



Final Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22 VAC 40-25
Regulation title	Auxiliary Grants Program
Action title	Amend Auxiliary Grant Regulations
Date this document prepared	August 18, 2010

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

Proposed changes to the regulation include (1) removing the requirement that assisted living facilities (ALFs) accepting individuals with an Auxiliary Grant (AG) submit an annual audit report to the Department of Social Services (DSS) and replacing it with a requirement for an annual AG certification; (2) the addition of a Virginia residency requirement for AG eligibility; (3) clarifications regarding ALFs' participation in the AG Program and the submission of the provider agreement; (4) amendments to the assessment process for emergency ALF placements; (5) clarification for ALF providers regarding procedures surrounding resident discharges from facilities; and (6) use of person-centered language throughout the proposed text.

There are three changes since the publication of the proposed text. In Section 20, language addressing the assessment of private pay individuals prior to admission to an ALF was removed because this text was confusing and conflicted with other regulations. Section 15, which addresses the residency requirement, was clarified. The requirement that individuals applying for AG must provide verification of Virginia residency was changed so that individuals may be required to provide verification of Virginia residency. Additionally, the length of time that a close relative has to have resided in Virginia before his family member could apply for AG was reduced from 180 days to 90 days.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

22 VAC 40-25 Auxiliary Grants Program was approved on August 18, 2010 by the State Board 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 numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The legal basis for this regulation is §§ 63.2-217 and 63.2-800 of the Code of Virginia (Code). These sections provide general authority for the development of regulations for program operation and mandatory authority for the development of regulations for the AG Program.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

Amending this regulation will help protect the health, safety, and welfare of vulnerable adults age 60 and over and individuals age 18 to 59 who have a disability and reside in ALFs throughout Virginia. The annual certification will provide sufficient assurances that the personal funds of individuals residing in an ALF are maintained appropriately and not commingled with facility funds. Implementing use of an annual certification form, instead of the costly and complicated annual audit requirement in the current regulation, will reduce burdensome reporting requirements that may hinder providers' willingness to continue to accept individuals who receive AG while still ensuring that personal funds of individuals residing in ALFs are properly maintained and not commingled with facility funds.

Establishing a residency requirement will ensure that more AG beds are available to low-income Virginia residents in need of ALF placements and reduce the number of out-of-state residents who relocate to Virginia in order to take advantage of the AG Program.

Clarifying assessment procedures for emergency admissions to ALFs and the ALF providers' responsibilities associated with discharging residents will improve communication between local departments of social services (LDSS) and ALF providers regarding individuals who are receiving AG payments. These clarifications will also ensure conformity with current licensing regulations.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

The proposed regulation amends the ALFs' financial reporting standards, adds AG residency requirements, clarifies assessment and discharge requirements, changes language to ensure that the AG regulation comports with licensing regulations, clarifies conditions of ALFs' participation in the AG Program, and promotes person-centered language when referring to individuals who apply for AG or live in ALFs. Substantive provisions include:

1. Changing annual audit report requirements to an annual certification requirement thereby minimizing the administrative burden while still ensuring ALFs appropriately manage the funds of the residents.
2. Adding a 90-day residency requirement for AG eligibility to ensure AG funds are available for Virginia residents.
3. Clarifying the assessment requirements associated with emergency placements in order to comport with licensing regulations.
4. Clarifying conditions of ALF providers' participation in the AG Program, including maintenance of residents' personal needs allowances in a separate bank account and issuance of monthly account statements.
5. Introducing person-centered language by removing references to "applicant," "recipient" and "resident."

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 there are no disadvantages to the public or the Commonwealth, please indicate.*

1. ALF providers in the Commonwealth have expressed concerns that the annual audit requirements in the current regulation are costly, complicated, and burdensome, and that without changes to this requirement, some providers may withdraw from the AG program, thus reducing the number of available AG beds. Replacing the annual audit requirement with an annual certification requirement will reduce the burden on ALFs and still provide sufficient information to assure that personal funds of individuals residing in ALFs are properly maintained and not commingled with facility funds.

Creating a residency requirement will ensure that AG beds are available to low-income Virginia residents in need of ALF placements and reduce the number of out-of-state residents who relocate to Virginia in order to take advantage of the AG Program. AG Program payments are comprised of 80% state and 20% local funds. Implementation of a residency requirement may mean that localities supporting a large number of out-of-state individuals with AG would see a reduction in their large local match requirements. However some ALF providers with a majority of AG residents from out-of-state have expressed concern about the limitations imposed by an AG residency requirement.

2. Clarifying the current regulation regarding conditions of ALF providers' participation in the AG Program, particularly with regard to admissions and discharges, will improve communication between LDSS and providers, reduce possible errors in AG payments, and remove current disparities between the AG regulation and Department of Social Services (DSS) licensing regulations.

3. Use of person-centered language in the regulation promotes personal dignity by recognizing that everyone is unique and removes labels that categorize (and sometimes stigmatize) individuals who use state services and benefits.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
15*	Individuals applying for AG must provide verification of Virginia residency in addition to submitting a written statement documenting the individual’s residency in Virginia.	States that individuals applying for AG may be required to show verification of Virginia residency.	Current AG guidance permits the eligibility worker to request documentation for a variety of circumstances if the individual’s statement about those circumstances is questionable. The regulation change permits eligibility workers to exercise professional judgment regarding whether an individual’s written statement is questionable. This is in line with current guidance for AG eligibility workers and reduces the need for the individual to provide excessive documentation when the individual’s statement is not being questioned.
15*	Individuals who have moved to Virginia to join a close relative who has lived in Virginia for at least 180 days are exempt from the 90-day residency requirement.	Changes the length of time a close relative must live in Virginia from 180 day to 90 days.	Families that relocate to Virginia and have a relative who may need to apply for AG would have to wait 180 days before the relative would be eligible for AG. Reducing the close relative’s residency requirement to 90 days conforms more closely with the residency requirement for an individual who relocates to Virginia.

20	The uniform assessment instrument (UAI) shall be completed on all individuals prior to admission to a facility with the exception of an emergency placement and for individuals who are private pay.	Removes the reference to private pay individuals as being exempt from having the UAI completed prior to admission.	Individuals paying privately to live in an ALF are required to be assessed prior to admission. The proposed text exempting private pay individuals was confusing and conflicted with guidance in 22 VAC 40-72-430 and 22 VAC 40-745-20.
----	--	--	---

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
Frankie Minor, Chestnut Grove Assisted Living/Southwest Assisted Living	22VAC 40-25-15 Opposes the residency requirement	DSS believes that the residency requirement is needed and will ensure that AG beds are available to low-income Virginia residents. The residency requirement will reduce General Fund expenditures (80%) and local match requirements (20%) of localities that support a significant number of out-of-state residents who relocate to Virginia to take advantage of the AG program.
Laverne Canter, Fort Shelby Manor ALF	22 VAC 40-25-15 Opposes the residency requirement	
Vicki Hay, Green Springs Rest Home	22 VAC 40-25-15 Opposes the residency requirement	
Sandra Minton, Abingdon Manor	22 VAC 40-25-15 Opposes the residency requirement	
Mike Williams, Virginia Long Term Care Network	22 VAC 40-25-15 Opposes the residency requirement	
Bob Williams	22 VAC 40-25-15 Opposes the residency requirement	
Mary Jane Hay, RN	22 VAC 40-25-15 Opposes the residency requirement	
Barbara Gregory	22 VAC 40-25-15 Opposes the residency requirement	
James Hay	22 VAC 40-25-15 Opposes the residency requirement	
Jamie Minor	22 VAC 40-25-15 Opposes the residency requirement	
Linda Neice, Administrator Greendale Home	22 VAC 40-25-15 Opposes the residency requirement	
James Wilson Hay, Green Springs Rest Home	22 VAC 40-25-15 Opposes the residency requirement	
Debbie Cooper, Administrator, DON	22 VAC 40-25-15 Opposes the residency requirement	
Tanya Anders, Medication Aide	22 VAC 40-25-15 Opposes the residency requirement	
Scott Rittenhouse, Campbell Insurance	22 VAC 40-25-15 Opposes the residency requirement	

Wanda Lawson, Office Manager for Assisted Living	22 VAC 40-25-15 Opposes the residency requirement	DSS believes that the residency requirement is needed and will ensure that AG beds are available to low-income Virginia residents. The residency requirement will reduce General Fund expenditures (80%) and local match requirements (20%) of localities that support a significant number of out-of-state residents who relocate to Virginia to take advantage of the AG program.
C.H. Longwood	22 VAC 40-25-15 Opposes the residency requirement	
Randy Scott, St. Mary's Woods	22 VAC 40-25-15 Supports the residency requirement	DSS agrees that the residency requirement is needed.
Robert Gose, Director, Bristol DSS	22 VAC 40-25-15 Supports the residency requirement	DSS agrees that the residency requirement is needed.
Tommy Cassteel, Director, Washington County DSS	22 VAC 40-25-15 Supports the residency requirement	DSS agrees that the residency requirement is needed.
Randy Scott, St. Mary's Woods	22 VAC 40-25-45 Sometimes it is difficult to determine which county or city the resident is from.	This is beyond the scope of the regulation and should be addressed in guidance. The guidance manual will emphasize the need for communication between eligibility workers and assisted living facility providers.
Randy Scott, St. Mary's Woods	If a resident is in the hospital who decides they lose the grant in 14 or 45 days?	This is beyond the scope of the regulation. This issue should be addressed in guidance.
Randy Scott, St. Mary's Woods	Can the family pay the difference in the grant and keep the room?	ALF providers are not permitted to accept payments above the AG rate. If AG payments have stopped and the family would like to maintain the room, any financial arrangements would be between the provider and the family.
Randy Scott, St. Mary's Woods	When the grant stops, there is no paid grace period to allow the family to get the furniture out.	This is beyond the scope of the regulation, however an AG payment cannot continue if the resident has been discharged from the facility. The facility may develop its own policy with regard to time frames for a family to remove personal items or furniture out of an unoccupied room.
Beverly Soble, Vice President of Regulatory Affairs, Virginia Health Care Association	22 VAC 40-25-70 Supports the proposed regulations and in particular the annual certification form requirement.	DSS agrees that the annual certification requirement will provide sufficient assurances that residents' personal needs allowance are not commingled with ALF operating funds.

Eleven individuals commented that the established AG rate was too low. This issue is beyond the scope of this regulatory action. DSS is aware of this issue. The rate is set by the General Assembly.

One individual commented three times in opposition to the residency requirement.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
22 VAC 40-25-10		Provides definitions of the terms used in the regulation.	Removes the term “audit report” and replaces it with “certification.” Removes the terms “newly licensed assisted living facility,” “other operating expense,” “other operating revenue,” and “operating costs,” as these terms were part of the cost report which is no longer used to determine an ALF’s approved rate. Adds definition of “personal toiletries.” Defines AG rate as established rate as set by the Appropriation Act. Removes the terms “applicant” and “recipient” and replaces them with the person-centered term “individual” throughout the regulation. Corrects capitalization errors. Removes reference to Department of Medical Assistance Services, as this agency is not referenced in other sections of the regulation.
	22 VAC 40-25-15	No current requirement.	Residency Requirement: Establishes requirement that an individual be a Virginia resident for a minimum of 90 days prior to being eligible for AG. Establishes an exception to the 90-day residency requirement if an individual moves to Virginia to be near a close relative who is a Virginia resident. Specifies that residents of Virginia apply for AG in the locality in which they reside. Clarifies that Virginia residents in an institution must apply for AG in the locality where they lived prior to entering an institution.
22 VAC 40-25-20		Describes assessment. States providers may not collect money, gift, donation, or other consideration from or on behalf of a recipient for any services.	Adds that an emergency placement may be made by a Virginia adult protective services worker before an assessment is complete. Clarifies that a provider may not accept money, gift, donation, or other consideration above the established rate from, or on behalf of, any individual for any services.

22 VAC 40-25-30		Describes services covered by the established rate.	Clarifies the description of personal toiletries. Clarifies reference to licensing regulations.
22 VAC 40-25-40		Describes the personal needs allowance and what it covers	Clarifies that the personal needs allowances must be maintained in a separate bank account.
22 VAC 40-25-45		Describes conditions for participation in the AG Program.	Clarifies that the provider agreement must be submitted to DSS along with a copy of the ALF's license, prior to the ALF accepting any AG residents. Changes the deadline for submitting the annual certification form from June 30 to October 1. Clarifies that the established rate must be accepted as payment in full for services rendered. Clarifies the requirement that ALFs maintain personal needs allowances in a separate bank account and issue a monthly account statement. Comports with licensing regulations by clarifying whom to notify and the timeframe for notification when an individual is discharged from an ALF or dies or when an ALF closes or changes ownership. Clarifies to which LDSS an ALF should return AG payments received on behalf of a discharged or deceased individual. Corrects a reference to Adult Services Approved Provider regulations.
22 VAC 40-25-50		Describes establishment of rate. Refers to the audit report requirements.	Removes references to the audit report and the required elements of the audit report. Clarifies that the rate is set forth in the Appropriation Act. Adds an explanation of how the AG payment is calculated.
22 VAC 40-25-60		Describes when AG funds are to be reimbursed.	Provides guidance on returning remaining personal funds when an individual is discharged or dies.
22 VAC 40-25-70		Describes audits.	Changes the section title to Certification. Removes the description of and the information to be contained in the audit report. Describes the contents of the annual certification and timeframe for its submission to DSS. Removes reference to "retroactive adjustment to the rate" because rate is set by the Appropriation Act. Corrects a reference to "Adult Services Approved Provider" regulations.

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.

This regulatory action proposes a simplified though effective means by which ALFs report on the management of residents' personal funds. The proposed residency requirements ensure that AG funds will continue to be available for elderly and disabled citizens of the Commonwealth. Clarifying responsibilities associated with submitting the provider agreement, admission and discharge of residents, and maintenance of personal needs allowances in separate bank accounts will assist ALF providers in understanding their obligations. It also will simplify the regulatory language to comport with licensing regulations.

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.

The proposed amendments will have a positive impact on family stability, responsibility and safety by strengthening protections for the financial well-being of AG recipients in ALFs. Simplifying and reducing the cost of complying with AG regulations will make it more attractive for ALF providers, including family operated businesses, to participate in the AG Program. Strengthening Virginia residency requirements for individuals applying for AG will ensure the AG Program continues to benefit low-income elderly and disabled Virginia citizens in need of ALF placement. Clarifying requirements regarding the submission of the ALF provider agreement will ensure that providers are in compliance with AG regulations and safeguard the rights of individuals residing in ALFs. Incorporating person-centered language promotes the dignity of elderly and disabled individuals. These amendments will not affect parental authority or rights, marital commitment, or disposable family income.