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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Virginia Department for Aging and Rehabilitative Services
Virginia Administrative Code (VAC) Chapter citation(s)	22VAC30-80
VAC Chapter title(s)	Auxiliary Grants Program
Date this document prepared	October 19, 2021

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 (1VAC7-10), and the **Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code**.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

Adult Foster Care Home (AFCH)
Assisted Living Facility (ALF)
Auxiliary Grant (AG)
Department for Aging and Rehabilitative Services (DARS)
Social Security Administration (SSA)
Social Security Income (SSI)
Supportive Housing (SH)

Legal Basis

Identify (1) the promulgating agency, 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 agency to regulate this specific subject or program, as well as a reference to the agency'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.

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

There are no alternatives to this activity; a periodic review of this regulation is required. There are no less intrusive or less costly alternatives.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Commenter	Comment	Agency response
Frank Minor	Talk about neglect. The state continues to neglect by not supporting a livable assisted living rate. The rate should have been increased in 2005 along with other 4 major recommendations. Study was done by department of aging. Of course other three were passed regulations. Double ag rate recommended then would have been \$1800 in 2005. Not at that rate yet. With mandatory wage increase there will be less and less ag beds. They have been declining for years. Eventually there will be none left. Functional obsolete. I've advocated for 30 years for a livable wage only to be ignored as politicians are fed by p a c and special interest. When will if anyone fund this much worthwhile program to a livable wage. Check mental health rate for group homes and units paid out for one of their residents. Check the rate for children's group home. Check the rate for nursing homes. All these are comparable services to assisted living. I am glad they are supported. They are all important services. Again it's not right to continue this neglect and not supporting to a livable wage. Looks like everything is fast forward with all mandatory wage increase. The ag rate needs a fast forward as well. Rate should be around \$ 3000 a month instead half of that.	Thank you for your comment and interest in this chapter and periodic review. Comments regarding the AG rate are best addressed through the General Assembly, which sets the AG rate via the annual Appropriation Act.

<p>Wanda Lawson, Office Manager at Chestnut Grove ALF</p>	<p>I would like to take this opportunity to ask that you consider providing an increase in the Auxiliary Grant for assisted living facilities. I have been employed 40 years at the ALF and I have not seen a sufficient rate increase to support daily cost of care for our residents. We want to continue to be able to provide a loving home for our residents. This is a much needed service and they, the residents, deserve this. The assisted living facility may not survive. PLEASE, we ask for your help.</p>	<p>Thank you for your comment and interest in this chapter and periodic review. Comments regarding the AG rate are best addressed through the General Assembly, which sets the AG rate via the annual Appropriation Act.</p>
<p>Eddie Baird: St. Francis Home Board of Directors</p>	<p>I would like to take a moment and ask you to please consider raising the rate of aux. grants for assisted living facilities. The residents on these grants need the increase for their individual care and the facilities in which they are cared for need the increase to provide sufficient care for the residents. Thanks for your time and concern regarding this important matter.</p>	<p>Thank you for your comment and interest in this chapter and periodic review. Comments regarding the AG rate are best addressed through the General Assembly, which sets the AG rate via the annual Appropriation Act.</p>
<p>Ed Blair, Director, St Francis Home</p>	<p>The auxiliary grant rate provided by the Commonwealth has rarely been increased over the past decade. The grant covers roughly 1/3 of the cost for an elderly person. With a surplus of \$2B, the state needs to make the a significant investment to ensure dignified care for the elderly is provided.</p>	<p>Thank you for your comment and interest in this chapter and periodic review. Comments regarding the AG rate are best addressed through the General Assembly, which sets the AG rate via the annual Appropriation Act.</p>
<p>Richard Boehling, St Francis Home Board of Directors</p>	<p>Current AG rates for our residents are insufficient to provide care without outside support. Cost of service continues to increase year over year. Currently AG rates cover about 1/3 of the cost of dignified care. Please consider a significant increase in AG rates so we may continue our mission.</p>	<p>Thank you for your comment and interest in this chapter and periodic review. Comments regarding the AG rate are best addressed through the General Assembly, which sets the AG rate via the annual Appropriation Act.</p>
<p>Tanya Woodard, Administrator, Chestnut Grove ALF in Dryden, VA</p>	<p>I am addressing the issue of the auxiliary grant rate in Virginia. Our facility is in a rural are of Virginia, most of our residents get the auxiliary grant. The rate as of right now is \$1562.00 per month with the resident receiving \$82.00 personal allowance per month. According to calculations it would take an increase of \$187.67 more per month for our facility to just break even with the cost of monthly expenses of the facility. In January 2022 when minimum wage goes up, it will go even higher. For nursing homes in our area, the care is \$6600.00 per month or \$220.00 per day while the grant pays \$52.00 per day for assisted living. With the rising cost of living and rising cost of minimum wage, this will cause facilities to close their doors and leave the need greatly for assisted living--as with all these increase it will be impossible to continue to operate and provide this service that is needed. All we are asking for is an</p>	<p>Thank you for your comment and interest in this chapter and periodic review. Comments regarding the AG rate are best addressed through the General Assembly, which sets the AG rate via the annual Appropriation Act.</p>

	<p>increase in the auxiliary grant so we can continue to provide a loving home for our residents. This is a much - needed service. We need the auxiliary grant to at least match the cost of living and the minimum wage increase. Your attention and any help you can give us concerning this matter will be greatly appreciated.</p>	
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Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

The AG is an income supplement for individuals who receive SSI and certain other aged, blind, or disabled individuals who reside in a licensed ALF, an approved AFCH, or a certified SH setting. An AG payment is issued to an individual monthly, to be used with a designated amount of their monthly income to pay the maximum monthly AG Program rate. The AG Program rate is determined by the Virginia General Assembly and is adjusted periodically. The AG Program is 80 percent state funded and 20 percent locally funded.

The AG Program regulations address standards for AG Program providers for the three settings (ALF, AFCH, and SH). This regulation meets the criteria set out in Executive Order 14, as amended, July 16, 2018, as it is necessary for the protection of public health, safety, and welfare. This regulation is clearly written and easily understandable. This regulation does not overlap, duplicate, or conflict with federal or state law or regulation.

Decision

Explain the basis for the promulgating agency’s decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

The agency recommends the regulation be amended in order to update the forms filed with the chapter. Updated forms are available and need to be filed accordingly. No other revisions to the chapter are needed at this time.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency’s decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

There is a continued need for the regulations as they are mandated by law, and they protect the health, welfare, and safety of individuals in the AG Program.

No complaints or comments about the chapter were received during the periodic review. The regulation is designed to support clarity and ensure transparency with the AG Program and the operations of AG Program providers.

The chapter comprises only those requirements for the implementation of the AG Program. The AG Program operates under the authority and approval of the SSA. As a state- and locally-funded program, there are no other federal or state regulations for the AG Program. As such, the chapter does not conflict with federal or state law or regulation.

The chapter was last revised in 2019 as directed by Chapters 657 and 658 of the 2019 Acts of Assembly (original legislation: HB 2017 and SB 1286). This legislation allowed individuals receiving AG to select SH without any requirement that such individuals wait until their first or any subsequent annual reassessment to make a SH selection.

This regulation does impact small businesses. Many of the AG Program providers would likely be considered small businesses. However, the chapter does not include overly burdensome requirements, reinforces common standards for business management, and protects the health and safety of the individuals in the AG Program.

