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## Proposed Regulation Agency Background Document

<b>Agency name</b>	Department for Aging and Rehabilitative Services
<b>Virginia Administrative Code (VAC) citation(s)</b>	__22__ VAC_30__-_80__
<b>Regulation title(s)</b>	Auxiliary Grant Program
<b>Action title</b>	Amend Auxiliary Grant Regulation to comport with 2012 legislations
<b>Date this document prepared</b>	April 20, 2016

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*.

### Brief summary

*Please provide a brief summary (preferably no more than 2 or 3 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.*

The intent of the proposed action is to (1) add information about third-party payments to the regulation (2) clarify requirements for assisted living facilities to implement third-party payments and (3) ensure third-party payments are applied appropriately as a payment source. The proposed action will ensure that regulations comport with § 51.5-160F (formerly § 63.2-800) of the Code of Virginia, which was amended during the 2012 General Assembly session. A regulatory action was started after the 2012 session, but authority for the Auxiliary Grant Program was moved from the Department of Social Services to the Department for Aging and Rehabilitative Services in 2013. Therefore the regulatory action, which had not reached the final stage, was withdrawn.

### 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.*

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Auxiliary Grant- AG  
Adult Foster Care- AFC  
Local Departments of Social Services- LDSS  
Uniform Assessment Instrument-UAI

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.*

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The legal basis for this regulatory action is § 51.5-160 of the Code of Virginia, which authorizes the Commissioner of the Department for Aging and Rehabilitative Services to adopt regulations for the administration of the auxiliary grants program. In addition, § 51.5-131 of the Code of Virginia authorized the Commissioner of the Department for Aging and Rehabilitative Services to promulgate regulations necessary to carry out the provisions of the laws of the Commonwealth administered by the Department.

### Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation 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.*

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Implementing third-party payments will contribute to the health, safety, welfare and quality of life of AG participants residing in an Assisted Living Facility or Adult Foster Care homes because it will permit family members or others to provide goods and services needed by residents but not covered by Auxiliary Grant payments.

There are no known potential issues that need to be addressed as the regulation is developed.

### Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of changes” section below.*

This provision will add a new section to the regulation, which will include language to address third-party payments. New content will define third-party payments and address documentation for these payments as well as permitted uses of third-party payments. New language will also clarify what services and goods providers are required to provide under the Auxiliary Grant Program

**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.*

Allowing third-party payments will help assisted living providers offset costs of needed goods or services beyond those required by the AG provider agreement. The primary disadvantages include that only an estimated 10 percent or fewer AG participants have access to voluntary third-party payments; that the payments must be made after the goods or services are provided; and, that third-party payments cannot be used for a private room upgrade.

The disadvantage to local departments of social services (LDSS) and DSS is that the payments may complicate the calculation and verification of income for determining AG eligibility and that DSS licensing staff will have to add monitoring of third-party payment documentation to their inspections. However, it is estimated that only a small percentage of AG recipients will have access to third-party payments.

The impact of third- party payments on other federal or state services or benefits is unknown at this time.

**Requirements more restrictive than federal**

*Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need 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.*

This proposal does not have any requirements which are more restrictive than federal requirements.

**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.*

No locality is particularly affected.

**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.*

In addition to any other comments, the Department for Aging and Rehabilitative Services 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 for the public comment file may do so by mail, email or fax to Tishaun Harris-Ugworji, DARS 8004 Franklin Farms Drive, Henrico, Virginia 23229, phone 804-662-7531, 804-662-9531 fax, or [Tishaun.harrisugworji@dars.virginia.gov](mailto:Tishaun.harrisugworji@dars.virginia.gov).

Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

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

**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 requirement creates the anticipated economic impact.*

<p><b>Projected cost to the state to implement and enforce the proposed regulation, including:</b>  <b>a) fund source / fund detail; and</b>  <b>b) a delineation of one-time versus on-going expenditures</b></p>	<p>There is no additional cost to the state to implement this regulation. The staff time for developing additional regulatory and policy guidance documents and the ongoing monitoring of third-party payment documentation by licensing inspectors would become a part of the routine work of existing staff in Adult Services and Licensing, for which there is no additional cost.</p>
<p><b>Projected cost of the new regulations or changes to existing regulations on localities.</b></p>	<p>There is no additional cost to the state to implement this regulation. The staff time for developing additional regulatory and policy guidance documents and the ongoing monitoring of third-party payment documentation by licensing inspectors would become a part of the routine work of existing staff in Adult Services and Licensing, for which there is no additional cost.</p>

<p><b>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</b></p>	<p>Individuals receiving the AG, their families and ALFs and AFC home owners whose residents have access to potential third-party payers.</p>
<p><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:  a) is independently owned and operated and;  b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>Approximately 295 Virginia ALFs and 48 AFC homes accept AG residents. The Joint Legislative and Review Commission (JLARC) estimated that fewer than 10% of Auxiliary Grant recipients living in ALFs and AFC homes would be affected. The majority of ALF and AFC providers that accept AG residents are small businesses.</p>
<p><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 including:</b>  a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and  b) 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.</p>	<p>Family members or others will be able to make voluntary payments for additional goods or services beyond what the AG requires for some residents of ALFs and AFC homes without affecting the resident’s AG eligibility Third-party payments must be voluntary and cannot be used as a condition of admission or length of stay or be used for a private-room upgrade. ALF and AFC providers or their staffs will be required to document and report all third-party payments. In some cases, providers may see a cost savings for needed items they previously provided to residents, such as extra incontinence supplies.</p>
<p><b>Beneficial impact the regulation is designed to produce.</b></p>	<p>Third-party payments will contribute to the health, safety, welfare and quality of life of a relatively small number of AG residents of ALFs and AFC homes and permit family members or others who wish to supplement required goods or services to do so. Third-party payments may help reduce the cost to the provider of certain goods and services.</p>

### 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 alternatives were considered as this action is necessary to ensure compliance with Code changes that took effect July 1, 2012.

### Regulatory flexibility analysis

*Pursuant to § 2.2-4007.1B of the Code of Virginia, 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.

There are no alternative regulatory methods for implementing this change.

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

*If you are using this form to report the result of a periodic review/small business impact review that was announced during the NOIRA stage, please 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.*

The proposed changes have been made to meet the requirements of 2012 legislation. A proposed regulatory action to make these changes was begun by the Department of Social Services after the 2012 session. However, during the regulatory process, authority for the Auxiliary Grant Program was moved from the Department of Social Services to the Department for Aging and Rehabilitative Services. Therefore the regulatory action, which had not reached the final stage, was withdrawn by the Department of Social Services. This proposed amendment is beginning this action again under the Department for Aging and Rehabilitative Services.

There is a continued need for this regulation. There were no complaints or comments received from the public regarding this regulation. The regulation is written in simple terms in order to reduce complexity. It does not overlap, duplicate, or conflict with federal or state law. The regulation had not been reviewed since 10/23/2013; thus, a review determined that the proposed changes are needed in order to comply with the 2012 legislation.

**Public comment**

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

There were no public comments received in response to the NOIRA.

**Family impact**

*Please assess the impact of this 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.

This action will not impact the authority and rights of parents in the education, nurturing and supervision of children. It will not discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse or one’s children and/or elderly parents. This action will not erode the marital commitment.

This proposed change is expected to affect only 10% of Auxiliary Grant recipients living in ALFs and AFC homes. It will allow family members or other entities to use discretionary income to pay for goods and services in addition to what the AG provides. Participation in third-party payments is voluntary and cannot be used as a condition of admission or length of stay.

### Detail of changes

*Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.*

For changes to existing regulation(s), please use the following chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
10			Added definitions for: authorized payee; authorized representative; minimal assistance; occasional bladder or bowel incontinence; personal funds; and third-party payment. Added language to the definition of personal needs allowance. Deleted the definition of personal representative.  New definitions relate to the new sections of the regulations. Amended definitions add clarity for existing sections. Personal representative was deleted because the terms are no longer used in the regulation.
20		Required use of UAI	Changes language to use of “state designated assessment form.” This change will allow for future assessment form changes that may replace the UAI
30			Language corrections and added

			reference to needed compliance with 22 VAC40-72
40		That personal needs funds must be maintained in separate bank account	Adds that personal needs funds may also be given directly to the individual, authorized representative or court appointed representative. This allows disbursement of funds to individuals who may purchase personal items for the individual using those funds
45		Does not address third-party payments for goods and services.	Adds new paragraphs C through E related to third-party payments. This language is required by changes to § 63.2-800 allowing third-party payments. The intent is to assist ALFs and AFC homes in reducing their costs for goods and services that are not covered by the AG payment and to allow family members or other entities to pay voluntarily for goods or services not covered by AG.
60		States those providers who do not comply with requirements of the regulation may be subject to adverse action.	Adds language that includes suspension and termination of the provider agreement as potential adverse actions.
70		Certification	Add the word ALF to clarify who completes the annual certification form.
form			Added third-party payment check box to the form for Certification.