



townhall.virginia.gov

Proposed Regulation Agency Background Document

Agency name	Department for Aging and Rehabilitative Services
Virginia Administrative Code (VAC) citation(s)	22 VAC 30-130
Regulation title(s)	Adult Services Standards
Action title	Establish Adult Services Standards
Date this document prepared	July 31, 2019

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 (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 adopt a new regulation addressing the provision of services by local departments of social services to adults with an impairment. This regulatory action was originally initiated in 2011 when the Adult Protective Services (APS) Division was part of the Department of Social Services (DSS). The regulatory action was started in response to the impending repeal of an outdated DSS regulation, "Family-Based Social Services." The Family-Based Social Services regulation was eventually repealed in November 2012.

As the Adult Services regulation did not reach the final stage when the APS Division relocated to the Department for Aging and Rehabilitative Services (DARS) in July 2013, the State Board of Social Services withdrew the prior action, as the board no longer had authority for the provision of adult services in Commonwealth.

The new Adult Services regulation will include definitions, principles inherent in the provision of AS, the process for client intake and service delivery, descriptions of the types of services that may be provided, eligibility for services, and local department of social services responsibilities.

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.

AS-Adult Services
DARS-Department for Aging and Rehabilitative Services
LDSS-Local department of social services
SFY-State fiscal year

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.

Section 51.5-145 of the Code of Virginia gives DARS the responsibility for the planning and oversight of AS. These services are to be delivered by the LDSS as set out in Article 1 (63.2-1600 et seq.) of Chapter 16 of Title 63.2 and pursuant to regulations and subject to the oversight of the Commissioner of DARS. Section 63.2-1600 of the Code of Virginia authorizes the provision of home-based services including the eligibility for such services pursuant to regulations promulgated by the Commissioner of DARS. In addition, § 51.5-131 of the Code of Virginia authorized the Commissioner of DARS 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.

This regulation will describe the provision of services to adults with impairment, as there is no regulation that specifically addresses this issue. Many services provided by LDSS AS workers ensure the safety of older adults and individuals with disabilities by helping prevent adult abuse, neglect, and exploitation from occurring or recurring.

These services also promote the well-being of adults by strengthening natural support systems, including family supports, that enable adults to live in community-based settings for as long as possible. The regulation will outline the principles and philosophy of AS and underscore the importance of an adult's right to self-determination and independence.

This regulatory action will ensure that the regulation content is clearly written. Clarity in regulation content is essential to ensuring that the individual's health and safety needs are most appropriately met.

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.

This new regulation will include definitions of terms used in the regulation, the principles inherent in the provision of AS, intake services, individuals to be served, service eligibility determination, and types of services that may be provided.

In addition, the AS regulation will clarify the need for the development of service plans when services are provided to adults and other responsibilities of the LDSS. Other revisions to the regulation content may be made based on public comments received.

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.

- (1) The regulation describes service provision and ensures that LDSS address the needs of older individuals and adults with an impairment.
- (2) The regulation content clarifies but does not increase LDSS staffs' responsibilities. Much of the regulatory language existed in a regulation that was repealed. Several sections directly refer to Code of Virginia requirements to which LDSS currently adhere. Additionally, the standards addressed in this regulatory action have been part of DARS guidance for several years.
- (3) The regulation language describes assistance available to older adults and adults with an impairment, their families, and adults' other support systems.

The regulatory action poses no disadvantages to the public or the Commonwealth.

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.

There are no federal requirements that specifically address the AS provision in Virginia.

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.

No locality is disproportionately affected by the proposed regulation. The regulation provides statewide uniform standards. The standards outlined in this regulation were part of a previous, larger regulation that was repealed in 2012. LDSS are familiar with the concepts described in the proposed regulation as they were part of a previous regulation and because current DARS guidance manuals used by LDSS address much of the proposed regulation text.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency is 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) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Paige McCleary, Adult Protective Services Division Director, 8004 Franklin Farms Drive, Henrico, VA 23229; paige.mccleary@dars.virginia.gov; or 804-662-7605 or 804-662-9531 (fax). Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of this stage of this regulatory action.

DARS APS Division staff drafted the regulatory content with the assistance of the following LDSS representatives:

- Jasmine Campbell, Stafford
- Mittie Wallace, Fauquier
- Jessica Hunter, Warren
- Michelle Le, Arlington
- Tina Robertson, Albemarle
- Samantha Stevens, Spotsylvania
- Nicole Medina, Shenandoah Valley
- Sonya Smith, Hannover
- Susan Corbett, Patrick

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</p>	<p>DARS would experience minimal impact from the promulgation of this regulation. DARS APS Division staff would be responsible for updating manuals and training materials, activities that are part of routine work responsibilities and existing Division funding.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>There is no projected cost of these new regulations to localities. While this is a new regulation, the regulatory language appears in guidance documents that LDSS workers currently use to implement AS and previously existed in an older DSS regulation. The Code of Virginia also specifies required LDSS activities and some of this language has been incorporated into the regulation.</p>
<p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>The regulations affect older adults, individuals with disabilities and their families who may seek services to help them live as independently as possible.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>Small businesses are not impacted by this regulation.</p> <p>One hundred and twenty LDSS provide services to eligible adults. In SFY 2017 LDSS provided the following services addressed in the proposed regulatory content:</p> <ul style="list-style-type: none"> • 3,800 home-based services cases • 15,000 preadmission screenings • 12,000 annual guardian report reviews • 2,500 ALF assessments
<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence</p>	<p>There are no anticipated costs related to these new regulations. The regulations do not require LDSS to perform additional interventions beyond what the Code of Virginia or DARS guidance manuals mandate currently. The regulatory action does not change any reporting or recordkeeping requirements. The regulatory action has no impact on the development of real estate for commercial or residential purposes.</p>

of the proposed regulatory changes or new regulations.	
Beneficial impact the regulation is designed to produce.	The regulation has the beneficial impact of providing a consistent framework during the provision of AS.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

No alternative to this regulatory action was considered, as the Code of Virginia addresses the need for regulations pertaining to AS including the eligibility determination process for home-based services. The regulation does not overlap, duplicate or conflict with federal law. A regulatory action was initiated in 2011 but that action was withdrawn. Promulgating these regulations is anticipated to have no impact on small businesses as businesses are not the focus of this regulation.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

No alternatives to the regulatory action were considered, as §§ 51.5-145 and 63.2-1600 of the Code of Virginia direct DARS to implement regulations addressing AS including eligibility criteria for home-based services. Much of the proposed regulatory content is addressed in DARS guidance manuals. Actions described in the regulation focus on ensuring the safety and wellbeing of adults with an impairment. The regulatory action does not change recordkeeping or reporting requirements for LDSS. The regulatory action does not address standards for small businesses or affect small businesses.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

No public comments were received during the NOIRA stage.

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.

The regulatory content will have a positive impact on family stability by ensuring that families with members who are elderly or have an impairment and may need assistance and support, receive prompt and appropriate interventions from LDSS workers. The regulation content will ensure that LDSS provide assistance in a manner that supports the adult’s dignity, independence, sense of personal responsibility and his or her right to self-determination.

The proposed regulatory action will have no impact on the authority and rights of parents in the education, nurturing, and supervision of their children. The proposed regulatory action will not affect marital commitment or disposable family income.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.

If a new regulation is being promulgated, that is not replacing an existing regulation, please use this chart:

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements
10	Defines terms used throughout the regulation	Not applicable.	The section defines terms used in the provision of adult services. The requirements will have minimal impact on LDSS and state staff.
20	Describes the intake process	Not applicable.	The section describes intake, the first step in accessing services and supports for the adult. The requirements will have minimal impact on LDSS and state staff.
30	Describes the types of services and activities performed by LDSS	Not applicable.	The section lists activities or services provided by LDSS to adults such as preadmission screenings, assisted living facility assessments, home-based services, and review of annual reports by guardians of incapacitated persons. The financial categories of universal

			access, income maintenance, and eligibility based on income are also discussed. The requirements will have minimal impact on LDSS and state staff.
40	Describes functional and financial eligibility determination process for services	Not applicable.	The section describes eligibility determination processes including financial and functional eligibility. The application of the financial categories are also discussed. The requirements will have minimal impact on LDSS and state staff.
50	Describes service planning by LDSS	Not applicable.	The section states the requirement for LDSS workers to develop a service plan for particular types of cases. The service plan describes activities and supports that will be provided to or arranged for the adult and progress towards meeting the service plan goals and objectives. The requirements will have minimal impact on LDSS and state staff.
60	Describes the responsibilities of the LDSS	Not applicable.	The section states the responsibilities of the worker to follow state law, regulations and program guidance, including when it is appropriate to close a case. The requirements will have minimal impact on LDSS and state staff.