

**Grants to Area Agencies on Aging
Regulatory Action Panel (RAP) Meeting**

**Monday, October 21, 2019
2:00 p.m. to 4:00 p.m.**

**Virginia Department for Aging and Rehabilitative Services
Office for Aging Services
1610 Forest Avenue, Suite 100
Henrico, VA 23229
Phone: (804) 662-9333**

MINUTES - DRAFT

RAP Members Present:

Ron Boyd (phone)
Carter Harrison
Sarah Henry (phone)
Martina James Nalley (phone)
Joani Latimer
Bill Massey
Ray Parks
Christine Stone (phone)
Thelma Watson

DARS Staff Present:

Charlotte Arbogast
Marcia DuBois
Jackie Freeze
Catherine Harrison
Kathy Miller
Leah Mills

Public and Guests:

Helen Leonard

Welcome and Introductions

DARS Staff Charlotte Arbogast started the meeting at 2:05 and welcomed members and guests. Members and guests introduced themselves. Members and public had the option to participate electronically.

Purpose of the RAP

After highlighting a few housekeeping items, Charlotte Arbogast outlined the goals for the meeting and the overall purpose of the RAP. She stated that DARS was in the process of developing proposed revisions to the current regulations found at 22VAC30-60, Grants to Area Agencies on Aging (AAAs). The RAP was convened to provide subject-matter expertise to DARS in the development of the regulations.

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Charlotte Arbogast noted that the Virginia Administrative Process Act and DARS' Public Participation Guidelines authorized DARS to convene a RAP to provide professional specialization or technical assistance when the agency determined that such expertise was necessary. This RAP membership includes individuals with expertise in administering or providing AAA programs or advocating for those who receive AAA services. Ms. Arbogast stated the RAP will meet twice to assist DARS with the development of the regulatory changes.

DARS Staff Presentation on:

Federal and State Requirements

Background on the Regulatory Action

Charlotte Arbogast presented on the current structure and history of AAA services in Virginia. PowerPoint slides are attached. Among the items covered:

- **Policies for AAA Services.** At the highest level is the Older Americans Act (OAA) statute, which is followed by the federal regulations found at 45 CFR Part 1321. From there, the Code of Virginia layers on followed by the current state regulations found at 22VAC30-60. There are also additional federal and state guidance materials. All of these are impacted by the degree of funding, federal and state, that is provided.
- **Federal Structure:** AAA services are governed by the Older Americans Act found at 42 U.S.C. 3001 et seq. This places the federal oversight within the U.S. Administration for Community Living. The last reauthorization of the Older Americans Act happened in 2016 and was approved through federal fiscal year (FFY) 2019. Current reauthorization is pending. Federal regulations are located at 45 Code of Federal Regulations (CFR) Part 1321. These regulations were first published and promulgated in 1988. These regulations were amended in 2016 to update citations for the Health and Human Services (HHS) regulations regarding Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. These regulations were also amended in both 2015 and 2016 to make revisions to the State Long-Term Care Ombudsman program requirements. Charlotte Arbogast reviewed the layout of 45 CFR Part 1321 and a copy was provided.
- **State Structure:** Within Virginia, Article 3 (Services to Older Virginians) of Chapter 14 (DARS) of Title 51.5 (Persons with Disabilities) governs DARS and the AAA services. Specifically, there are five sections. These sections: list definitions; identify the powers and duties of Department with respect to aging persons and AAAs; lay out the state plan requirements; lay out the oversight and planning for AAA services and funding; and identify a process for long-term care coordinating councils in localities. From a regulatory perspective in Virginia, 22VAC30-60 Grants to AAAs outlines various processes and requirements for DARS and AAA services. Charlotte Arbogast reviewed the outline of those regulations, which were also provided.
- **DARS Timeline of Regulatory Action:** Charlotte Arbogast provided a history and timeline.
 - In 1989, the regulatory chapter was originally promulgated under the Virginia Department for the Aging (VDA; 22VAC5).
 - In 2002, VDA made minor amendments to the original regulations.
 - In 2012, the entire chapter was moved (without amendments) from VDA to the newly created Virginia Department for Aging and Rehabilitative Services (DARS; 22VAC30). At that time, VDA merged with the Virginia Department of Rehabilitative Services to form DARS.

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- Also in 2012, following a periodic review for the chapter, DARS recommended the chapter be retained “as is”.
- Most recently, in 2019, DARS completed a periodic review of the chapter. In its finding, filed on March 21, 2019, DARS recommended the regulation be amended.
- **AAA Characteristics:** Charlotte Arbogast reviewed the characteristics of AAAs, including variability placement (nonprofits and local governments); geography (rural, urban or both); and size (large and small). AAA Core Services were also reviewed. Under the category of Supportive Services, AAAs provided access services, in-home services, and legal services. Other services include Disease Prevention & Health Promotion, Nutrition, Caregiving, Elder Rights, and (Native Americans), with the latter as applicable to each state that has federally recognized tribes participating in Title VI. The various funding streams for AAAs was also highlighted, including a slide with a breakdown of federal funding passed through DARS to the AAAs for FFY 2018. In addition, roughly \$19 million in state general funding provides support for services like Care Coordination for Elderly Virginians (CCEVP), transportation, meals, community based services, respite care, guardianship, SeniorNavigator, and the ombudsman program. Many AAAs also receive funding through other state agencies, such as the Department of Planning and Budget (DPB).
- **AAA Evolution:** Since the original promulgation of the regulations in 1989 and since the last regulatory activity on this chapter, the landscape of the AAA network has changed. Among the areas of change include:
 - Demands – The older adult population has continued to grow, with overall funding not keeping pace with the demand or in some cases, even inflation. Further, the older adult population has changed, becoming more and more diverse.
 - Formation of ACL – The rather recent merger of aging and disability programming to form ACL at the federal level.
 - Partnerships – In large part to meet the growing demand and need for more funding, AAAs have formed extensive partnerships with other community organizations, including disability organizations, Medicaid providers and MCOs, and aging and disability resource centers, and much more.
 - Person-Centered Practices - Uses of outdated terminology has been replaced with person-centered language and an increased focus on meeting clients’ preferences.
 - Targeted Populations – The criteria for the targeted populations referenced in the OAA has changed.
 - Technology – Lastly, technology has changed and the current regulations reflect an outdated understanding of current business models and practices. The use of No Wrong Door, CRIA, and other systems to track and respond to client needs was radically different 20 or even 10 or 5 years ago.
- **DARS NOIRA:** In response to this recognition of changes, and the conclusion of the periodic review, DARS published a Notice of Intended Regulatory Action (NOIRA) on July 22, 2019. A 30-Day Comment Period ran until August 21, 2019. DARS did not receive any comments. A copy of the NOIRA was provided. In the NOIRA, DARS referenced a number of intended actions. Among those were:
 - Revisions to address changes to the OAA and regulations in 45 CFR Part 1321.

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- Removal or revisions with outdated requirements (e.g., section 270 for automatic data processing equipment) and modifications to some AAA reporting deadlines to make them more manageable.
- Inclusion of omitted OAA requirements.
- Revision to terminology for populations to be served, inclusion of person-centered language, updates to the services provided by AAAs, and clarifications on requirements for waivers for direct services.
- Revisions to sections that are determined, upon further review, to be outdated or inconsistent with policy and practice.
- A review of all citations that reference federal requirements or the regulations of other agencies to ensure accuracy of all citations and any associated language.
- **Other Initiatives:** Charlotte Arbogast also reviewed other related actions underway.
 - DARS recently completed an exempt regulatory change package for 22VAC30-60. It went into effect on May 1, 2019. Exempt actions are used for actions that are technical updates only or that are required by federal or state law and when the agency uses no discretion. Charlotte Arbogast noted that the completed Virginia Administrative Code (VAC) chapter that was shared reflects the changes from May 2019.
 - DARS has also filed a NOIRA for Reorganization and Revisions to the State Long-Term Care Ombudsman Program. This included the formation of another a separate RAP. The Ombudsman Program sections will be removed from this chapter and placed a new to-be-established chapter specifically for the program. Charlotte Arbogast noted that any questions or concerns about content found in the current Program sections (570, 580 or 590) should be directed to her for that work and is separate from the work of this RAP.
 - Lastly, the Commonwealth Council on Aging has initiated an effort to update sections related to aging in the Code of Virginia. These changes are intended to be non-substantive and clarifying in nature. This is intended as “clean up” since the merger of DRS with VDA, which brought two separate agencies under one Code Chapter. It is expected that there will be legislation during the upcoming General Assembly Session on this.

RAP Member Discussion

Charlotte Arbogast opened the meeting up to questions and comments from the RAP members.

Members discussed:

- The audit reporting deadline found in 22VAC30-60-460. Members noted that this deadline should be moved back.
- Changes to services listed in 22VAC30-60-80, including the addition of nutrition counseling.
- The pending reauthorization of the Older Americans Act. It was suggested the regulatory changes be crafted so as to maximize consistency and minimize potential conflicts with the future Older Americans Act.
- Charlotte Arbogast reviewed the realistic timeline for the regulatory initiative, with a rough estimate of up to three years from start to finish.
- Carter Harrison provided further background on the Council on Aging’s initiative related to the Code of Virginia.

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Public Comment

Helen Leonard made a public comment. In her public comment, she emphasized the timeliness in looking at these regulations. She noted a particular interest in: 1) definitions; 2) process for waivers for direct services; and 3) making sure the regulations continue to focus on the needs of older adults in the community and that there is adequate and proper administration of programs.

Next Steps

At the conclusion of the meeting, the following was agreed to:

- Members and interested parties can submit additional questions, comments or feedback on the regulatory chapter through Friday, November 8, 2019. Such feedback should be sent to Charlotte Arbogast.
- DARS will plan for a second RAP meeting post-General Assembly Session. DARS will follow up later to set that meeting date.

Adjourn

The meeting adjourned at 3:05 pm.



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*Supporting Virginians' efforts
 to secure independence and employment*




Regulatory Action Panel (RAP): Grants to Area Agencies on Aging

October 21, 2019
 8004 Franklin Farms Drive, Henrico, VA 23229

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Acronyms

- AAA = Area Agency on Aging
- ACL = U.S. Administration for Community Living
- AoA = U.S. ACL Administration on Aging
- APS = Adult Protective Services
- CFR = Code of Federal Regulations
- DARS = Virginia Department for Aging and Rehabilitative Services
- DPB = Virginia Department of Planning and Budget
- HCBS = Home and Community-Based Services
- LTC = Long-Term Care
- NOIRA = Notice of Intended Regulatory Action
- NWD = No Wrong Door
- OAA = Older Americans Act
- OAG = Virginia Office of the Attorney General
- RAP = Regulatory Action Panel
- SHHR = Secretary of Health and Human Resources
- SLCTOP = State Long-Term Care Ombudsman Program
- SUA or State Agency = State Unit on Aging
- V4A = Virginia Association of Area Agencies on Aging



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Meeting Handouts

- PowerPoint slides
- 1988 Federal Register for 45 CFR Part 1321
- Current 45 CFR Part 1321
- Current Code of Virginia sections
- Current 22VAC30-60
- DARS NOIRA for 22VAC30-60



OUTLINE


Purpose of the
RAP

Federal & State
Requirements

Virginia
Regulatory
Action

Next Steps,
Questions,
Public Comment






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PURPOSE OF THE RAP

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Regulatory Action Panel (RAP)


- 22VAC30-11-70 (Public Participation Guidelines): DARS may appoint a RAP to provide professional specialization or technical assistance when the agency determines that such expertise is necessary to address a specific regulatory issue or action or when individuals indicate an interest in working with the agency on a specific regulatory issue or action.
- The RAP membership includes individuals who have expertise in administering or providing AAA programs or services and in advocating for older adults who receive AAA services.
- RAP members will assist DARS in the careful consideration of proposed regulation content.
- This RAP will consist of two meetings; October 21 and a second meeting TBD.

Conducted in accordance with the Virginia Administrative Process Act (§ 2.2-4007.02 of the Code of Virginia)




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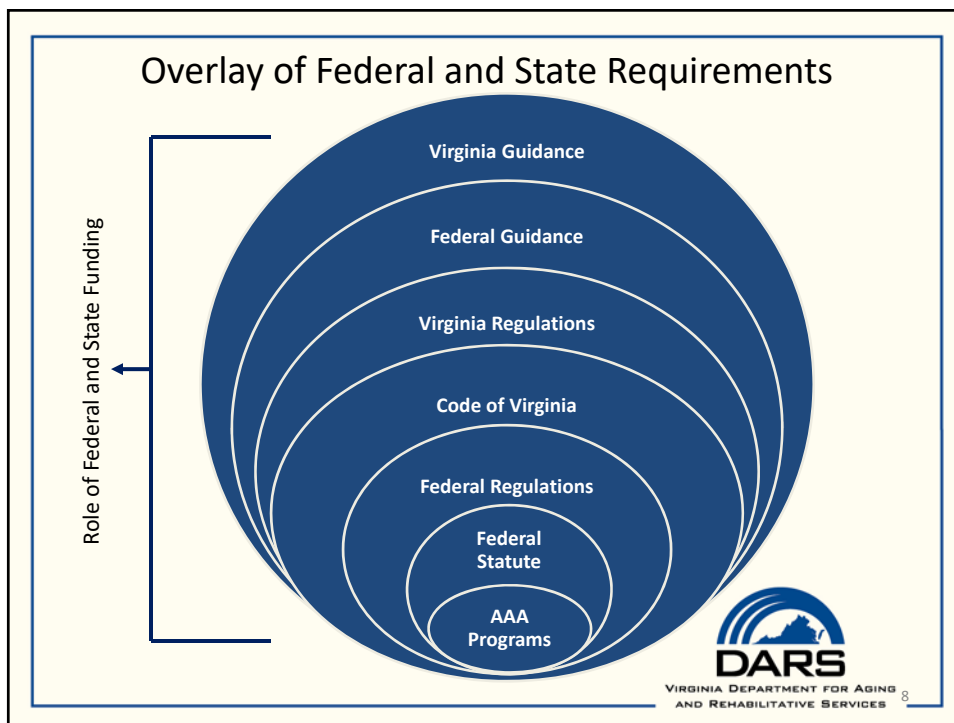


FEDERAL & STATE REQUIREMENTS

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Federal Law: Older Americans Act (OAA)

- [42 U.S.C. 3001 et seq.](#)
- Placed within the U.S. Administration for Community Living (ACL) – Administration on Aging (AoA)
- Last reauthorized in 2016 through FFY 2019.
- Current reauthorization is pending.



Federal Regulations: [45 CFR Part 1321](#)

- First published in 1988 (53 FR 33766, August 31, 1988)
- Amended in 2016 ([81 FR 3022](#), January 20, 2016)
 - Updates citations for the HHS regulations regarding Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- Amended in 2015 ([80 FR 7758](#), February 11, 2015) and 2016 ([81 FR 35645](#), June 3, 2016)
 - Revisions were related to changes to the SLTCOP


HANDOUT



45 CFR Part 1321

Subpart A	• Introduction
Subpart B	• State Agency Responsibilities
Subpart C	• Area Agency Responsibilities
Subpart D	• Service Requirements
Subpart E	• Hearing Procedures for State Agencies

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Code of Virginia

- AAA-related statutes are found under Article 3 (Services to Older Virginians) of Chapter 14 (DARS) of Title 51.5 (Persons with Disabilities):

§ 51.5-134 (Definitions)	§ 51.5-135 (Powers and duties of Department with respect to aging persons; area agencies on aging)	§ 51.5-136 (Strategic long-range planning for aging services; four-year plan; report)
§ 51.5-137 (Administrative responsibilities of Department regarding long-term care)	§ 51.5-138 (Coordination of local long-term care services by localities)	

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Virginia Regulations

- 22VAC30-60 Grants to Area Agencies on Aging

22VAC30-60-10
through
22VAC30-60-30
Part I: Introduction

22VAC30-60-40
through
22VAC30-60-70
Part II: AAAs

22VAC30-60-80
through
22VAC30-60-110
Part III: Area Plans

22VAC30-60-120
Through
22VAC30-60-560
**Part IV: Administration of
Grants & Contracts**

22VAC30-60-570
Through
22VAC30-60-590
Part V: LTCOP

Next Slide: More in-depth on Part IV

HANDOUT



Part IV: Administration of Grants & Contracts

Sections	Article	Subject
120-190	1	Principles and Standards for Financial Management and Accounting
200	2	Transfer of Funds
210-240	3	Personnel Policies
250-280	4	Property Control
290-340	5	Procurement Practices and Contracting
350-400	6	General Program Income
410-420	7	Bank Balance and Check Handling Procedures
430	8	Monitoring of Subcontractors of AAAs
440	9	Carry-Over Balance Policies
450-480	10	Audits
490-510	11	Close-Out Procedures
520-560	12	Record Management



Guidance: Federal and State

- ACL Guidance:
 - Program Instructions: <https://acl.gov/about-acl/administration-aging-program-instructions>
- Virginia Aging Services Standards:
 - <https://townhall.virginia.gov/L/ViewGDoc.cfm?gdid=6495>
 - <https://townhall.virginia.gov/L/ViewGDoc.cfm?gdid=6687>



VIRGINIA REGULATORY ACTION


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Timeline of State Actions

- 1989**
 - The regulatory chapter was originally promulgated in 1989 under the Virginia Department for the Aging (VDA; 22VAC5).
- 2002**
 - VDA made minor amendments to the original regulations.
- 2012**
 - The entire chapter was moved (without amendments) from VDA to the newly created Virginia Department for Aging and Rehabilitative Services (DARS; 22VAC30). At that time, VDA merged with the Virginia Department of Rehabilitative Services to form DARS.
- 2012**
 - Following a periodic review for the chapter in 2012, DARS recommended the chapter be retained as is.
- 2019**
 - DARS completed a periodic review of the chapter. In its finding, filed on March 21, 2019, DARS recommended the regulation be amended.



AAA Variability


Placement	Location	Size
<ul style="list-style-type: none"> Nonprofit Government 	<ul style="list-style-type: none"> Rural Urban Both 	<ul style="list-style-type: none"> Small Large



AAA Core Services

Supportive Services	Disease Prevention & Health Promotion	Nutrition
<ul style="list-style-type: none"> Access Services In-Home Services Legal Services 	Caregiving	Elder Rights
		(Native Americans)


Sources: Virginia State Plan for Aging Services (2019-2023) and N4A (March 2017) "AAAs: Local Leaders in Aging and Community Living"



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AAA Funding Sources

ACL/AoA	Other Federal Agencies	State General Funds
Medicaid	Local Government	Private Support
Health Plans/MCOs	Cost Sharing/Fees	



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Federal Funding to AAAs from DARS

FFY 2018 Allocation	Amount
ACL OAA Title III-B Supportive Services	\$ 13,597,311
ACL OAA Title III-C Nutrition (Congregate & Home Delivered + USDA NSIP)	\$ 15,071,724
ACL OAA Title III-D Preventive Health	\$ 593,778
ACL OAA Title III-E National Family Caregiver Support Program	\$ 4,210,006
ACL OAA Title VII (Long-Term Care Ombudsman & Elder Abuse)	\$ 508,237
DOL OAA Senior Community Service Employment Program	\$1,714,565
ACL OAA Discretionary Grants	\$ 3,387,531

Many AAAs also receive federal funding through other state agencies, such as DRPT.



Some of the Landscape Changes



NOIRA

- Following the Periodic Review, DARS published a Notice of Intended Regulatory Action ([NOIRA](#)) on July 22, 2019.
- A 30-Day Comment Period until August 21, 2019.
- No comments were submitted or received.

HANDOUT



Anticipated Changes

FROM THE NOIRA:

Provisions for proposed regulations include revisions to address changes to the OAA and regulations in 45 CFR Part 1321.

DARS seeks to remove or amend outdated requirements (e.g., section 270 for automatic data processing equipment) and modify some AAA reporting deadlines to make them more manageable.

DARS intends to add omitted OAA requirements.

DARS seeks to amend terminology for populations to be served and to include person-centered language, update services provided by AAAs to older adults, and clarify requirements for waivers for direct services.

DARS also intends to amend sections that may be determined, upon further review, to be outdated or inconsistent with policy and practice.

All citations that reference federal requirements or the regulations of other agencies will also be reviewed to ensure these citations, and any associated language, are accurate.

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Be Advised:

- AAA [Exempt](#) Regulatory Changes
 - Effective May 1, 2019
- DARS has also filed a Notice of Intended Regulatory Action ([NOIRA](#)) for:
 - Reorganization and Revisions to the State Long-Term Care Ombudsman Program
- Commonwealth Council on Aging has initiated an effort to update aging-related sections in the Code of Virginia
 - Intended to be non-substantive
 - Clarifying in nature



NEXT STEPS
QUESTIONS
PUBLIC COMMENT

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Next Steps

- Second RAP Meeting: TBD
 - Agenda: Discuss Proposed Regulations
- Submission of DARS' Proposed Regulations work is expected by February 17, 2020
 - It will then undergo a review by the Office of the Attorney General (OAG), Department of Planning and Budget (DPB), Secretary of Health and Human Resources (HHR), and Governor's Office.



Questions

RAP Member Discussion

Public Comment

Questions or comments should be directed to:

- Charlotte Arbogast
- Phone: 804-662-7093
- Email: charlotte.arbogast@dars.virginia.gov

