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## Final Regulation Agency Background Document

<b>Agency name</b>	Department for Aging and Rehabilitative Services
<b>Virginia Administrative Code (VAC) citation(s)</b>	22VAC30-80
<b>Regulation title(s)</b>	Auxiliary Grant Program
<b>Action title</b>	CH 0080 Adding supportive housing to Auxiliary Grant Program
<b>Date this document prepared</b>	October 10, 2018

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 VAC7-10), 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 this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

This proposed stage replaces the emergency regulations that addressed supportive housing as new residential option for Auxiliary Grant (AG) eligible individuals. The text in the emergency regulation will appear as the proposed regulation text and includes: (1) the requirements to participate in the supportive housing setting, (2) providers' responsibility for each AG setting, and (3) updated terminology and guidelines for the AG Program.

It should also be noted that since the emergency regulations became effective via action #4637 in January 2017, a separate regulatory action (#4035) affecting the AG regulations also became final on October 4, 2017. This second regulatory action incorporated language about the receipt of third party payments on behalf of AG recipients. The Department for Aging and Rehabilitative Services is highlighting this change to ensure that individuals reading the final language are not confused as to why this language did not appear in the emergency text, but is present in the final text.

## Acronyms and Definitions

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.*

Adult Foster Care Home (AFCH)  
 Assisted Living Facility (ALF)  
 Auxiliary Grant (AG)  
 Department for Aging and Rehabilitative Services (DARS)  
 Department of Behavioral Health and Developmental Services (DBHDS)  
 Department of Social Services (DSS)  
 Local Departments of Social Services (LDSS)  
 Social Security Administration (SSA)  
 Supportive Housing (SH)  
 United States Department of Agriculture (USDA)

## Statement of Final Agency Action

*Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.*

The Commissioner of the Department approved the amendments to the Auxiliary Grant Program 22VAC30-80) on October 10, 2018.

## Mandate and Impetus

*Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously-reported information, include a specific statement to that effect.*

The 2016 Acts of Assembly, Chapter 567, enactment clause #2 directed the Commissioner of DARS to promulgate regulations for the provision of supportive housing (SH) for individual receiving auxiliary grants within 180 days. The emergency regulations went into effect on January 1, 2017, and an extension to the emergency regulation until January 1, 2019 was granted to allow time for DARS to promulgate the final regulations.

## 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 legal basis for this regulatory action is § 51.5-160 of the Code of Virginia, which authorizes the DARS Commissioner to adopt regulations for the administration of the AG program. In addition, § 51.5-131 of the Code of Virginia authorized the DARS Commissioner to promulgate regulations necessary to carry out the provisions of the laws of the Commonwealth administered by the Department.

## Purpose

*Please explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.*

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The regulation needs to be amended to incorporate the changes in the emergency regulation which provides guidance regarding the SH setting. The regulation is essential to protecting the health, safety or welfare of citizens. The proposed regulatory content outlines standards for providers who provide care to individuals with AG. Additionally, regulation content clarifies the range of person-centered housing options available to AG eligible individuals.

## Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.*

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This regulatory action will: (1) address definitions related to SH and clarify existing definitions that were part of the AG regulation, (2) explain evaluation and assessment procedures, (3) detail requirements for the SH provider agreement, (4) address basic SH services, and (5) amend any outdated or obsolete language.

## Issues

*Please identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.*

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The primary advantage to the public will be that eligible individuals will have an additional choice in their living arrangement. Having SH as an option may also help address the shortages of AG beds in certain communities. There are no disadvantages to the public or the Commonwealth regarding the proposed regulatory action.

## Requirements More Restrictive than Federal

*Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously-reported information, include a specific statement to that effect.*

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This proposal does not have any requirements which are more restrictive than federal requirements.

### Agencies, Localities, and Other Entities Particularly Affected

*Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously-reported information, include a specific statement to that effect.*

#### Other State Agencies Particularly Affected

No state agency is expected to be particularly affected by this amendment.

#### Localities Particularly Affected

No locality is expected to be particularly affected by this amendment.

#### Other Entities Particularly Affected

No other entity is expected to be particularly affected by this amendment.

### Public Comment

*Please summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. If no comment was received, enter a specific statement to that effect.*

No public comments were received regarding the amendments to this regulation.

### Detail of Changes Made Since the Previous Stage

*Please list all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Please put an asterisk next to any substantive changes.*

No substantive changes were made.

In 22VAC30-80-10, the definition for “Assisted living facility” was modified to align with § 63.2-100 of the Code of Virginia minus the clarification that the “Virginia Department of Social Services” (not “the department”) is the licensing entity for children’s residential facilities. The definition of “Program” was deleted; it is not needed as there is a definition for “Auxiliary Grant Program” included in the section.

Several technical changes were made to consistently use the acronym “AG” in place of “Auxiliary Grant Program” or “AG Program” in 22VAC30-80-10 through 22VAC30-80-45 and 22VAC30-80-60.

One technical change was made in 22VAC30-80-10 to change “ALFs” to “ALF”.

### Detail of All Changes Proposed in this Regulatory Action

Please list all changes proposed in this action and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Please put an asterisk next to any substantive changes.

Current chapter-section number	New chapter-section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of updated requirements
10		Define terms used throughout the regulation	Added acronym SH to several definitions. Ensured that acronym AG replaces Auxiliary Grant in a consistent manner in all definitions. Added information that number of individuals who may be served in SH may not exceed the number delineated in the signed agreement between DARS and SSA. Clarified definition of certification. Defined acronym for DBHDS and SH. Clarified that provider includes an SH provider. Clarified definition of qualified assessor. Added definition of SH. Made minor grammatical changes.
20		Describes procedures for assessing individuals in AFCH or ALF settings.	Added evaluation and assessment procedures for individuals in SH. Added provisions that enable the individual to change his mind about his choice of housing option after the annual reassessment has been completed. Even if the individual selects ALF after the reassessment, he may change his mind at a later date and not have to wait until the next annual assessment.
30		Describes basic services to be provided to individuals in AFCH or ALF settings.	Used acronyms in the section heading. Amended obsolete reference to USDA food pyramid. Clarified basic services in an ALF or AFCH. Clarified that the AFC provider shall adhere to standards in 22 VAC30-120-40.
	22VAC30-80-35		Added basic services for SH setting.
45		Describes conditions for providers to participate in AG Program	Added C. "Provider Agreement for Supportive Housing" and listed requirements for the SH provider agreement. Added acronym SH to content where appropriate.
50		Describes how the AG rate is established.	Added references to SH where appropriate.

60		Describes reimbursement procedures.	Added references to other sections of the regulation. Added references to SH where appropriate. Added a reference to authorized payee. Added a definition of authorized payee as part of a separate regulatory action and the term needed to be included in this section.
70		Describes the requirements for ALFs to submit certification forms.	Clarified section heading. Clarified certification requirements for ALF and SH providers.
Forms		Lists various forms used by DARS and providers.	Updated the AG Provider Agreement, 032-02-0747-06 (7/17) Updated the AG Certification form, 032-02-0745-10 (7/17) Added new form called AGSH Certification Form, 032-15-0012-00 (2/17)