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**TO:** JAMES A. ROTHROCK, Commissioner  
Virginia Department of Social Services

**FROM:** MICHELLE A. L'HOMMEDIEU   
Assistant Attorney General

**DATE:** July 19, 2017

**SUBJECT:** Exempt Final Regulation – Amend Adult Services Approved Provider  
Regulations, 22 VAC 30-120-10 *et seq.* (4810/7919)

I am in receipt of the attached regulation to amend the Adult Services Provider regulations 22 VAC 30-120-10 *et seq.* You have asked the Office of the Attorney General to review and determine if the DARS Commissioner has the statutory authority to promulgate the proposed regulations and if the proposed regulations comport with applicable state law.

Virginia Code § 51.5-131 mandates that the Commissioner promulgate regulations that are necessary to carry out the provisions of the laws of the Commonwealth administered by DARS. The current regulations for the administration of adult services approved providers are set forth at 22 VAC 30-120-10 *et seq.* The proposed amendments to these regulations are necessary to reflect the changes to Virginia Code by the adoption of Chapters 195 and 809 of the 2017 Acts of Assembly.

Based on my review, it is my view that the DARS Commissioner has the authority to promulgate the final regulations, subject to compliance with the provisions of Article 2 of the Administrative Process Act (“APA”) and Executive Order 17 (2014), and has not exceeded that authority. The Agency Background Document available on Town Hall reflects the Commissioner’s approval of these regulatory amendments on May 12, 2017. Based on the foregoing, it is my view that the amendments to these regulations are exempt from the procedures of Article 2 of the APA under Virginia Code § 2.2-4006(A)(4)(a). If you have any questions or need additional information about this regulation, please contact me at 786-6005.

cc: Kim F. Piner, Esq.  
Attachment

**Project 5079 - Final**

**DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES**

**Amend Adult Services Approved Provider Regulations to comport with legislation passed during the 20**

**22VAC30-120-10. Definitions.**

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Activities of daily living" or "ADLs" means bathing, dressing, toileting, transferring, bowel control, bladder control and eating/feeding. A person's degree of independence in performing these activities is part of determining the appropriate level of care and services.

"Adult" means any individual 18 years of age or over.

"Adult abuse" means the willful infliction of physical pain, injury or mental anguish or unreasonable confinement of an adult as defined in § 63.2-1603.

"Adult day services provider" means a provider who gives personal supervision for up to three adults for part of a day. The provider promotes social, physical and emotional well-being through companionship, self-education, and satisfying leisure activities. Adult day services that are provided for more than three adults require licensure by the Virginia Department of Social Services.

"Adult exploitation" means the illegal, unauthorized, improper, or fraudulent use of an incapacitated adult as defined in § 63.2-1603 or his funds, property, benefits, resources, or other assets for another's profit, benefit, or advantage, including a caregiver or person serving in a fiduciary capacity, or that deprives the adult of his rightful use of or access to such fund, property, benefits resources, or other assets. "Adult exploitation" includes (i) an intentional breach of a fiduciary obligation to an adult to his detriment or an intentional failure to use the financial resources of an adult in a manner that results in the neglect of such adult; (ii) the acquisition, possession, or control of an adult's financial resources or property through the use of undue influence, coercion, or duress; and (iii) forcing or coercing an adult to pay for goods or services or perform services against his will for another's profit, benefit, or advantage if the adult did not agree or was tricked, misled, or defrauded into agreeing, to pay for such goods or services or perform such services.

"Adult foster care" means room and board, supervision, and special services to an adult who has a physical or mental condition or an emotional or behavioral problem. Adult foster care may be provided by a single provider for up to three adults.

"Adult foster care provider" means a provider who gives room and board, supervision and special services in his own home for up to three adults who are unable to remain in their own homes because of a physical or mental condition or an emotional or behavioral problem. Care provided for more than three adults requires licensure by the Virginia Department of Social Services.

"Adult neglect" means that an adult as defined in § 63.2-1603 is living under such circumstances that he is not able to provide for himself or is not being provided services necessary to maintain his physical and mental health and that the failure to receive such necessary services impairs or threatens to impair his well-being.

"Adult services" means services that are provided to adults 60 years of age and older and to adults 18 years of age and older who are impaired.

"Assistant" means any individual who is responsible to assist an adult services approved provider in caring for adult clients. Assistants must meet the same requirements as the provider.

"Chore provider" means a provider who performs nonroutine, heavy home maintenance tasks for adult clients unable to perform such tasks for themselves. Chore services include minor repair work on furniture and appliances in the adult's home; carrying coal, wood and water; chopping wood; removing snow; yard maintenance; and painting.

"Client" means any adult who needs supervision and/or services and seeks assistance in meeting those needs from a local department of social services.

"Companion provider" means a provider who assists adult clients unable to care for themselves without assistance and where there is no one available to provide the needed services without cost in activities such as light housekeeping, companionship, shopping, meal preparation, transportation, household management and activities of daily living (ADLs).

"Department" means the Virginia Department for Aging and Rehabilitative Services.

"Home-based services" means companion, chore, and homemaker services that allow individuals to attain or maintain self-care and are likely to prevent or reduce dependency.

"Homemaker services" means a provider who gives instruction in or, where appropriate, performs activities such as personal care, home management, household maintenance, nutrition, consumer or hygiene education.

"In-home provider" means an individual who provides care in the home of the adult client needing supervision and/or services. In-home providers include companion, chore, and homemaker providers.

"Instrumental activities of daily living" means meal preparation, housekeeping/light housework, shopping for personal items, laundry, or using the telephone. An adult client's degree of independence in performing these activities is part of determining the appropriate level of care and services.

"Local board" means the local board of social services representing one or more counties or cities.

"Local department" means the local department of social services of any county or city in this Commonwealth.

"Local department-approved provider" means a provider that is not subject to licensure and is approved by a local department of social services to provide services to clients.

"Out-of-home provider" means an individual who provides care in the individual's own home to adult clients who enter the home for purposes of receiving needed supervision and/or services.

"Personal care services" means the provision of nonskilled services including assistance in the activities of daily living, and may include instrumental activities of daily living related to the needs of the adult client, to maintain the adult client's health and safety in their home.

"Responsible person" means an individual designated by or for an adult client who is authorized to make decisions concerning the adult client and/or to receive information about the adult client.

Statutory Authority

§ 51.5-131 of the Code of Virginia.

Historical Notes

Former 22VAC40-771-10, derived from Virginia Register Volume 24, Issue 2, eff. November 1, 2007; amended and renumbered as 22VAC30-120-10, Virginia Register Volume 30, Issue 1, eff. October 9, 2013.

**22VAC30-120-30. Standards for providers and other persons.**

A. Age requirements include:

1. All local department-approved adult services homemaker providers shall be at least 18 years of age.
2. All local department-approved adult services chore and companion providers shall be at least 16 years of age. If the local department chooses to approve a chore or companion provider who is at least 16 years of age but less than 18 years of age, the local department must determine that the provider is competent and able to provide the service.
3. Any assistant to a local department-approved in-home provider for adult services shall be at least 16 years of age.

B. Criminal record background checks and additional requirements include:

1. The provider and any assistant, the spouse of the provider, or other adult household members who come in contact with adults in care shall identify any criminal convictions and consent to a criminal record search. A new criminal record background check shall be required at the time of renewal.
2. Convictions of ~~crimes listed in § 63.2-1719~~ any offense set forth in clause (i) of the definition of barrier crime in §19.2-392.02 of the Code of Virginia shall prohibit a provider, the assistant, spouse of the provider, or other adult household members who come in contact with adults in care to receive approval as a provider. In addition, if the provider or, for adult foster care and adult day services, the assistant, spouse of the provider, or other adult household members who come in contact with adults in care, has been convicted of any other felony or misdemeanor that, in the judgment of the local department jeopardizes the safety or proper care of adults, the provider shall be prohibited from being approved as a provider of services to adults.
3. Conviction of ~~a crime listed in § 63.2-1719~~ any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02 of the Code of Virginia will result in the revocation of the provider's approval unless an allowable variance is granted by the local department.
4. When the provider and any assistant, and for adult foster care, spouse of the provider, or other adult household members who come in contact with adults in care, has been convicted of a felony or misdemeanor not listed in ~~§ 63.2-1719~~ clause (i) of the definition of barrier crime in §19.2-392.02 of the Code of Virginia, the local department may approve the provider if the local department determines that the conviction does not jeopardize the safety or proper care of the adult.

C. Interview, references, and employment history requirements include:

1. The provider shall participate in interviews with the local department.
2. The provider shall provide at least two references from persons who have knowledge of the provider's ability, skill, or experience in the provision of services and who shall not be related to the provider.
3. The provider shall provide information on the provider's employment history.
4. The local department shall use the interviews, references, and employment history to assess that the provider is:
  - a. Knowledgeable of and physically and mentally capable of providing the necessary care for adults;
  - b. Able to sustain positive and constructive relationships with adults in care, and to relate to adults with respect, courtesy, and understanding;
  - c. Capable of handling emergencies with dependability and good judgment; and

- d. Able to communicate and follow instructions sufficiently to ensure adequate care, safety and protection for adults.
- 5. For adult foster care and adult day services, at least one interview shall occur in the home where the care is to be provided. All adult household members shall be interviewed to ensure that they understand the demands and expectations of the care to be provided.
- 6. For homemaker providers, the local department shall further use the interview, references, and employment history to assess that the provider has knowledge, skills, and ability, as appropriate, in:
  - a. Home management and household maintenance;
  - b. The types of personal care of the elderly or adults with a disability permitted by regulation;
  - c. Nutrition education and meal planning and preparation, including special diets; and
  - d. Personal hygiene and consumer education.
- 7. For adult foster care providers, the local department shall further use the interview, references, and employment history to assess that the provider has sufficient financial income or resources to meet the basic needs of his own family and has the knowledge, skills, and abilities to care for adults, including, but not limited to:
  - a. Provision of a furnished room in the home that meets applicable zoning, building, and fire safety codes.
  - b. Housekeeping services based on the needs of the adult in care.
  - c. Nutritionally balanced meals and snacks, including extra portions and special diets as necessary.
  - d. Provision of clean bed linens and towels at least once a week and as needed by the adult.
  - e. Assistance with personal hygiene including bathing, dressing, oral hygiene, hair grooming and shampooing, care of clothing, shaving, care of toenails and fingernails, arranging for haircuts as needed, care of needs associated with menstruation or occasional bladder or bowel incontinence.
  - f. Provision of generic personal toiletries including soap and toilet paper.
  - g. Assistance with the following: care of personal possessions, care of personal funds if requested by the adult and adult foster care home's policy permits it, use of telephone, arranging transportation, obtaining necessary personal items and clothing, making and keeping appointments, and correspondence.
  - h. Securing health care and transportation when needed for medical treatment.
  - i. Providing social and recreational activities as required by the local department and consistent with licensing regulations.
  - j. General supervision for safety.

D. Training requirements include:

- 1. The local department shall provide basic orientation to any approved provider.
- 2. The provider shall attend any orientation and training required by the local department. The provider shall bear the cost of any required training unless the local department subsidizes the cost for all local department-approved providers.

E. Medical requirements include:

- 1. The provider; for out-of-home care, the assistant; the provider's spouse; and all other adult household members who come in contact with adults in care shall submit a

statement from the local health department or licensed physician that he is believed to be free of tuberculosis in a communicable form.

2. The provider and assistant shall submit the results of a physical and mental health examination when requested by the local department.

F. All local department-approved providers shall keep the local department informed of changes in the household that may affect approval of the provider.

G. The provider shall have the capability to fully perform the requirements of the position, have the moral and business integrity and reliability to ensure good faith performance and be determined by the local department to meet the requirements of the position.

H. Any provider who causes the local department to make an improper payment by withholding information or providing false information may be required to repay the amount of the improper payment. Failure to repay any improper payment shall result in a referral for criminal or civil prosecution.

**Statutory Authority**

§ 51.5-131 of the Code of Virginia.

**Historical Notes**

Former 22VAC40-771-30, derived from Virginia Register Volume 24, Issue 2, eff. November 1, 2007; renumbered as 22VAC30-120-30, Virginia Register Volume 30, Issue 1, eff. October 9, 2013.