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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Department for Aging and Rehabilitative Services
<b>Virginia Administrative Code (VAC) citation(s)</b>	22 VAC 30-120
<b>Regulation title(s)</b>	Adult Services Approved Providers
<b>Action title</b>	Revisions to Adult Services Approved Providers
<b>Date this document prepared</b>	July 5, 2017

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Subject matter and intent

*Please describe briefly the subject matter, intent, and goals of the planned regulatory action.*

The intent of the proposed action is to provide a general review of 22 VAC 30-120, Adult Services Approved Providers. 22 VAC 30-120 establishes standards for providers who are approved by local departments of social services (LDSS) to provide services, such as homemaker, chore, or companion services, to adults.

This regulatory action seeks to review all current regulation content and (1) clarify regulation content that may be unclear, inconsistent, or obsolete, and (2) incorporate person-centered language throughout the regulation.

### Legal basis

*Please identify the (1) the agency (includes any type of promulgating entity) and (2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.*

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Section 51.5-145 of the Code of Virginia gives DARS the responsibility for the planning and oversight of Adult Services including homemaker, chore, and companion services. These services are to be delivered by the LDSS as set out in Article 1 (§ 63.2-1600 et seq.) of Chapter 16 of Title 63.2 and pursuant to regulations and subject to the oversight of the Commissioner of DARS. In addition, § 63.2-1601 gives the Commissioner of DARS the authority to over regulations related to the recruitment and approval for the provision of adult foster care services. Finally, § 51.5-131 of the Code of Virginia authorized the Commissioner of the DARS to promulgate regulations necessary to carry out the provisions of the laws of the Commonwealth administered by the Department.

### Purpose

*Please describe the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, please explain any potential issues that may need to be addressed as the regulation is developed.*

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This regulation will amend relevant content that describes the standards a local provider must meet in order to receive approval from an LDSS. The standards ensure that an adult's health and safety remain a primary focus when services are provided to older adults and individuals with disabilities.

Many services provided by LDSS approved homemaker, chore, companion and adult foster care providers promote the well-being of adults by strengthening the support systems, including family supports, that enable them to live in community-based settings for as long as possible.

This regulatory action will ensure that the regulation content is clearly written. Clarity in regulation content is essential to ensuring that the individual's health and safety needs are most appropriately met.

The regulations do not pertain entities, such as home health providers, which are regulated by other state agencies.

### Substance

*Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.*

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Proposed changes include clarifying definitions and other regulation text as well as amending content that is obsolete or inconsistent. There is some content which is currently in conflict with federal law and must be amended. The intention is also to review regulatory language to ensure requirements adequately address the safety of the adult who is receiving services, while also balancing the adult's right to self-determination. Person-centered language will be incorporated throughout the regulation. Other revisions to the regulation content may also be proposed based on public comment.

### 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.*

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No alternative action was considered because the Code of Virginia addresses the provision of home based services and adult foster care for adults and that regulations addressing these services are to be promulgated by the DARS Commissioner. The Code of Virginia also authorizes criminal history checks for providers and for the promulgation of regulations to address the process for criminal background checks. Promulgating these regulations is anticipated to have little impact on small businesses as businesses are not the focus of this regulation.

## Public participation

*Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments. Please include one of the following choices: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is \_\_\_\_\_; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.*

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The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation.

The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to **Paige McCleary, Adult Protective Services Division Director, 8004 Franklin Farms Drive, Henrico, VA 23229; [paige.mccleary@dars.virginia.gov](mailto:paige.mccleary@dars.virginia.gov); or 804-662-7605 or 804-662-9531 (fax)**. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.

A panel will be assembled to develop these regulations to ensure that only pertinent content is included. Panel members will make certain that information that is not appropriate for inclusion in the regulation is addressed in other guidance materials. The panel membership will include individuals from a variety of backgrounds who have expertise in providing services to or advocating for older and other vulnerable adults. Members will assist DARS in the careful consideration of proposed regulation content and its impact on other entities. DARS will appoint panel members and if you are interested in serving on the panel, contact Paige McCleary, APS Division Director at [paige.mccleary@dars.virginia.gov](mailto:paige.mccleary@dars.virginia.gov).

A public hearing will not be held following the publication of the proposed stage of this regulatory action.

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### Periodic review/small business impact review announcement

*If you wish to use this NOIRA to announce a periodic review (§ 2.2-4017 & EO-17 (2014)) and a small business impact review (§ 2.2-4007.1) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete this section.*

In addition, pursuant to Executive Order 17 (2014) and § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

### Periodic review and small business impact review report of findings

*If this NOIRA is the result of a periodic review/small business impact review, use this NOIRA to report the agency's findings. Please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review and (2) indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.*

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This regulation was not the result of a periodic review.