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TO: KATHRYN A. HAYFIELD, Commissioner
Virginia Department of Social Services

FROM: MICHELLE A. L'HOMMEDIEU 
Assistant Attorney General

DATE: August 30, 2019

SUBJECT: Proposed Regulations – Establish Adult Services Standards Regulations, 22
VAC 40-130-10 *et seq.* (4851/8246)

I am in receipt of the attached regulations to establish standards for adult services 22 VAC 30-130-10 *et seq.* You have asked the Office of the Attorney General to review and determine if the Department of Aging and Rehabilitative Services (“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 and 51.5-145 mandate that the DARS Commissioner promulgate regulations that are necessary to carry out the provisions of the laws of the Commonwealth administered by DARS, which includes responsibility for promulgating regulations concerning the provision of adult services by local departments of social services. These proposed regulations establish standards for adult services in the Commonwealth and would be set out at 22 VAC 30-130-10 *et seq.*

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 and Executive Order 14 (amended) (2018), and has not exceeded that authority. The Agency Background Document available on Town Hall reflects the Commissioner has not yet approved these proposed regulations. 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 5230 - Proposed

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Establish Adult Services Standards

CHAPTER 130

ADULT SERVICES STANDARDS

22VAC30-130-10. 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, eating/feeding, and bowel and bladder continence.

"Adult" means any individual age 18 or over, or under 18 if legally emancipated.

"Adult services" means services that are provided by local departments of social services to adults with an impairment.

"Adult with an impairment" means an adult whose physical or mental capacity is diminished to the extent that the adult needs counseling or supervisory assistance with ADLs or instrumental activities of daily living.

"Auxiliary Grants" or "AG" means cash payments made to certain aged, blind or disabled individuals who receive benefits under Title XVI of the Social Security Act, as amended, or would be eligible to receive these benefits except for excess income.

"Chore services" means non-routine, heavy home maintenance services provided to adults including minor repair work on furniture and appliances in the adult's home; carrying coal, wood or water; chopping wood; removing snow; yard maintenance; and painting.

"Companion services" means services to an adult including light housekeeping, companionship, shopping, meal preparation, transportation, laundry, money management, and assistance with ADLs.

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

"Department-designated case management system" means the official state automated computer system for adult services that collects and maintains information on adult services provided by the local department.

"Eligibility based on income" means an eligibility category under which the adult's eligibility for services is based upon an income scale issued annually by the department.

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

"Homemaker services" means services that provide the adult instruction in or the performance of activities to maintain a household. Homemaker services may include personal care, home management, household maintenance, nutrition, and consumer or hygiene education.

"Income maintenance" means an eligibility category under which the adult is eligible for a service because the adult receives Temporary Assistance for Needy Families, Supplemental Security Income, or AG.

"Instrumental activities of daily living" or "IADLs" means tasks such as meal preparation, shopping, housekeeping, money management, transportation, using the telephone, home maintenance, and laundry.

"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.

"Public assistance" means TANF, AG, medical assistance, energy assistance, supplemental nutritional assistance program, employment services, child care, and general relief.

"Responsible person" means an individual who is authorized under state or federal law to make decisions concerning the adult and to receive information about the adult.

"Service plan" means a written plan to address the needs of the adult.

"Social supports" means individuals or organizations who routinely provide assistance or support to the adult.

"Uniform Assessment Instrument" or "UAI" means the department-designated assessment form. It is used to record information about the adult's level of service needs.

"Universal access" means an eligibility category under which the adult is eligible for services without consideration of the adult's income.

22VAC30-130-20. Intake process.

A. Intake is designed to provide a timely, coordinated method for the adult to request services or assistance or to obtain sufficient information about other resources.

B. The local department shall be responsible for performing intake activities. These activities may include information and referral or initial assessment for assistance as indicated by the adult's situation.

22VAC30-130-30. Services and activities.

Local departments shall provide the following adult services:

A. Services provided under Universal Access.

1. Screening for long-term care services and supports pursuant to § 32.1-330 of the Code of Virginia.

2. Public pay assisted living facility assessment pursuant to § 63.2-1804 of the Code of Virginia.

3. Review of annual reports submitted by guardians pursuant to § 64.2-2020 of the Code of Virginia.

B. Home-based services provided under Universal Access, Income Maintenance, or Eligibility Based on Income.

1. Home-based services shall be provided, to the extent that federal or state funding is available, as requested by an adult with an impairment who meets financial and functional eligibility criteria.

2. Local boards shall establish a local home-based services policy that includes the types of home-based services that are offered in the locality, the functional eligibility criteria, and the financial eligibility criteria as decided by the local board.

3. The local department, upon the decision of the local board, may choose to offer home-based services under Universal Access. If the local department does not offer home-based services under Universal Access, the adult shall be evaluated by the local department under the eligibility categories of Income Maintenance or Eligibility Based on Income. Adults who are not eligible under Universal Access or Income Maintenance, shall be evaluated by the local department under the category Eligibility Based on Income category.

22VAC30-130-40. Eligibility determination.

A. To request home-based services, the adult or the adult's responsible person shall submit a service application (Application for Adult Services Form) to the local department. The service application shall be on a form provided by the department. The local department shall document receipt of the application in the department-designated case management system. A service application shall not be required to request a screening for long-term care services and supports, for an assisted living facility assessment, or for review of an annual guardian report.

B. Determinations for functional eligibility and financial eligibility are separate processes but shall be pursued simultaneously. Functional and financial eligibility shall be determined as promptly as possible. The local department shall notify the adult of its eligibility determination decision no later than 45 days from the date the application is received by the local department.

C. Functional eligibility. The local department shall determine the adult's functional eligibility for home-based services. Home-based services shall not be available to adults who reside in an institutional setting including a nursing facility, assisted living facility, or hospital. The local department shall assess the adult using the UAI, the department-designated form, including evaluating the adult's degree of independence or need for assistance with performing ADLs and IADLs.

D. Financial eligibility. The local department shall determine the adult's financial eligibility for home-based services.

1. If the local department chooses to offer home-based services under Universal Access, the adult is financially eligible for home-based services without consideration of the adult's income.

2. If the local department chooses to offer home-based services under Income Maintenance, the local department shall verify and document the adult's source of income in the department-designated case management system, and document whether the adult is eligible for Auxiliary Grant, Temporary Assistance for Needy Families, or Supplemental Security Income. Adults who receive Auxiliary Grant, Temporary Assistance for Needy Families, or Supplemental Security Income meet the financial eligibility requirement for home-based services offered under the Income Maintenance category.

3. If the local department chooses to offer home-based services under Eligibility Based on Income, each local board shall select a threshold percentage of the median income to evaluate financial eligibility for adults. The department shall provide a scale of the median income for a family of four in Virginia as updated periodically in the Federal Register by the U.S. Department of Health and Human Services annually to local departments to use to determine financial eligibility. The adult's income, not resources, shall be counted when determining the adult's financial eligibility. The local department shall verify and document the adult's income in the department-designated case management system. Income from the following resources shall be disregarded when determining financial eligibility for home-based services in Eligibility Based on Income category:

a. Home produce utilized by the adult for his own consumption;

b. The value of food benefits under the Supplemental Nutrition Assistance Program;

c. The value of supplemental food assistance received under the Child Nutrition Act of 1966 (42 USC §§ 1771-1789). This includes all school meals programs; the Women, Infants and Children program, and the Child Care Food program.

- d. The value of foods donated under the United States Department of Agriculture Commodity Distribution Program, including those furnished through the school meal programs;
- e. Benefits received under Title VII, Nutrition Program for the Elderly, of the Older Americans Act of 1965, as amended (42 USC §§ 3001 et seq.);
- f. Grants or loans to any undergraduate students for educational purposes made or insured under any program administered by the United States Secretary of Education;
- g. A scholarship or grant obtained and used under conditions which preclude its use for current living costs;
- h. Training allowance provided by the department for persons participating in Rehabilitative Services Programs;
- i. Payments to VISTA volunteers;
- j. The Veterans Administration educational amount for the caretaker 18 or older when used specifically for educational purposes. Any additional money included in the benefit amount for dependents is to be counted as income;
- k. Income tax refunds including earned income tax credit advance payments and refunds;
- l. Payments made under the Energy Assistance Program;
- m. All federal, state, local government rent and housing subsidies and utility payments;
- n. Funds distributed to, or held in trust for, members of any Indian tribe under Public Laws 92-254, 93-134, 94-540, 97-458, 98-64, 98-123, or 98-124. Additionally, interest and investment income accrued on such funds while held in trust, and purchases made with such interest and investment income;
- o. All bona fide loans. The loan may be for any purpose and may be from a private individual as well as from a commercial institution. The amount disregarded is limited to the principal of the loan;
- p. Monetary gifts for special occasions such as the adult's birthdays, holidays, or graduations;
- q. Withdrawals of bank deposits;
- r. Payments to vendors for services provided to the adult; and
- s. Lump sum insurance payments.

22VAC30-130-50. Service planning.

A. A variety of interventions including, but not limited to, referral to public assistance and other resources, case management, and other programs may be provided depending on the adult's needs.

B. The services or activities may be provided directly by local department staff or volunteers, purchased from local department approved providers or contracted vendors, or provided through referral to other community resources.

C. If an adult is determined eligible for home-based services, the local department shall develop a service plan, enter it into the department-designated case management system, and review it at least annually. A service plan shall not be required when the only intervention or activity provided by the local department is screening for long-term services and supports, public pay assisted living facility annual assessment or review of an annual guardian report. The local department, the adult and the adult's family, the responsible person, or other social

supports, if applicable, shall collaborate to evaluate progress towards meeting the goals and objectives of the service plan. The local department shall document progress towards meeting service plan goals and objectives at least quarterly in the department-designated case management system.

D. For any services for which a payment is made on behalf of an adult, the service, service provider, and payment authorization shall be documented in the service plan. Any local department hard copy records documenting the provision of adult services shall be made available to the department upon request.

22VAC30-130-60. Responsibilities of local department.

A. The local department shall comply with all laws, regulations, and department guidance regarding the provision of adult services.

B. The local department shall notify the adult on a form approved by the department when the local department takes an action regarding home-based services pursuant to § 51.5-147 of the Code of Virginia.

C. The local department shall close the adult's case in the department-designated case management system in the following circumstances, including:

1. When the adult dies;
2. When the adult with capacity or the adult's responsible person requests closure;
3. When the local department is unable to locate the adult and attempts to contact the adult are unsuccessful;
4. When the adult is no longer functionally or financially eligible for the service;
5. When the local department has no funding to provide home-based services;
6. When the service or activity identified on the service plan is complete; or
7. With exception of annual guardian report reviews, when the adult relocates to another state.

FORMS (22VAC30-130)

Application for Adult Services Form (rev. 05/2017)

Virginia Uniform Assessment Instrument, UAI, (1994)