



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22VAC-40-25
Regulation title	Auxiliary Grant (AG) Program
Action title	Amend Auxiliary Grant Regulations.
Date this document prepared	August 16, 2012

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

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 Auxiliary Grant (AG) is an income supplement for individuals who receive Supplemental Security Income and certain other aged, blind or disabled individuals who reside in a licensed assisted living facility or approved adult foster home. The purpose of the proposed action is to (1) add third-party payments to the regulation (2) clarify and simplify requirements for assisted living facility (ALF) and adult foster care providers in implementing third-party payments and (3) ensure third-party payments are applied appropriately as a payment source. This change is needed due to Code of Virginia changes made during the 2012 General Assembly based on recommendations of the 2011 Joint Legislative Audit and Review Commission (JLARC) study, "Funding Options for Low-Income Residents of Assisted Living Facilities."

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

The legal bases for this regulation are §§ 63.2-800 and 63.2-217 of the Code of Virginia. These sections provide general authority for the development of regulations for program operation and mandatory authority for the development of regulations for the AG program.

Need

Please detail 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.

Changes to § 63.2-800 were made in response to a 2011 JLARC study that recommended allowing third-party payments to help ALF providers offset costs in providing additional services. Allowing third-party payments would contribute to the health, safety and welfare of citizens as services and goods would be more available.

Substance

Please detail any changes that will be proposed. Be sure to define all acronyms. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

Proposed changes to the regulation include adding language to address third-party payments. This includes a definition of third-party payment, proper documentation of third-party payments and the permitted uses of third-party payments. Also, it includes clarifying language as to what services and goods are required under the AG program for maintenance and care of residents and what can be provided voluntarily by third-parties.

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, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

No alternatives were considered as this action is necessary to ensure compliance with Code changes that were effective July 1, 2012.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal 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 on this notice.

Please also indicate, pursuant to your Public Participation Guidelines, whether a Regulatory Advisory Panel or a Negotiated Rulemaking Panel will be used in the development of the proposed regulation.

Please state one of the following: 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 regulatory proposal.

The agency is not using a formal panel; an ongoing AG workgroup will be used to provide input on this regulatory action. The workgroup members are Marjorie Marker, Adult Services Regional Consultant; Sharon DeBoever, Licensing Inspector; Judy McGreal, Licensing Consultant; Sandy Smith, Program Consultant Benefits; Johnita Clarke, Eligibility worker; Yolanda Rance, Adult Services worker; Sharon Craft, Medicaid Regional Consultant; Melissa Mercer, Eligibility Supervisor; Sandra Blevins, Eligibility Supervisor; Yvonne Haynes, BHDS; and Karen Packer, DMAS.

The agency is seeking comments on this regulatory action, including but not limited to 1) ideas to be considered in the development of this proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) 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 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 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, VDSS 801 E. Main Street, 11th floor, Richmond, Virginia 23219, phone 804-726-7560, 804-726-7895 fax number or Tishaun.harrisugworji@dss.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 is not planned for this action.

Family impact

Assess the potential impact of the proposed 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 encourage 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.

The proposed changes are expected to impact fewer than 10% of AG recipients living in assisted living facilities and adult foster care homes. This change will allow family members or other entities to pay voluntarily for goods or services in addition to what the AG provides and remain eligible for the program. Participation in third-party payments is voluntary and cannot be used as a condition of admission or length of stay.