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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Department for Aging and Rehabilitative Services
Virginia Administrative Code (VAC) citation(s)	22VAC30-60
Regulation title(s)	Grants to Area Agencies on Aging
Action title	Amend Regulations Following Periodic Review
Date this document prepared	May 5, 2019

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

The Virginia Department for Aging and Rehabilitative Services (DARS) serves as the single state agency (or state unit on aging or SUA) for administering the federal Older Americans Act (OAA) of 1965, as amended (42 U.S.C. § 3001 et seq.). As such, DARS has the authority to prepare, submit, and carry out state plans developed pursuant to the OAA, and to be the agency primarily responsible for coordinating state programs and activities affecting older Virginians. DARS is responsible for dividing the state into distinct planning and service areas (PSAs) and for designating a public or private nonprofit agency or organization as the area agency on aging (AAA) for each PSA.

This chapter, 22VAC30-60 (Grants to Area Agencies on Aging), prescribes the requirements that the 25 state-designated AAAs in Virginia shall meet in order to receive federal and state funds for various programs, including those for nutrition services, care coordination, legal assistance, information and referral services, and many others. Following a 2019 periodic review, DARS has determined the current chapter requires updates. This regulatory action seeks to clarify content that may be unclear,

inconsistent, or obsolete, make adjustments for a modernized AAA and aging-network structure, and ensure consistency with updated federal requirements.

Acronyms and Definitions

Please define all acronyms or technical definitions used in the Agency Background Document. .

AAA = Area Agency on Aging
 ACL = U.S. Administration for Community Living
 CFR = U.S. Code of Federal Regulations
 DARS or the Department = Virginia Department for Aging and Rehabilitative Services
 OAA = Older Americans Act
 PSA = Planning and Service Area(s)
 SUA = State Unit on Aging
 USC = United States Code

Mandate and Impetus

Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

The chapter was originally promulgated in 1989 under the Virginia Department for the Aging (VDA; 22VAC5). In 2002, VDA made minor amendments to the original regulations. In 2012, the entire chapter was moved (without amendments) from VDA to the newly created Virginia Department for Aging and Rehabilitative Services (DARS; 22VAC30). At that time, VDA merged with the Virginia Department of Rehabilitative Services to form DARS. Following a periodic review for the chapter in 2012, DARS recommended the chapter be retained as is.

In 2019, DARS completed a periodic review of the chapter. In its finding, filed on March 21, 2019, DARS recommended the regulation be amended.

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.

The Commissioner of DARS has legal authority to promulgate this regulation under § 51.5-131 of the Code of Virginia. In accordance with § 51.5-135 A 6 of the Code of Virginia, DARS shall have, without limitation, the duty to "designate area agencies on aging pursuant to P.L. 89-73 or any law amendatory or supplemental thereto of the Congress of the United States and to adopt regulations for the composition and operation of such area agencies on aging."

Further, under the OAA and 45 CFR Part 1321, DARS, as Virginia's designated SUA, is required to develop policies governing all aspects of programs operated under the OAA and enforce those policies.

Purpose

Please describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, please explain any potential issues that may need to be addressed as the regulation is developed.

This regulation supplements the OAA and 45 CFR Part 1321 by providing specifics on how the SUA will administer the grants to AAAs. The regulation supports clarity, and ensures consistency with aging services and the operation of AAAs. The regulation has not been significantly revised since it was originally promulgated in 1989.

Since the previous state regulatory actions in 2002 and 2012, the OAA was reauthorized in 2016 and the U.S. Administration for Community Living (ACL) made changes to 45 CFR Part 1321. Further, the model of AAAs and the aging-network, both nationally and in Virginia, has evolved. The current chapter requires updates to clarify content that may be unclear, inconsistent, or obsolete, make adjustments for a modernized AAA and aging-network structure, and ensure consistency with updated federal OAA and 45 CFR Part 1321 requirements.

The regulation protects the health and safety of Virginians ages 60 and older who qualify for and receive AAA services, which include nutrition services, care coordination, legal assistance, information and referral services, and many others. Consistency and fidelity to federal regulations and DARS policies is essential to ensuring that the health and safety needs of older adults are safeguarded.

Substance

Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

Provisions for proposed regulations include revisions to address changes to the OAA and regulations in 45 CFR Part 1321. DARS seeks to remove or amend outdated requirements (e.g., section 270 for automatic data processing equipment) and modify some AAA reporting deadlines to make them more manageable. DARS intends to add omitted OAA requirements. DARS seeks to amend terminology for populations to be served and to include person-centered language, update services provided by AAAs to older adults, and clarify requirements for waivers for direct services. DARS also intends to amend sections that may be determined, upon further review, to be outdated or inconsistent with policy and practice. All citations that reference federal requirements or the regulations of other agencies will also be reviewed to ensure these citations, and any associated language, are accurate.

Other revisions to the regulation content may also be proposed based on public comment or which arise from the workgroup that will meet to discuss proposed changes.

Alternatives

Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

There are no other viable alternatives to the proposed regulatory action. The regulation prescribes requirements which AAAs shall meet to receive federal and state funds. There are no less intrusive or less costly alternatives available that will provide the force of law to protect the health, safety, and welfare of older Virginians who receive services from AAAs in the Commonwealth.

Public Participation

Please indicate how the public should contact the agency to submit comments on this regulation, including ideas to assist the agency in the development of the regulation and the costs and benefits of the alternatives stated in this notice or other alternatives.

Also, indicate whether a public hearing is to be held to receive comments. Please include one of the following choices: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulation.

The agency is seeking comments on this regulation, including but not limited to: ideas to be considered in the development of this regulation, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation. Also, the agency/board is also 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) the probable effect of the regulation on affected small businesses; and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at <https://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. Comments may also be submitted by mail, email or fax to Charlotte Arbogast, 8004 Franklin Farms Drive, Henrico, VA 23229, phone number: 804-662-7093, fax number: 804-662-7663; email: charlotte.arbogast@dars.virginia.gov. 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 the proposed stage of this regulatory action.

A panel will be assembled to provide professional specialization and technical assistance on the development of the regulations. The panel membership will include individuals who have expertise in administering or providing AAA programs or services and in advocating for older adults who receive AAA services. Members will assist the Department in the careful consideration of proposed regulation content. The Department will appoint panel members and if you are interested in serving on the panel, contact Charlotte Arbogast (charlotte.arbogast@dars.virginia.gov).