



**COMMONWEALTH of VIRGINIA**

*Office of the Attorney General*

*Richmond 23219*

Kenneth T. Cuccinelli, II

900 East Main Street  
Richmond, Virginia 23219  
804-786-2071  
804-371-8947 TDD

**TO: JAMES A. ROTHROCK, Commissioner**  
Virginia Department for Aging and Rehabilitative Services

**FROM: ERIC J. REYNOLDS**  
Assistant Attorney General

**DATE: August 20, 2013**

**SUBJECT: Exempt Regulations for relocation of Adult Services Approved Providers regulations from DSS to DARS (4047/6696)**

I am in receipt of the attached regulations reflecting the changes in Virginia statutory law made by Chapters 803 and 835 of the *2012 Acts of the Assembly* regarding the relocation of Adult Services Approved Providers regulations from the Department of Social Services to the Department for Aging and Rehabilitative Services. You have asked the Office of the Attorney General to review and determine if the Commissioner of the Department for Aging and Rehabilitative Services has the statutory authority to promulgate the proposed regulations and if the proposed regulations comport with applicable state law.

On July 1, 2013, pursuant to *2012 Acts of the Assembly*, Chapters 803 and 835, Adult Services and Adult Protective Services Programs were relocated from the Department of Social Services (DSS) to the Department of Aging and Rehabilitative Services (DARS). Virginia Code §51.5-116 *et seq.* created DARS and establishes the powers and duties thereof. Virginia Code §51.5-131 authorizes the Commissioner of DARS to promulgate regulations necessary to carry out the provisions of the laws of the Commonwealth administered by the Department.

It is my opinion that the Commissioner of DARS has the authority to promulgate these regulations, subject to compliance with the provisions of Article 2 of the Administrative Process Act ("APA") and has not exceeded that authority. To date, the Commissioner of DARS has not

James A. Rothrock

August 20, 2013

Page 2

yet acted on these regulations; and the Agency Background Document available on Town Hall reflects the as yet unknown date of the Commissioner's action.

Based on the foregoing, it is my view that these regulations are exempt from the procedures of Article 2 of the APA pursuant to Virginia Code § 2.2-4006(A)(4)(a) provided the regulations are filed with the Registrar within 90 days of the law's effective date and the requirements of Virginia Code § 2.2-4006(B) and (C) are met. If you have any questions or need additional information about these regulations, please contact me at 786-3450.

cc: Kim F. Piner, Esquire

Attachment



Logged in: ejr

## Final Text

**Action:** Transferring Approved Provider Regulations from DSS to DARS

**Stage:** Final

8/9/13 4:59 PM [latest] ▼

22VAC30-120  
CHAPTER 120

### ADULT SERVICES APPROVED PROVIDERS

22VAC30-120-10  
~~22VAC40-774-10~~ 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 (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.

"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 use of an incapacitated adult or his resources for another's profit or advantage.

"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 home 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 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 of Social Services~~ 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 ~~Department of Social Services~~ 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.

22VAC30-120-20

~~22VAC40-771-20~~ 22VAC30-120-20. Local department-approved providers.

A. This regulation applies to providers approved by a local department and does not apply to facilities or organizations licensed by a licensing or regulatory agency.

A local department shall not approve a provider that does not meet the standards set out in this regulation.

B. This regulation is applicable to the following providers:

1. Out-of-home providers including:

a. Adult day services providers;

b. Adult foster care providers;

2. In-home providers including:

a. Chore providers;

b. Companion providers;

c. Homemaker providers.

C. The local department is not required to accept provider applications for any type of service when the local department has a sufficient number of providers for that service to meet the client population needs or does not offer the type of service.

D. Prior to approving an out-of-home provider located in another jurisdiction, the local department shall seek written permission from the local department where the provider will provide services.

E. Local departments may use an approved provider from another jurisdiction without performing another approval study when the local department obtains written permission and a copy of the approval documents from the local department that conducted the approval study.

22VAC30-120-30

~~22VAC40-771-30~~ 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 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 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 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.

22VAC30-120-40

~~22VAC40-771-40~~ 22VAC30-120-40. Standards for care for adult services providers.

A. The provider shall provide care that does not discriminate on the basis of race,

ethnicity, sex, national origin, age, religion, disability or impairment.

B. Supervision requirements include:

1. The provider shall have a plan for seeking assistance from police, firefighters, and medical professionals in an emergency.
2. A responsible adult or an approved assistant shall always be available to provide appropriate care for the adult in case of an emergency.
3. If extended absence of the provider is required, the local department shall approve any substitute arrangements the provider wishes to make. An extended absence shall be defined as greater than one day.
4. The provider shall ensure that adequate care and supervision are provided to adults in care and that the adult's health, safety, and well-being are protected.

C. The following standards apply to food provided to adult clients by adult day services and adult foster care providers:

1. Adults in care shall receive nutritionally balanced meals and snacks appropriate to the length of time in care each day and the daily nutritional needs of each adult.
2. Adults in care shall receive special diets if prescribed by a licensed physician or in accordance with religious or ethnic requirements, the adult's preferences, or other special needs.
3. Adequate drinking water shall be available at all times.

D. Requirements for transportation of adults include:

1. If the provider and, for out-of home services, the assistant; spouse of the provider; volunteer; or any other agent involved in the day-to-day operation of the adult day services or adult foster care transports adults in care, the provider or the person providing the transportation shall have a valid driver's license and automobile liability insurance.
2. The vehicle used to transport adults shall have a valid license and inspection sticker.
3. Providers or the person who transports adults in care must ensure that all passengers use safety belts in accordance with requirements of Virginia law.

E. Requirements for medical care include:

1. The provider shall have the name, address, and telephone number of each adult's physician and responsible person easily accessible.
2. The provider shall be able to meet the identified needs of the adult before accepting the adult for care and in order to continue to provide services to the adult.
3. The adult foster care and adult day services provider shall:
  - a. Ensure that the adult receives prescription drugs only in accordance with an order signed by a licensed physician or authentic prescription label and, with the responsible person's written consent, as appropriate;
  - b. Document all medications taken by adults in care, including over-the-counter medications;
  - c. Ensure that the adult in care receives nonprescription drugs only with the adult's or responsible person's written consent, as required;
  - d. Keep medications separate from food except those items that must be refrigerated;

- e. Report all major injuries and accidents to the adult's responsible person immediately;
  - f. Have authorization for emergency medical care for each adult in care; and
  - g. Have first aid supplies easily accessible in case of accidents.
4. Admission or retention of adults in an adult foster care home is prohibited when the adult's care needs cannot be met by the provider as determined by the assessment of the adult services worker or by the adult's physician.
- F. The adult day services and adult foster care provider shall provide recreational and other planned activities appropriate to the needs, interests, and abilities of the adults in care.
- G. All providers of adult services shall immediately report any suspected abuse, neglect, or exploitation of any adult in care to the local department or to the 24-hour toll-free hotline (hotline number: 888-83-ADULT). Providers covered by this regulation are mandatory reporters in accordance with § 63.2-1606 of the Code of Virginia. Failure to report could result in the imposition of civil penalties.
- H. The adult foster care provider shall ensure that adults in care have adequate, properly fitting, and seasonal clothing and that all clothing is properly laundered or cleaned and altered or repaired as necessary.

22VAC30-120-50

~~22VAC40-771-50~~ 22VAC30-120-50. Standards for the home of the adult foster care or adult day services provider.

A. Physical accommodations requirements include:

1. The home shall have appropriate space and furnishings for each adult receiving care in the home to include:
  - a. Space to keep clothing and other personal belongings;
  - b. Accessible and adequate basin and toilet facilities;
  - c. Comfortable sleeping or napping furnishings;
  - d. For adults unable to use stairs unassisted, sleeping space on the first floor of the home;
  - e. Adequate space for recreational activities; and
  - f. Sufficient space and equipment for food preparation, service, and proper storage.
2. All rooms used by adults shall be heated in winter, dry, and well-ventilated.
3. All doors and windows used for ventilation shall be appropriately screened.
4. Rooms used by adults in care shall have adequate lighting for activities and the comfort of adults.
5. The provider and any adult in care shall have access to a working telephone in the home.
6. The home shall be in compliance with all local ordinances.
7. Additional standards for adult foster care include:
  - a. No more than two adults shall share a sleeping room unless they request and consent to sharing such a sleeping arrangement.
  - b. There shall be space in the household for privacy outside of the sleeping rooms

for the adult to entertain visitors and talk privately.

B. Home safety requirements include:

1. The home and grounds shall be free from litter and debris and present no hazard to the safety of the adults receiving care.
2. The provider shall permit a fire inspection of the home by appropriate authorities if conditions indicate a need for approval and the local department requests it.
3. The provider shall have a written emergency plan that includes, but is not limited to, fire or natural disaster and rehearse the plan at least twice a year. The provider shall review the plan with each new adult placed in the home.
4. Attics or basements used by adults in care shall have two emergency exits. One of the emergency exits shall lead directly outside and may be a door or an escapable window.
5. Possession of any weapons, including firearms, in the home shall be in compliance with federal, state, and local laws and ordinances. The provider shall store all weapons, firearms, and ammunition in a locked cabinet with safety mechanisms activated. The key or combination to the cabinet shall not be accessible to the adult in care. Any glass cabinets used to store any weapons, including firearms, shall be shatterproof.
6. The provider shall protect adults from household pets that may be a health or safety hazard. Household pets shall be inoculated as required by state or local ordinances. Documentation of inoculations shall be made available upon local department request.
7. The provider shall keep cleaning supplies and other toxic substances stored away from food and out of the reach of adults in care who are mentally incapacitated.
8. The provider shall provide and maintain at least one approved, properly installed, and operable battery-operated smoke detector, at a minimum, in each sleeping area and on each additional floor. Existing installations that have been approved by the state or local fire marshal are exempted from this requirement.

C. Sanitation requirements include:

1. The provider shall permit an inspection of the home's private water supply and sewage disposal system by the local health department if conditions indicate a need for approval and the local department requests it.
2. The home and grounds shall be free of garbage, debris, insects, and rodents that would present a hazard to the health of the adult in care.

D. Capacity standards include:

1. The provider shall not exceed the maximum allowable capacity for the type of care provided and approved by the local department.
2. The adult day services provider shall not accept more than three adults in the home at any one time. A provider who has more than three adults receiving day services shall be licensed by the ~~department~~ Department of Social Services.
3. The adult foster care provider shall not accept more than three adults for the purpose of receiving room, board, supervision, or special services, regardless of relationship of any adult to the provider. A provider who accepts more than three adults for these purposes shall be licensed as an assisted living facility by the ~~department~~ Department of Social Services.

22VAC30-120-60

~~22VAC40-771-60~~ 22VAC30-120-60. Record requirements for adult foster care and adult day services providers.

- A. The provider shall maintain written legible information on each adult in care.
- B. Information on the adult in care shall include:
  - 1. Identifying information on the adult in care;
  - 2. Name, address, and home and work telephone numbers of responsible persons;
  - 3. Name and telephone number of person to be called in an emergency when the responsible person cannot be reached;
  - 4. Name, address, and home and work telephone numbers of persons authorized to pick up the adult in care;
  - 5. Name of persons not authorized to call or visit the adult in care;
  - 6. Date of admission and discharge of the adult in care;
  - 7. Daily attendance records, where applicable. Daily attendance records are required for adult day services;
  - 8. Medical information pertinent to the health care of the adult in care;
  - 9. Correspondence related to the adult in care as well as other written adult information provided by the local department; and
  - 10. Placement agreement between the provider and the adult and his responsible person, where applicable.
- C. Adult records are confidential and shall not be shared without the approval of the adult in care or responsible person.
- D. The local department and its representatives shall have access to all records.
- E. The department and its representative shall have access to all records.

22VAC30-120-70

~~22VAC40-771-70~~ 22VAC30-120-70. Approval period.

The approval period for a provider may be up to 24 months when the provider meets the standards. In the case of adult day services and adult foster care, the home shall also meet the standards.

22VAC30-120-80

~~22VAC40-771-80~~ 22VAC30-120-80. Allowable variance.

- A. The provider may request an allowable variance on a standard if the variance does not jeopardize the safety and proper care of the adult or violate federal, state, or local law and the local department approves the request.
- B. The local department shall consult with the state adult services consultant prior to granting an allowable variance.
- C. The allowable variance shall be in writing with a copy maintained by the local department and the provider.
- D. The local department and the provider shall develop a plan to meet the applicable standard for which the allowable variance has been granted.
- E. The allowable variance shall be requested and granted by the local department

prior to the approval of the provider or at the time of the provider's renewal.

22VAC30-120-90

~~22VAC40-771-90~~ 22VAC30-120-90. Emergency approval.

A. Emergency approval of a provider may be granted under the following conditions:

1. The court orders emergency placement; or
2. The adult or his responsible person requests placement or service in an emergency.

B. A representative of the local department shall visit the provider's home to ensure that minimum safety standards are evident and that the provider is capable of providing the care prior to the emergency placement of the adult in adult foster care or adult day services.

C. For an in-home provider, the representative of the local department shall interview the provider to ensure that the emergency provider is capable of providing the needed services.

D. Emergency approval shall not exceed 30 days.

E. The provider must meet all applicable standards if services shall be provided beyond the 30-day emergency approval or if the emergency approval is extended beyond 30 days.

22VAC30-120-100

~~22VAC40-771-100~~ 22VAC30-120-100. Provider monitoring.

A. For adult day services or adult foster care providers, the local department representative shall visit the home of the provider as often as necessary, but at least semi-annually to monitor the performance of the provider.

B. For home-based care providers, the local department representative shall interview the provider face-to-face as often as necessary, but at least semi-annually, to monitor the performance of the provider.

C. Provider monitoring shall include interviews with adults receiving care from the provider.

D. The adult in care or his responsible person shall have access to all provider monitoring reports completed by the local department upon request.

22VAC30-120-110

~~22VAC40-771-110~~ 22VAC30-120-110. Renewal process.

The local department shall reapprove the provider prior to the end of the approval period if the provider continues to meet the standards. In the case of adult day services or adult foster care providers, the home also shall continue to meet the standards.

22VAC30-120-120

~~22VAC40-771-120~~ 22VAC30-120-120. Inability to meet standards.

A. If the provider cannot meet the standards for adult services approved providers, the local department shall grant provisional approval, suspend approval, or revoke approval depending on the duration and nature of noncompliance.

B. The local department may grant provisional approval if noncompliance does not jeopardize the safety or proper care of the adults in care. Provisional approval shall not exceed three months.

C. The local department may suspend approval if noncompliance may jeopardize

the safety and proper care of the adults in care. Suspension shall not exceed three months. During the suspension, the provider can give no care to adults referred by the local department.

D. If the provider is found to be out of compliance with the standards set forth herein and cannot meet standards within three months and a variance is not granted, the approval shall be revoked.

E. The local department shall immediately revoke its approval if noncompliance jeopardizes the health, safety and proper care of the adults in care. Adults in adult foster care and adult day services shall be removed within five calendar days from the date of the decision.

F. The decision to grant provisional approval, suspend approval or revoke approval shall be in writing with the effective date of the decision noted.

22VAC30-120-130

~~22VAC40-771-130~~ 22VAC30-120-130. Relocation of out-of-home provider.

A. If the out-of-home provider moves, the local department approving the provider shall determine continued compliance with standards related to the home as soon as possible, but no later than 30 days after relocation to avoid disruption of services to the adult in care.

B. If an out-of-home provider moves outside of the locality that approved the provider, the local department in the new place of residence may accept the provider approval of the initial local department based upon the recommendation of the initial local department or may initiate the approval process itself.

22VAC30-120-140

~~22VAC40-771-140~~ 22VAC30-120-140. Right to review.

A. The provider shall have the right to request that the decision of the local department be reviewed by the local director of social services.

B. The provider must request the review within 10 calendar days from the effective date of the notice of action.

22VAC30-120-150

~~22VAC40-771-150~~ 22VAC30-120-150. Rights of adults in care.

A. Adults in the care of local department-approved providers shall have the rights and responsibilities specified in this section. The provisions of this section shall not be construed to restrict or abridge any right that any adult has under the law. The provider shall establish policies and procedures to ensure that adults in care are aware of the following rights:

1. To be fully informed, prior to the beginning of the provision of services, of his rights and of all rules and expectations governing his conduct and responsibilities; the adult and, if appropriate, his responsible persons shall acknowledge, in writing, receipt of this information, which shall be filed in his record;

2. To be fully informed, prior to the beginning of the provision of services, of services available and of related charges, if any; this shall be reflected by the adult's written acknowledgment of having been so informed, which shall be filed in his record;

3. Unless a conservator of such person has been appointed, to be free to manage his personal finances and funds; to be entitled to access to personal account statements reflecting financial transactions made; and, when receiving adult foster care, to be given at least a quarterly accounting of financial transactions made on his behalf;

4. To be afforded confidential treatment of his personal affairs and records and to approve or refuse their release to any individual outside the home except as otherwise provided in law and except in case of his transfer to another setting;
5. When receiving adult foster care or adult day services, to be transferred or discharged only when provided with a statement of reasons, or for nonpayment for his stay, and to be given advance notice of at least 30 days; upon notice of discharge or upon giving reasonable advance notice of his desire to move, the adult shall be afforded reasonable assistance to ensure an orderly transfer or discharge; such actions shall be documented in his record; the local department that made the placement shall be given advance notice of at least 30 days for any transfer or discharge;
6. An adult receiving adult foster care or adult day services may be discharged immediately if his physical or mental health conditions or his behavior places himself or others at risk of serious bodily harm or injury; the discharge must be to a setting that will ensure the protection of the adult's health, safety and welfare; the local department that made the placement must be notified of the emergency discharge as soon as practicable but no later than 24 hours after the emergency discharge;
7. In the event a medical condition should arise while he is under the care of the provider, to be afforded the opportunity to participate in the planning of his program or care and medical treatment and the right to refuse treatment;
8. When receiving care from an adult foster care or adult day services provider, to not be required to perform services for the home except as voluntarily contracted pursuant to an agreement for services that states the terms of consideration or remuneration and is documented in writing and retained in his record;
9. To be free to select health care services from reasonably available resources;
10. To be free from mental, emotional, physical, sexual, and financial abuse or exploitation; to be free from forced isolation, threats, or other degrading or demeaning acts against him; and, when receiving care from an adult foster care or adult day services provider, to not have his known needs neglected or ignored by the provider;
11. To be treated with courtesy, respect, and consideration as a person of worth, sensitivity, and dignity;
12. To be free to voice grievances and recommend changes in policies and services, free of coercion, discrimination, threats, or reprisal;
13. When receiving care from an out-of-home local department-approved provider, to be permitted to retain and use his personal clothing and possessions as space permits unless to do so would infringe upon rights of other adults;
14. To be encouraged to function at his highest mental, emotional, physical, and social potential;
15. To receive and send uncensored, unopened mail;
16. To refuse medication unless there has been a court finding of incapacity;
17. To choose which services are included in the service agreement and to receive all physician-prescribed treatments. Adults also have the right to refuse services, if doing so does not endanger the health or safety of other adults; and
18. To be free of physical, mechanical or chemical restraint except in the following situations and with appropriate safeguards, including training for the provider on the use of restraints:

a. As necessary to respond to unmanageable behavior in an emergency situation that threatens the immediate safety of the adult or others; and

b. As medically necessary, as authorized in writing by a physician, to provide physical support to a weakened adult;

19. To be free of prescription drugs except where medically necessary, specifically prescribed, and supervised by the attending physician;

20. To be accorded respect for ordinary privacy in every aspect of daily living, including but not limited to the following:

a. In the care of his personal needs except as assistance may be needed;

b. In any medical examination or health-related consultations that the adult may have at the home;

c. In communications, in writing or by telephone;

d. During visitations with other persons;

e. When receiving care from an out-of-home provider, in the adult's room or portion thereof; adults shall be permitted to have guests or other adults in their rooms unless to do so would infringe upon the rights of other adults; staff shall not enter an adult's room without making their presence known except in an emergency or in accordance with safety oversight requirements included in regulations of the State Board of Social Services administered by the Commissioner for Aging and Rehabilitative Services; and

f. When receiving care from an out-of-home provider, in visits with his spouse; if both are adults of the home they are permitted, but not required, to share a room unless otherwise provided in the adult's agreements; and

21. Is permitted to meet with and participate in activities of social, faith-based, and community groups at his discretion unless medically contraindicated as documented by his physician in his medical record.

B. If the adult is unable to fully understand and exercise the rights and responsibilities contained in this section, the local department shall require that a responsible person, of the adult's choice when possible, designated in writing in the adult's record, be made aware of each item in this section and the decisions that affect the adult or relate to specific items in this section; an adult shall be assumed capable of understanding and exercising these rights unless a physician determines otherwise and documents the reasons for such determination in the adult's record.

C. The out-of-home provider shall make available in an easily accessible place a copy of these rights and responsibilities and shall include in them the name and telephone number of the Adult Protective Services Hotline ~~of the Department of Social Services~~ as well as the toll-free telephone number for the Virginia Long-Term Care Ombudsman Program and any state ombudsman program serving the area.

D. The out-of-home provider shall make its policies and procedures for implementing this section available and accessible to adults, relatives, agencies, and the general public.

E. Each out-of-home provider shall provide appropriate staff training to implement each adult's rights included in this section.

F. Adults in care have the right to be fully informed in advance about recommended care and treatment and of any recommended changes in that care or treatment.

G. Adults in care have the right to freedom from searches of personal belongings without the adult or responsible person's permission, unless the care provider has reason to suspect that the adult possesses items that are illegal or prohibited in the out-of-home provider setting and the adult is present during the search.

H. When receiving care from an out-of-home provider, adults have the right to be notified before the adult's room or roommate is changed.

I. When receiving care from an out-of-home provider, adults have the right to communicate privately and without restriction with any other adult who does not object to the communications.

22VAC30-120-160

~~22VAC40-774-160~~ 22VAC30-120-160. Responsibilities of adults in adult foster care or adult day services.

A. Adults in care shall follow the rules of the provider unless these rules are in violation of adults' rights.

B. Adults in care, or the local department when appropriate, shall give a two-week written notice of intent to leave the placement.

C. Adults in care shall notify providers if there are changes in the adult's health status.