosophy of adult services; and provides additional guidance on intake services. Additionally, the new regulation more thoroughly details the population to be served, clarifies the descriptions of the type of services that may be offered to an adult, outlines the process of determining eligibility for services, and describes the responsibilities of the AS worker.

**Issues**

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) *other pertinent matters of interest to the regulated community, government officials, and the public.*

*If the regulatory action poses no disadvantages to the public or the Commonwealth, please indicate.*

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- (1) The regulation describes service provision and ensures that the needs of elderly individuals and adults with an impairment are addressed.
- (2) The regulation content clarifies but does not increase LDSS staffs' responsibilities. Much of the regulatory language currently exists in another regulation that is scheduled to be repealed. Additionally the standards addressed in this regulatory action have been part of department guidance for many years.
- (3) The regulation language supports elderly individuals and adults with an impairment and their families and support systems.

The regulatory action poses no disadvantages to the public or the Commonwealth.

**Requirements more restrictive than federal**

*Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

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There are no federal requirements that address the provision of adult services.

**Localities particularly affected**

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

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No locality is disproportionately impacted by the proposed regulation. The regulation provides statewide uniform standards for adult services. The standards outlined in this regulation have been in place for several years as part of another regulation and department guidance.

**Public participation**

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.*

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In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Townhall website, [www.townhall.virginia.gov](http://www.townhall.virginia.gov), or by mail, email or fax to **Paige McCleary, Adult Services Program Consultant, 801 East Main Street, Richmond, VA 23219; [paige.mccleary@dss.virginia.gov](mailto:paige.mccleary@dss.virginia.gov); or 804-726-7895 (fax)**. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last date of the public comment period.

The regulation was drafted with the assistance of the following Adult Services regulation workgroup members: Tonya Gardner, Social Worker, Portsmouth DSS; Dawn Riddle, Social Work Supervisor, Roanoke County DSS; Zondra Anderson, Social Worker, Fairfax DSS; Kendall Girten, Social Work Supervisor, York DSS; Sharon Durham, Social Worker, Prince William DSS; Jacquelyn Morande, and Joan Thompson, Social Workers, Gloucester DSS; Judith Robinson, Social Worker, Surry DSS; Sue Vilic, Social Worker, Prince Edward DSS; Latarsha Harris and Jean Morrison, Social Workers, Newport News DSS; and Katheryn Cloud, Social Worker, Hanover DSS.

Tracie Brewster, Social Worker, Radford DSS; Jo-Ann Leitch, Social Worker, Alexandria DSS; and Joyce Martin, Social Work Supervisor, Charlottesville DSS, reviewed the regulation and assisted with drafting.

### Economic impact

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirements creates the anticipated economic impact.*

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| <b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.</b> | DSS would experience minimal impact from the proposed changes to the regulation. DSS staff would be responsible for updating regulation citations in the Adult Services Program Manual. Manual changes would be announced via broadcast on the DSS intranet.<br><br>DSS staff will assist DSS trainers in incorporating regulation content into the course curriculum, such as New Worker Training. AS training courses have been taught for several years and utilize course materials that would require minor updates.<br><br>DSS staff would be responsible for updating information about adult services on the DSS intranet and public website. |
| <b>Projected cost of the new regulations or changes to existing regulations on localities.</b>  | There is no projected cost of these new regulations to localities. While this is a new regulation, the content in the regulation has been lifted from a regulation that is currently in effect but will eventually be repealed. The guidance and requirements of the regulation are not new.  |
| <b>Description of the individuals, businesses or</b>  | The regulation impacts LDSS AS staff; elderly or  |

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| <b>other entities likely to be affected by the new regulations or changes to existing regulations.</b>  | disabled individuals who apply for or receive adult services, and these individuals' family members or representatives.   |
| <b>Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.   | There are 120 LDSS with AS workers who provide adult services.<br><br>In state fiscal year (SFY) 2011, there were 25,679 cases for which AS workers provided or arranged for services including but not limited to case management, social work monitoring, home-based services, assessment for assisted living facility placement and preadmission screening for nursing facility placement or Medicaid funded home and community-based care.<br><br>Small businesses are not impacted by this regulation. |
| <b>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</b> | There are minimal projected costs to the changes in these regulations. The regulatory action does not change any reporting or recordkeeping requirements. The regulatory action has no impact on the development of real estate for commercial or residential purposes.   |
| <b>Beneficial impact the regulation is designed to produce.</b>   | The regulation provides a framework for the provision of services to adults. It clarifies (1) definitions associated with the provision of services to adults, (2) the philosophy in the provision of services, (3) intake activities, (4) who receives services, (5) the array of services and eligibility for services, and (6) responsibilities of the AS worker.  |

## Alternatives

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

No alternative to this regulatory action was considered, as establishing a distinct regulation to address adult services will ensure there is consistency in the services that are provided to adults throughout the Commonwealth. This action is necessary because the regulation that currently addresses Adult Services is being repealed by another regulatory action. Small businesses are not impacted by this regulation.

## Regulatory flexibility analysis

*Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

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As §§ 63.2-1600 and 63.2-1602 of the Code of Virginia address specific services to adults that are already being provided under current regulations and guidance, no alternatives to the regulatory action were considered. The regulatory action does not change recordkeeping or reporting requirements for LDSS. The regulatory action does not address standards for small businesses.

### Public comment

*Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.*

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No public comments were received.

### Family impact

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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The regulatory content will have a positive impact on family stability by ensuring that family members, who are elderly or have an impairment and who may need assistance and support, receive prompt and appropriate interventions from LDSS AS workers. The regulation content will ensure that LDSS provide assistance in a manner that supports the adult's dignity, independence, sense of personal responsibility and his or her right to self-determination.

The proposed regulatory action will have no impact on the authority and rights of parents in the education, nurturing, and supervision of their children. The proposed regulatory action will not affect marital commitment or disposable family income.

### Detail of changes

*Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact if implemented in each section. Please describe the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes to existing regulations between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

| <b>Section number</b> | <b>Proposed requirements</b>   | <b>Other regulations and law that apply</b>                            | <b>Intent and likely impact of proposed requirements</b>   |
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| 10                    | Defines terms used throughout the regulation                         | 22VAC40-800-10 (being repealed as part of another regulatory action)   | The section defines terms used in the provision of adult services. The requirements will have minimal impact on LDSS and state staff.  |
| 20                    | Describes the philosophy inherent in the provision of Adult Services | Not applicable.  | The section describes the adult's right to self-determination and the worker's role in relation to the adult. The requirements will have minimal impact on LDSS and state staff.   |
| 30                    | Describes intake services  | 22VAC40-800-30 (being repealed as part of another regulatory action)   | The section describes intake, the first step in accessing services and support. The requirements will have minimal impact on LDSS and state staff.   |
| 40                    | Describes the individuals to be served by LDSS                       | 22 VAC 40-800-40 (being repealed as part of another regulatory action) | The section describes individuals who are: (1) required to be served, (2) served to the extent that funding is available, and (3) served at the option of the LDSS. The requirements will have minimal impact on LDSS and state staff.                                 |
| 50                    | Describes the provision of services                                  | 22VAC40-800-100 (being repealed as part of another regulatory action)  | The section describes the provision of services including the determination of eligibility for services and the types of services that the adult may receive or to which the adult may be referred. The requirements will have minimal impact on LDSS and state staff. |
| 60                    | Describes the responsibilities of the AS worker                      | Not applicable.  | The section states the responsibilities of the worker to follow state law, regulations and program guidance. The requirements will have minimal impact on LDSS and state staff.  |