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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>	__22__ VAC_30__ -_80__
<b>Regulation title(s)</b>	Auxiliary Grant Program
<b>Action title</b>	Amend Auxiliary Grant Regulation to comport with 2012 legislations
<b>Date this document prepared</b>	June 20, 2017

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

The intent of the proposed action is to (1) add information about third-party payments to the regulation (2) clarify requirements for assisted living facilities to implement third-party payments and (3) ensure third-party payments are applied appropriately as a payment source. The proposed action will ensure that regulations comport with § 51.5-160F (formerly § 63.2-800) of the Code of Virginia, which was amended during the 2012 General Assembly session. A regulatory action was started after the 2012 session, but authority for the Auxiliary Grant Program was moved from the Department of Social Services to the Department for Aging and Rehabilitative Services in 2013. Therefore the regulatory action, which had not reached the final stage, was withdrawn.

### 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.*

Auxiliary Grant- AG  
Adult Foster Care- AFC  
Local Departments of Social Services- LDSS  
Uniform Assessment Instrument-UAI

### 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.*

On June 20, 2017, the Commissioner of the Department for Aging and Rehabilitative Services adopted the final regulatory amendment to the 22 VAC 30-80 Auxiliary Grant Program.

### 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 basis for this regulatory action is § 51.5-160 of the Code of Virginia, which authorizes the Commissioner of the Department for Aging and Rehabilitative Services to adopt regulations for the administration of the auxiliary grants program. In addition, § 51.5-131 of the Code of Virginia authorized the Commissioner of the Department for Aging and Rehabilitative Services 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 new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

Implementing third-party payments will contribute to the health, safety, welfare and quality of life of AG participants residing in an Assisted Living Facility or Adult Foster Care homes because it will permit family members or others to provide goods and services needed by residents but not covered by Auxiliary Grant payments.

There are no known potential issues that need to be addressed as the regulation is developed.

### Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both.*

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This provision will add a new section to the regulation, which will include language to address third-party payments. New content will define third-party payments and address documentation for these payments as well as permitted uses of third-party payments. New language will also clarify what services and goods providers are required to provide under the Auxiliary Grant Program

### Issues

*Please identify the issues associated with the proposed regulatory action, 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, please indicate.*

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Allowing third-party payments will help assisted living providers offset costs of needed goods or services beyond those required by the AG provider agreement. The primary disadvantages include that only an estimated 10 percent or fewer AG participants have access to voluntary third-party payments; that the payments must be made after the goods or services are provided; and, that third-party payments cannot be used for a private room upgrade.

The disadvantage to local departments of social services (LDSS) and DSS is that the payments may complicate the calculation and verification of income for determining AG eligibility and that DSS licensing staff will have to add monitoring of third-party payment documentation to their inspections. However, it is estimated that only a small percentage of AG recipients will have access to third-party payments.

The impact of third- party payments on other federal or state services or benefits is unknown at this time.

### Requirements more restrictive than federal

*Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are*

*no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

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

### Localities particularly affected

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

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No locality is particularly affected.

### Family impact

*Please assess the impact of this 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.*

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This action will not impact the authority and rights of parents in the education, nurturing and supervision of children. It will not discourage 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.

This proposed change is expected to affect only 10% of Auxiliary Grant recipients living in ALFs and AFC homes. It will allow family members or other entities to use discretionary income to pay for goods and services in addition to what the AG provides. Participation in third-party payments is voluntary and cannot be used as a condition of admission or length of stay

### Changes made since the proposed stage

*Please list all changes that made to the text of the proposed regulation and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. \*Please put an asterisk next to any substantive changes.*

Section number	Requirement at proposed stage	What has changed	Rationale for change
30	<p>2 a. Minimal assistance as defined in <a href="#">22VAC40-72-10</a> with personal hygiene including bathing, dressing, oral hygiene, hair grooming and shampooing, care of clothing, shaving, care of toenails and fingernails <u>or arranging for such assistance if the resident's medical condition precludes facility from providing the service</u>, arranging for haircuts as needed, and care of needs associated with menstruation or occasional bladder or bowel incontinence;</p> <p>2d(4) (4) Arranging transportation;</p> <p>2.e. e. <del>Securing</del> <u>Arranging</u> health care and transportation when needed for medical treatment;</p>	<p>2 a. Minimal assistance <del>as</del> <u>defined in <a href="#">22VAC40-72-10</a></u> with personal hygiene including bathing, dressing, oral hygiene, hair grooming and shampooing, care of clothing, shaving, care of toenails and fingernails <u>or arranging for such assistance if the resident's medical condition precludes facility from providing the service</u>, arranging for haircuts as needed, and care of needs associated with menstruation or occasional bladder or bowel incontinence [<u>that occurs less than weekly</u>]; *</p> <p>2d(4) (4) Arranging [<u>nonmedical</u>] transportation;</p> <p>2.e. e. <del>Securing</del> [<u>Arranging</u> <del>Securing</del>] health care and transportation when needed for medical treatment;</p>	Public comment
45	<p><u>C ALFs and AFC homes providing services to AG recipients may accept third-party payments made by persons or entities for goods or services to be provided</u></p>	<p><u>C ALFs and AFC homes providing services to AG recipients may accept third-party payments made by persons or entities for [the actual costs of] goods or services [to be that have been provided] to the AG</u></p>	Public comment

	<p><u>to the AG recipient.</u></p> <p><u>F</u> No requirement that a statement be signed by the AG recipients or authorized representative as acknowledgement of receipt of goods or services.</p>	<p><u>recipient.*</u></p> <p><u>[This statement shall be signed by the AG recipient or authorized representative as acknowledgement of receipt and shall be made available to the department upon request.] *</u></p>	

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate. Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.*

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
<p>Heidi L. Lawyer, VBPD</p> <p>Submitted directly to agency</p>	<p>§51.5-160 Revisions to the Code allows provisions for Supportive Housing. This statutory change is not reflected in the proposed regulations as published.</p>	<p>A separate regulatory action was already underway in response to the General Assembly’s establishment of third party payments. Supportive Housing regulations are in effect through an emergency action. DARS is working to ensure that third party payments and supportive housing language are included in the final regulations.</p>
<p>Heidi L. Lawyer, VBPD</p> <p>Submitted directly to agency</p>	<p>22VAC30-80-30 Maintenance and Care 2. a, d.4, e.</p> <p>Clarify the goods and services that ALFs , AFC Homes, and Supportive Housing providers must provide as a condition of participating in the AG program by more clearly defining vague terms, such as “minimal assistance”, “occasional bladder or bowel incontinence”, and</p>	<p>Minimal assistance in this regulation is defined in 22VAC40-72-10. Occasional bladder or bowel incontinence has been clarified as that which occurs less than weekly. This is the same definition used on the Uniform Assessment Instrument. Arranging transportation has been changed to arranging nonmedical transportation. Arranging health care transportation has been changed back to the original phrase of securing health care transportation.</p>

	“arranging transportation”	
Heidi L. Lawyer, VBPD  Submitted directly to agency	22VAC30-80-45 C. Prohibit the acceptance of third party payments in excess of the actual cost of providing the goods and/or services for which they are accepted.	To prohibit the acceptance of third party payments in excess of the actual cost of the goods or services, the subsection has been changed to clarify that ALFs and AFC homes may accept third-party payments for the actual costs of goods or services that have been provided to the AG recipient.
Heidi L. Lawyer, VBPD  Submitted directly to agency	22VAC30-80-45 C. Clarify that third-party payments may be accepted only after the goods or services for which the payments are submitted have been provided.	This is stated in 22VAC30-80-45 (C) (1)
Heidi L. Lawyer, VBPD  Submitted directly to agency	22VAC30-80-45 C. Pursuant to 22VAC30-80-45 (C), third party payments may be accepted if they are “made by persons or entities for goods or services to be provided to the AG recipient.” This language suggests that these payments may be accepted in advance of the provision of the goods or services for which payments are made. This contradicts what follows in 22VAC30-80-45 (C) (1)	The subsection has been revised to state that ALFs and AFC homes may accept third party payments for the actual costs of goods or services that have been provided. This clarifies that third party payments may be accepted after the provision of the goods or services.
Heidi L. Lawyer, VBPD  Submitted directly to agency	22VAC30-80-45 F. Require ALFs, AFC Homes, and Supportive Housing providers to maintain a copy of the list of goods and services that shall be covered by the Auxiliary Grants referenced in 22VAC30-80-45 (F), which shall be signed by the AG recipient or authorized representative as acknowledgement of recipient or authorized representative as acknowledgement of receipt and shall be made available to the Department upon request.	Currently, the provider guidance document states that the provider is to give a list of goods and services covered by the AG program and a statement stating that the family is not to be charged for any additional services that are not on the list. It also requires that the request is documented in the client’s record what additional services or goods were paid for by third party payment. It has been added to this subsection that a statement shall be signed by the AG recipient or authorized representative as acknowledgement of receipt and shall be made available to the department upon request.

**All changes made in this regulatory action**

*Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections. Explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
10			<p>Added definitions for: authorized payee; authorized representative; minimal assistance; occasional bladder or bowel incontinence; personal funds; and thirdparty payment. Added language to the definition of personal needs allowance. Deleted the definition of personal representative.</p> <p>New definitions relate to the new sections of the regulations. Amended definitions add clarity for existing sections. Personal representative was deleted because the terms are no longer used in the regulation.</p>
20		Required use of UAI	<p>Changes language to use of “state designated assessment form.” This change will allow for future assessment form changes that may replace the UAI</p>
30			<p>Language corrections and added reference to needed compliance with 22 VAC40-72</p> <p>Minimal assistance in this regulation is defined in 22VAC40-72-10.</p> <p>Occasional bladder or bowel incontinence has been clarified as that which occurs less than weekly. This is the same definition used on the Uniform Assessment Instrument.</p> <p>Arranging transportation has been changed to arranging nonmedical transportation.</p> <p>Arranging health care transportation has been changed back to the original phrase of securing health care transportation.</p>



			Public comment recommended clarification.
40		That personal needs funds must be maintained in separate bank account	Adds new paragraphs C through E related to third-party payments. This language is required by changes to § 63.2-800 allowing third-party payments. The intent is to assist ALFs and AFC homes in reducing their costs for goods and services that are not covered by the AG payment and to allow family members or other entities to pay voluntarily for goods or services not covered by AG.
45		<p>Does not address third-party payments for goods and services.</p> <p>22VAC30-80-45 C Does not stress that third party payments may only be accepted for the actual costs of goods or services that have been provided to the AG recipient.</p> <p>22VAC30-80-45 C. Pursuant to 22VAC30-80-45 (C), third party payments may be accepted if they are “made by persons or entities for goods or services to be provided to the AG recipient.” This language suggests that these payments may be</p>	<p>Adds new paragraphs C through E related to third-party payments. This language is required by changes to § 63.2-800 allowing third-party payments. The intent is to assist ALFs and AFC homes in reducing their costs for goods and services that are not covered by the AG payment and to allow family members or other entities to pay voluntarily for goods or services not covered by AG.</p> <p>To prohibit the acceptance of third party payments in excess of the actual cost of the goods or services, the subsection has been changed to clarify that ALFs and AFC homes may accept third-party payments for the actual costs of goods or services that have been provided to the AG recipient. Public comment recommended clarification.</p> <p>The subsection has been revised to state that ALFs and AFC homes may accept third party payments for the actual costs of goods or services that have been provided. This clarifies that third party payments may be accepted after the provision of the goods or services. Public comment recommended clarification.</p>

		<p>accepted in advance of the provision of the goods or services for which payments are made. This contradicts what follows in 22VAC30-80-45 (C) (1)</p> <p>22VAC30-80-45 F No stated requirement that the AG recipient or authorized representative sign a statement acknowledging receipt of goods or services.</p>	<p>Currently, the provider guidance document states that the provider is to give a list of goods and services covered by the AG program and a statement stating that the family is not to be charged for any additional services that are not on the list. It also requires that the request is documented in the client’s record what additional services or goods were paid for by third party payment. It has been added to this subsection that a statement shall be signed by the AG recipient or authorized representative as acknowledgement of receipt and shall be made available to the department upon request.</p>
60		States those providers who do not comply with requirements of the regulation may be subject to adverse action.	Adds language that includes suspension and termination of the provider agreement as potential adverse actions.
70		Certification	Add the word ALF to clarify who completes the annual certification form.
form			Added third-party payment check box to the form for Certification.