

**State Long-Term Care (LTC) Ombudsman Program
Regulatory Action Panel (RAP) Meeting**

Tuesday, August 13, 2019

1:00 p.m. to 4:00 p.m.

Virginia Department for Aging and Rehabilitative Services

Rooms 101-103-105

8004 Franklin Farms Drive

Henrico, VA 23229

Attendees:

Pam Beckner, Office of the Attorney General

Davis Creef, Virginia Poverty Law Center

Tara Davis-Ragland, Virginia Department of Social Services

David DeBiasi, AARP

Judy Hackler, Virginia Assisted Living Association (VALA)

Carter Harrison, Alzheimer's Association

Dev Nair, Department of Behavioral Health & Developmental Services

F. Ellen Netting, Virginia Commonwealth University School of Social Work

Dana Parsons, LeadingAge Virginia

April Payne, Virginia Health Care Association (VHCA)

Kathy Pryor, Consumer

Marcia Tetterton, the Virginia Association for Home Care and Hospice

Lisa Walker, Bay Aging

Erica Wood, Northern Virginia Aging Network (NVAN)

DARS Staff: Charlotte Arbogast, Catherine Harrison, Joani Latimer, Paige McCleary, Leah Mills, and Gail Thompson

Welcome and Introductions

Ms. Arbogast welcomed the RAP members and thanked everyone for attending. She asked the members to go around the table and introduce themselves.

**Review of Draft Proposed Regulations – State Long-Term Care Ombudsman Program
(Presentation attached)**

Charlotte Arbogast, DARS

After highlighting a few housekeeping items, Ms. Arbogast outlined the goals for the meeting and reminded the members of the overall purpose of the RAP, which is to review and receive feedback on the draft regulations for Virginia's State Long-Term Care Ombudsman Program (SLTCOP). Ms. Arbogast noted that at the April 13 RAP meeting, the members received a presentation on the reasons why revisions to the current SLTCOP regulations were necessary. She reiterated that the revisions to Virginia's regulations were necessary due to the re-authorization of the federal Older Americans Act (OAA) and ensuing federal regulations (45 CFR Parts 1321 and 1324).

Ms. Arbogast stated that the current regulations for the Office of the State Long-Term Care Ombudsman (OSLTCO) and the SLTCOP would be repealed and a new, standalone chapter would be established to more clearly align Virginia's regulations with these federal requirements. She provided an outline of the new draft proposed chapter as well as the sources of the content. Ms. Arbogast highlighted other states' SLTCOP that Policy staff reviewed in compiling the draft proposed regulations.

Ms. Arbogast informed the RAP that the draft proposed regulation section addressing access to legal counsel was still being researched and not available for review for this RAP meeting. She then explained the draft proposed regulations will be subject to Executive Branch review by the Office of the Attorney General, the Department of Planning and Budget, the Secretary of Health and Human Resources, and the Governor's Office. Following the Executive Review, the proposed regulations will be published in the Virginia Register for a 60-day public comment period. There will then be additional opportunity for public comment on the proposed regulations.

Ms. Arbogast informed the RAP that they will be able to submit additional input and public comment after today's meeting. Additional comments would be accepted through 5:00 p.m. on Tuesday, August 27, 2019. She instructed the members that comments could be emailed to either herself or Ms. Mills.

Public Comment/RAP Discussion

Ms. Arbogast opened the meeting for questions and public comments. Below is a general summary of the comments received on the draft regulations by section.

22VAC30-140-10 – Purpose

A question was raised as to what was meant by long-term care services clients having regular and timely access to program services and whether "system" should be included for clarification in B.3.

A suggestion was made add a new Section C to emphasize the resident-directed approach utilized by the SLTOP.

Section 22VAC30-140-20 – Definitions

A comment was made that a couple of the definitions may need to be fleshed out a bit more in lieu of cross referencing them with the other regulatory sections.

A comment was made that the definition of "client" was a shift from the term "resident" and a departure from the historical context. Other commenters noted that the term "client" was appropriate in home and community-based care.

It was noted that the definition of "abuse" was too limited and inconsistent with other sections. It was noted that this definition would need to be modified to reflect the OAA and Virginia definitions.

A question was raised about the “community-based provider” definition and whether this covered all Department of Behavioral Health and Developmental Services’ (DBHDS) licensed providers and all DBHDS licensed entities. This, particularly in relation to the definition of “long-term care services,” seemed to be circular.

For the definition of “neglect,” it was noted that individuals have the right to self neglect and that it may be helpful to emphasize self-determination in the chapter.

22VAC30-140-100 – Qualifications for Representatives of the Office

A suggestion was made that Section A. 8. include clarification that documentation of negative tuberculosis risk assessments or screenings be a requirement for the employer and not the employee.

22VAC30-140-110 – Prerequisite Training, Designation, and Annual Training Requirements

A commenter noted that this section does not include the assessment of cognitive ability and capacity necessary for informed decision making in the annual training requirements. There should be greater detail about the training content to be included for ongoing training.

A suggestion was made to include training on legal issues, which could be added to Section B.5.

However, several members cautioned against making the training requirements too detailed in scope. Such detail could be too restrictive and not allow for flexibility. It was noted that the Administration for Community Living (ACL) is developing guidance on training and a reference to ACL guidance may be helpful.

22VAC30-140-140 – Complaint Processing

A comment was made that Section G. does not include information about closing a case after an investigation if the information cannot be founded/or is unfounded (i.e., “verified” versus “unverified” complaints).

A comment was made that it would be helpful to include information about types of auxiliary aids in Section D. 1. which are used to help communicate or understand the client’s concerns (e.g. a third party helping ensure that a client is understood if they have a speech impairment).

A commenter suggested more clearly delineating the timing for initiating an investigations and clarifying that more egregious complaints would be prioritized. It may be helpful to list the more urgent complaints with accompanying certain time frames for investigations. Several members noted this would be difficult because the SLTCOP was not fully staffed. However, it would be helpful to have more specificity on the factors used to establish the priority for response.

22VAC30-150 – Management of Program Records, Confidentiality, and Disclosure

A comment was made regarding Section B. 2. for program record retention and whether the language had to be so detailed. A suggestion was made to refer to federal and state requirements. It was noted that the specific policy must be included in the text of the regulation for transparency and consistency in keeping with the requirements set forth in the Administrative

Process Act. It was noted that the SLTCOP records retention schedule is determined by the Library of Virginia.

22VAC30-140-160 – Conflict of Interest

A question was raised about Section C.3. and whether donations from long-term care facilities to Area Agencies on Aging (AAAs) constituted a conflict which could be remediated. Questions were also raised whether this provision would apply to Programs for All-Inclusive Care for the Elderly (PACE) and to state-operated assisted living facilities (ALFs)

22VAC30-140-170 – Reporting Suspected Abuse and Neglect

A suggestion was made to add language to Section B. to reflect instances when residents wish to report suspected abuse or neglect to Adult Protective Services.

Another suggestion was made for Section G. to clarify that if a report were to be made to the local department of social services (LDSS), that the representative of the Office would seek information from the LDSS pursuant to § 63.2-1605. of the Code of Virginia.

22VAC30-140-180 – Grievance Process

A recommendation was made to change “second tier” to “reconsideration” in Sections C. 4. and C.5.

A commenter stated it would be helpful to clarify that Section D. 1. does not apply to local ombudsman representatives because this was addressed in a previous subsection.

A question was raised as to what “if appropriate” means for Section F. regarding review by the Department.

22VAC30-140-190 – Protections from Interference, Retaliation and Reprisal; Sanctions

A comment was made that the term “good faith” is used twice in Section A.

A comment was made that Section E is not clear and that it would be helpful to clarify to whom it would apply.

General Comments

One commenter suggested that the staffing ratio included in the Code of Virginia (Va. Code § 51.5-135) for one ombudsman for every 2,000 beds be included in the regulations for emphasis. It was noted that this Code Section also states that this requirement is subject to sufficient appropriations made by the General Assembly.

Several RAP members inquired whether an additional meeting would be convened to review the proposed regulatory language for the role of legal counsel. Ms. Arbogast stated that DARS’ staff was working with the Office of Attorney General in researching necessary components for this section and that she would advise the RAP of next steps once this was completed.

Next Steps

Ms. Arbogast thanked the RAP members for participating. She stated that DARS staff would revise the draft proposed regulations and keep the RAP members informed of the progress of the regulatory review process.

The meeting was adjourned at 2:31 p.m.