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Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Department for Aging and Rehabilitative Services
Virginia Administrative Code (VAC) citation(s)	22VAC30-80
Regulation title(s)	Auxiliary Grant Program
Action title	Amend Auxiliary Grant (AG) Regulation to include Supportive Housing
Date this document prepared	Oct. 12, 2016

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to eighteen months), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation. 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 of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

Currently, Auxiliary Grant regulations address standards for the two settings, Assisted Living Facility and Adult Foster Care Home in which an individual has traditionally received Auxiliary Grant. The intent of this proposed regulatory action is to (1) add supportive housing as a third setting in which individuals may receive Auxiliary Grant, (2) define requirements to participate in the supportive housing setting, (3) clarify providers' responsibilities for each setting, and (4) update terminology and guidelines for the AG Program.

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.

- Auxiliary Grant (AG)
- Assisted Living Facility (ALF)
- Adult Foster Care Home (AFCH)
- Department for Aging and Rehabilitative Services (DARS)
- Department of Social Services (DSS)
- Supportive Housing (SH)
- Department of Behavioral Health and Developmental Services (DBHDS)

Emergency Authority

The APA (Code of Virginia § 2.2-4011) states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A.4. of § 2.2-4006. Please explain why this is an emergency situation as described above, and provide specific citations to the Code of Virginia or the Appropriation Act, if applicable.

The 2016 Acts of Assembly, Chapter 567, enactment clause #2 directed the Commissioner of DARS to promulgate regulations for the provision of supportive housing for individual receiving auxiliary grants within 180 days. Therefore, emergency regulations are needed to meet this requirement.

Legal basis

Other than the emergency authority described above, 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 number(s), if applicable, and 2) the promulgating entity, i.e., agency, board, or person.

The legal basis for this regulatory action is §51.5-160 of the *Code of Virginia*, which authorizes the Commissioner of DARS to adopt regulations for the administration of the AG Program. In addition, §51.5-131 of the *Code of Virginia* authorizes the Commissioner of DARS to promulgate regulations necessary to carry out the provisions of the laws of the Commonwealth administered by the Department.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The intent of the proposed regulatory action is to add supportive housing as an option for individuals receiving the Auxiliary Grant. The regulation needs to be amended to provide clear guidance regarding the supportive housing setting, which is a new living arrangement that individuals who receive AG payments may choose, in accordance with newly enacted amendments to the statutes authorizing the AG program.

The goals of this amended regulation are to (1) add information about supportive housing as a new setting for AG, (2) define requirements for providers of the supportive housing setting, (3) clarify the

providers' responsibilities for each setting, and (4) update terminology and guidelines for the Auxiliary Grant Program.

Need

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, delineate any potential issues that may need to be addressed as the regulation is developed.

ALF and AFC placements are limited. Amending the AG regulations to allow supportive housing settings will assist individuals who may be unable to locate an ALF or AFC placement to meet their needs. Adding supportive housing as an approve setting for AG will protect the health, safety, and welfare of individuals who choose this living arrangement by ensuring that they will receive safe, high quality support to meet their daily living needs.

Substance

Please describe any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons the agency has determined that the proposed regulatory action is essential to protect the healthy, safety, or welfare of Virginians.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, and likely impact of proposed requirements
10		Defines terms used throughout the regulation.	Added acronym "SH" in several definitions. Added SH to definition of Auxiliary Grants Program. Added information that number of individuals who may be served in SH may not exceed the number delineated in the signed agreement between DARS and SSA. Added SH to definition of "certification." Defined acronym for DBHDS and SH. Clarified that provider includes an SH provider. Clarified definition of "qualified assessor"
20		Describes procedures for assessing individuals in AFCH or ALF settings.	Added evaluation and assessment procedures for individuals in SH.

30		Describes basic services to be provided to individuals in AFCH or ALF settings.	Clarified basic services in an ALF or AFCH. Amended obsolete reference to USDA food pyramid
	22VAC30-80-35		Added basic services for supportive housing setting.
45		Describes conditions for providers to participate in AG Program	Added a heading "Provider Agreement for Supportive Housing". Listed requirements for the SH provider agreement.
50		Describes how the AG rate is established.	Added references to SH where appropriate.
60		Describes reimbursement procedures.	Added references to other sections of the regulation. Added references to SH where appropriate.
70		Describes the requirements for ALFs to submit certification forms.	Clarified differences in certification requirements for ALF and SH providers.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

There are no alternatives to this proposed regulatory action. DARS is required to promulgate emergency regulations in response to the Acts of Assembly.

Public participation

The agency (DARS) 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.

The agency is also utilizing an advisory panel to assist in developing this emergency regulation and the permanent regulation that will follow . The panel members are: Michael Shank, citizen; Alexander Macaulay, NAMI representative; Kristen Yavorsky, Homeless Coordinator, DBHD; Barry Lee, Office of Licensure, DBHD; Sherry Meyers, Pathways Home Provider; Dawn Riddle, Roanoke DSS; Davina Hall, Lynchburg DSS; Shenee McCrae, Richmond Behavioral Health; Tony Powell, Horizon Behavioral Health provider; Brenda Hornsby, Licensing Adm., DSS.

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 [Tishaun Harris Ugworji, 8004 Franklin Farms Drive, Henrico, VA, 804-662-7531, 804-662-9531, and Tishaun.harrisugworji@dars.virginia.gov]. 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.

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 regulatory change will clarify the living arrangement choices available to individuals who are eligible for AG and give these individuals more options to live as independently as possible.
