



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Jason S. Miyares
Attorney General

202 North Ninth Street
Richmond, Virginia 23219
804-786-2071
Fax 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

TO: KATHRYN HAYFIELD, Commissioner
Virginia Department of Aging and Rehabilitative Services

FROM: SUSAN P. D. WHYTE *SPPW*
Assistant Attorney General

DATE: February 15, 2022

SUBJECT: Exempt Final Regulation – Code of Virginia Reference Technical Correction,
22 VAC 30-80-35

I am in receipt of the attached regulation to make a technical correction to the Auxiliary Grant, Basic Services in Supportive Housing Settings, regulation (22 VAC 30-80-35). You have asked the Office of the Attorney General to review and determine if the DARS Commissioner has the statutory authority to promulgate the regulation and if the proposed regulation comports with applicable state law.

Virginia Code § 51.5-131 mandates that the Commissioner promulgate regulations that are necessary to carry out the provisions of the laws of the Commonwealth administered by DARS. The proposed amendment to the regulation is necessary to accurately reference the Virginia Residential Landlord and Tenant Act, which is codified at Virginia Code § 55.1-1200 *et seq.* It is my view that the Commissioner has the authority to promulgate this regulation and that the amendment to this regulation is exempt from the procedures of Article 2 of the APA under Virginia Code § 2.2-4006(A)(3). If you have any questions or need additional information about this regulation, please contact me at 786-3450.

22VAC30-80-35. Basic services in supportive housing settings.

A. The rate established under the AG for SH, as defined in 22VAC30-80-10, shall cover a residential setting with access to SH services that include:

1. Development of individualized SH service plans;
2. Access to skills training;
3. Assistance with accessing available community-based services and supports;
4. Initial identification and ongoing review of the level of care needs; and
5. Ongoing monitoring of services described in the individual's individualized SH plan.

B. The residential setting covered under the AG for SH, as defined in 22VAC30-80-10, shall be the least restrictive and most integrated setting practicable for the individual and shall:

1. Comply with federal habitability standards;
2. Provide cooking and bathroom facilities in each unit;
3. Afford dignity and privacy to the individual; and
4. Include rights of tenancy pursuant to the Virginia Residential Landlord and Tenant Act (~~§ 55-248.2~~ 55.1-1200 et seq. of the Code of Virginia).