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TO: KATHRYN A. HAYFIELD, Commissioner
Virginia Department of Social Services

FROM: MICHELLE A. L'HOMMEDIEU 
Assistant Attorney General

DATE: September 9, 2019

SUBJECT: Proposed Regulations – Revise Adult Services Provider Regulations, 22 VAC 40-120-10 *et seq.* (4874/8304)

I am in receipt of the attached regulations to revise the regulations concerning the approved providers of adult services 22 VAC 30-120-10 *et seq.* You have asked the Office of the Attorney General to review and determine if the Department of Aging and Rehabilitative Services (“DARS”) Commissioner has the statutory authority to promulgate the proposed regulations and if the proposed regulations comport with applicable state law.

Virginia Code §§ 51.5-131 and 51.5-145 mandate that the DARS Commissioner promulgate regulations that are necessary to carry out the provisions of the laws of the Commonwealth administered by DARS, which includes responsibility for promulgating regulations concerning the provision of adult services by local departments of social services. The current regulations for approved providers of adult services are set forth at 22 VAC 30-120-10 *et seq.*

Based on my review, it is my view that the DARS Commissioner has the authority to promulgate these proposed regulations, subject to compliance with the provisions of Article 2 of the Administrative Process Act and Executive Order 14 (amended) (2018), and has not exceeded that authority. The Agency Background Document available on Town Hall reflects the Commissioner has not yet approved these proposed regulations. If you have any questions or need additional information about this regulation, please contact me at 786-6005.

cc: Kim F. Piner, Esq.
Attachment

Project 5298 - Proposed

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Revisions to Adult Services Approved Providers

CHAPTER 120

ADULT SERVICES LOCAL DEPARTMENT APPROVED PROVIDERS

22VAC30-120-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Activities of daily living" or "ADLs" means bathing, dressing, toileting, transferring, bowel control, bladder control and eating/feeding. A person's degree of independence in performing these activities is part of determining the appropriate level of care and services.

"Adult" means any individual 18 years of age or over, or under 18 if legally emancipated.

"Adult abuse" means the willful infliction of physical pain, injury or mental anguish or unreasonable confinement of an adult as defined in § 63.2-1603.

~~"Adult day services provider" means a provider who gives personal supervision for up to three adults for part of a day. The provider promotes social, physical and emotional well-being through companionship, self-education, and satisfying leisure activities. Adult day services that are provided for more than three adults require licensure by the Virginia Department of Social Services.~~

"Adult exploitation" means the illegal, unauthorized, improper, or fraudulent use of an adult as defined in § 63.2-1603 or his funds, property, benefits, resources, or other assets for another's profit, benefit, or advantage, including a caregiver or person serving in a fiduciary capacity, or that deprives the adult of his rightful use of or access to such fund, property, benefits resources, or other assets. "Adult exploitation" includes (i) an intentional breach of a fiduciary obligation to an adult to his detriment or an intentional failure to use the financial resources of an adult in a manner that results in the neglect of such adult; (ii) the acquisition, possession, or control of an adult's financial resources or property through the use of undue influence, coercion, or duress; and (iii) forcing or coercing an adult to pay for goods or services or perform services against his will for another's profit, benefit, or advantage if the adult did not agree or was tricked, misled, or defrauded into agreeing, to pay for such goods or services or perform such services.

"Adult foster care" means room and board, supervision, and special services to an adult who has a physical or mental condition ~~or an emotional or behavioral problem~~. Adult foster care may be provided by a single provider for up to three adults.

"Adult foster care provider" means a provider who gives room and board, supervision and special services in his own home ~~for up to three adults who are unable to remain in their own homes because of~~ to an adult with a physical or mental condition or an emotional or behavioral problem. Adult foster care may be provided by a single provider for up to three adults. Care provided for more than three adults requires licensure as an assisted living facility by the Virginia Department of Social Services.

"Adult neglect" means that an adult as defined in § 63.2-1603 is living under such circumstances that he is not able to provide for himself or is not being provided services necessary to maintain his physical and mental health and that the failure to receive such necessary services impairs or threatens to impair his well-being. However, no adult shall be considered neglected solely on the basis that such adult is receiving religious nonmedical treatment or religious nonmedical nursing care in lieu of medical care, provided that such

treatment or care is performed in good faith and in accordance with the religious practices of the adult and there is a written or oral expression of consent by that adult.

~~"Adult services" means services that are provided to adults 60 years of age and older and to adults 18 years of age and older who are impaired.~~

"Assistant" means any individual who is responsible to assist an ~~adult services~~ approved provider in caring for ~~adult clients~~ adults. Assistants must shall meet the same requirements as the provider standards set forth in this chapter.

"Chore provider" means a provider who performs nonroutine, heavy home maintenance tasks for ~~adult clients~~ adults ~~unable to perform such tasks for themselves~~. ~~Chore services include~~ including minor repair work on furniture and appliances in the adult's home; carrying coal, wood ~~and~~ or water; chopping wood; removing snow; yard maintenance; and painting.

~~"Client" means any adult who needs supervision and/or services and seeks assistance in meeting those needs from a local department of social services.~~

"Companion provider" means a provider who assists ~~adult clients~~ adults ~~unable to care for themselves without assistance and where there is no one available to provide the needed services without cost in~~ with activities such as light housekeeping, companionship, shopping, meal preparation, transportation, laundry, money management, household management and activities of daily living (ADLs) ADLs.

"Department" means the Virginia Department for Aging and Rehabilitative Services.

"Health care professional" means a physician or other health care practitioner licensed, accredited, or certified to perform specific health care services consistent with the laws of the Commonwealth.

~~"Home-based services" means companion, chore, and homemaker services that allow individuals to attain or maintain self-care and are likely to prevent or reduce dependency.~~

"Homemaker services provider" means a provider who gives instruction in or, where appropriate, performs activities such as personal care, ~~home~~ household management, household maintenance, nutrition, consumer or hygiene education.

"In-home provider" means an individual who provides care in the home of the adult ~~client~~ needing supervision and/or services. In-home providers include are companion, chore, and homemaker providers.

"Instrumental activities of daily living" or "IADLs" means meal preparation, housekeeping/light housework light housekeeping, shopping for personal items, money management laundry, or using the telephone, home maintenance, and laundry. An adult client's adult's degree of independence in performing these activities is part of determining the appropriate level of care and services an adult's service needs.

~~"Local board" means the local board of social services representing one or more counties or cities.~~

"Local department" means the local department of social services of any county or city in this Commonwealth.

"Local department-approved provider" means a provider that is not subject to licensure by the Department of Health or the Department of Social Services and is approved by a local department of social services to provide in-home or adult foster care services to clients adults.

~~"Out-of-home provider" means an individual who provides care in the individual's own home to adult clients who enter the home for purposes of receiving needed supervision and/or services.~~

"Personal care services" means the provision of nonskilled services to the adult including assistance in the activities of daily living ADLs, and may include instrumental activities of daily

living IADLs related to the needs of the adult client, to maintain the adult client's health and safety safely in their his home.

"Personal toiletries" means hygiene items provided to the individual by the adult foster care provider including deodorant, razor, shaving cream, shampoo, soap, toothbrush, toothpaste, and toothpaste.

"Responsible person" means an individual ~~designated by or for an adult client~~ who is authorized by state law to make decisions concerning the adult client ~~and/or~~ and to receive information about the adult client.

"Significant change" means a change in an adult's condition that is expected to last longer than 30 days. It does not include short-term changes that resolve with or without intervention, a short-term acute illness or episodic event, or a well-established, predictive, cyclic pattern of clinical signs and symptoms associated with a previously diagnosed condition for which an appropriate course of treatment is in progress.

22VAC30-120-20. Local department-approved providers.

A. This regulation applies to ~~providers approved by a local department~~ approved providers and ~~does~~ shall not apply to facilities or organizations licensed or regulated by a the Department of Health or the Department of Social Services licensing or regulatory agency. A local department shall not approve a provider that does not meet the standards set ~~out~~ forth in this regulation chapter.

B. This regulation is applicable to the following providers:

1. ~~Out-of-home providers including:~~ Adult foster care providers, and
 - a. ~~Adult day services providers;~~
 - b. ~~Adult foster care providers;~~
2. ~~In-home providers including:~~
 - a. ~~Chore providers;~~
 - b. ~~Companion providers;~~
 - c. ~~Homemaker providers.~~

C. The local department is not required to accept provider applications for ~~any type of service~~ when the local department has a sufficient number of approved providers for that service ~~to meet the client population needs or, does not offer the type of service, or chooses to contract with an agency or organization licensed or regulated by the Department of Health or the Department of Social Services to provide in-home providers~~. However, if the local department approves its own providers and the adult identifies an individual to be a provider, the local department shall initiate the approval process for that individual as long as the service is offered by that locality. The individual identified by the ~~adult~~ shall meet the standards set forth in this regulation.

D. Prior to approving an ~~out-of-home adult foster care provider located in another~~ that is not approved by the local department in the whose jurisdiction the provider is located, the local department wanting to approve the provider shall seek written permission from the local department in the jurisdiction where the adult foster care provider will provide services is located.

E. Local departments may use an approved in-home or adult foster care provider from another jurisdiction without ~~performing another approval study~~ initiating the approval process when the local department obtains written permission and a copy of the approval documents from the local department that ~~conducted the approval study~~ approved the in-home or adult foster care provider.

22VAC30-120-30. Standards for providers and other persons.

A. Age requirements include:

1. All local department-approved ~~adult services homemaker~~ providers shall be at least 18 years of age.
2. ~~All local department-approved adult services chore and companion providers shall be at least 16 years of age. If the local department chooses to approve a chore or companion provider who is at least 16 years of age but less than 18 years of age, the local department must determine that the provider is competent and able to provide the service.~~ Any assistant to a local department-approved provider shall be at least 18 years of age.
3. ~~Any assistant to a local department-approved in-home provider for adult services shall be at least 16 years of age.~~

B. Criminal record background checks and additional requirements include:

1. ~~The provider and any assistant, the spouse of the provider, or other adult household members who come in contact with adults in care shall identify any criminal convictions and consent to a criminal record search.~~ An individual applying to become an in-home or adult foster care provider shall identify any criminal convictions and consent to a criminal record search. The local department shall obtain criminal history record information from the Central Criminal Records Exchange of any individual the local department is considering approving as an in-home or adult foster care provider. The local department may also obtain a criminal records search on all adult household members residing in the home of an individual the local department is considering approving as an adult foster care provider. A new criminal record background check shall be required at the time of provider renewal.
2. Convictions of any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02 of the Code of Virginia shall prohibit a any provider the assistant, spouse of the provider, or other adult household members who come in contact with adults in care to receive approval as a provider individual from being approved as a local department approved provider. In addition, if the provider or, for adult foster care and adult day services, the assistant, spouse of the provider, or other adult household members member who come in contact with adults in care, has been convicted of any other felony or misdemeanor that, in the judgment of the local department jeopardizes the safety or proper care of adults, the provider shall be prohibited from being approved as a provider of services to adults.
3. Conviction of any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02 of the Code of Virginia will result in the revocation of the in-home or adult foster care provider's approval unless an allowable variance is granted by the local department. The local department shall terminate the provision of services by an in-home provider or the adult shall be removed from the adult foster care home immediately, if any adult in the home has been convicted of any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02.
4. ~~When the provider and any assistant, and for adult foster care, spouse of the provider, or other adult household members who come in contact with adults in care, has been convicted of a felony or misdemeanor not listed in clause (i) of the definition of barrier crime in § 19.2-392.02 of the Code of Virginia, the local department may approve the provider if the local department determines that the conviction does not jeopardize the safety or proper care of the adult. If approval as a local department-approved provider is denied because of information obtained through a Central Criminal Records Exchange search, the local department, upon request, shall provide a copy of the information~~

obtained to the individual who is the subject of the search. Except as provided by law, further dissemination of the criminal history record information is prohibited.

C. Interview, references, and employment history requirements include:

1. The provider shall participate in interviews with the local department.
2. The provider shall provide at least two references from persons who have knowledge of the provider's ability, skill, or experience in the provision of services and who shall not be related to the provider.
3. The provider shall provide information on the provider's employment history.
4. The local department shall use the interviews, references, and employment history to assess that the provider is:
 - a. Knowledgeable of and physically and mentally capable of providing the necessary care for adults;
 - b. Able to sustain positive and constructive relationships with adults ~~in care~~, and to relate to adults with respect, courtesy, and understanding;
 - c. Capable of handling emergencies with dependability and good judgment; and
 - d. Able to communicate and follow instructions sufficiently to ensure adequate care, safety and protection for adults.
5. For adult foster care ~~and adult day services providers~~, at least one interview shall occur in the home where the care is to be provided. All adult household members shall be interviewed to ensure that they understand the demands and expectations of the care to be provided.
6. For homemaker providers, the local department shall further use the interview, references, and employment history to assess that the provider has knowledge, skills, and ability, as appropriate, in:
 - a. Home management and household maintenance;
 - b. The types of personal care of ~~the elderly~~ older adults or adults with a disability permitted by regulation;
 - c. Nutrition education and meal planning and preparation, including special diets; and
 - d. Personal hygiene and consumer education.
7. For adult foster care providers, the local department shall further use the interview, references, and employment history to assess that the provider has sufficient financial income or resources to meet the basic needs of his own family and has the knowledge, skills, and abilities to care for adults, including, but not limited to:
 - a. Provision of a furnished room in the home that meets applicable zoning, building, and fire safety codes.
 - b. Housekeeping services based on the needs of the adult ~~in care~~.
 - c. Nutritionally balanced meals and snacks, including extra portions and special diets as necessary.
 - d. Provision of clean bed linens and towels at least once a week and as needed by the adult.
 - e. Assistance with personal hygiene including bathing, dressing, oral hygiene, hair grooming and shampooing, care of clothing, shaving, care of toenails and fingernails, arranging for haircuts as needed, care of needs associated with menstruation or occasional bladder or bowel incontinence.
 - f. Provision of generic personal toiletries ~~including soap and toilet paper~~.

g. Assistance with the following: care of personal possessions, care of personal funds if requested by the adult and adult foster care home's policy permits it, use of telephone, arranging transportation, obtaining necessary personal items and clothing, making and keeping appointments, and correspondence.

h. Securing health care and transportation when needed for medical treatment.

i. Providing social and recreational activities as required by the local department ~~and consistent with licensing regulations.~~

j. General supervision for safety.

D. Training requirements include:

1. The local department shall provide basic orientation to any approved provider.

2. The provider shall attend any orientation and training required by the local department. The provider shall bear the cost of any required training unless the local department subsidizes the cost for all local department-approved providers.

E. Medical requirements include:

1. The ~~in-home provider; for out-of-home care, the an assistant; the adult foster care provider's spouse; provider,~~ and all other adult household members in the adult foster care home who come in contact with adults in receiving care shall submit a statement from ~~the local health department or licensed physician~~ a health care professional that he is believed to be free of tuberculosis in a communicable form.

2. The provider and assistant shall submit the results of a physical and mental health examination when requested by the local department.

F. ~~All local department-approved providers~~ adult foster care providers shall ~~keep~~ notify the local department informed within one business day of changes in the household composition that may affect approval of the provider.

G. The provider shall have the capability to ~~fully~~ perform the requirements of the position, have the moral and business integrity and reliability to ensure good faith performance and be determined by the local department to meet the requirements of the position.

H. Any provider who causes the local department to make an improper payment by withholding information or providing false information ~~may~~ shall be required to repay the amount of the improper payment. Failure to repay any improper payment shall result in a referral for criminal or civil prosecution.

22VAC30-120-40. Standards for ~~of care for adult services providers~~ for local department-approved providers.

A. The provider shall provide care that does not discriminate on the basis of race, ethnicity, sex, national origin, age, religion, disability or impairment.

B. Supervision requirements include:

1. The provider shall have a plan for seeking assistance from police, ~~firefighters~~ the fire department, and medical professionals in an emergency.

2. A responsible adult or an approved assistant shall always be available to provide appropriate care for the adult in case of an emergency.

3. ~~If extended absence of the provider is required, the local department shall approve any substitute arrangements the provider wishes to make~~ The adult foster care provider shall inform the local department prior to an extended absence. An extended absence shall be defined as greater than one calendar day. Each adult foster care provider shall identify to the local department a substitute provider who will provide care during the

adult foster care provider's extended absence. Each substitute provider shall also meet the standards set forth in this regulation.

4. The provider shall ensure that adequate care and supervision are provided to adults in care each adult and that the adult's health, safety, and well-being are protected.

5. The provider shall notify the local department within 24 hours of any significant changes in the adult's mental or physical condition.

C. The following standards apply to food provided to ~~adult clients~~ adults by ~~adult day services and~~ adult foster care providers:

1. ~~Adults in care~~ shall receive nutritionally balanced meals and snacks appropriate to the length of time in care each day, ~~and the daily nutritional needs of each adult, and the time of day care is provided.~~

2. ~~Adults in care~~ shall receive special diets if prescribed by a ~~licensed physician~~ health care professional or in accordance with religious or ethnic requirements, the adult's preferences, or other special needs.

3. Adequate drinking water shall be available at all times.

D. Requirements for transportation of adults include:

1. ~~If the provider and, for out-of-home services, the assistant; spouse of the provider; volunteer; or any other agent involved in the day-to-day operation of the adult day services or adult foster care transports adults in care, the~~ As part of the service, only the approved provider or assistant shall provide or the person providing the transportation for the adult and shall have a valid driver's license and automobile liability insurance. When the approved provider or assistant is unable to provide transportation for the adult, the approved provider shall coordinate and assist the adult in obtaining backup transportation.

2. The vehicle used to transport adults shall have a valid license and inspection sticker.

3. ~~Providers or the person who transports adults in care must~~ The vehicle operator shall ensure that all passengers use safety belts in accordance with requirements of Virginia law.

E. Requirements for medical care include:

1. The provider shall have the name, address, and telephone number of each adult's physician health care professional and responsible person easily accessible.

2. The provider shall be able to meet the identified needs of the adult as assessed by the local department before accepting the adult for care and in order to continue providing services or continuing to provide services to the adult.

3. The adult foster care provider shall not administer medications. The adult foster care and adult day services provider shall:

a. Ensure that the adult receives prescription ~~drugs~~ medications only in accordance with an order signed by a licensed physician or authentic prescription label the prescription label and, with the adult's responsible person's written consent, as appropriate applicable;

b. Document all medications taken by adults ~~in care~~, including over-the-counter medications;

c. Ensure that the adult ~~in care~~ receives nonprescription drugs over the counter medications only with the adult's or the adult's responsible person's written consent, as required applicable;

d. Keep medications separate from food except those items that must be refrigerated;

e. Report all major injuries to and accidents experienced by the adult to the local department and the adult's responsible person immediately;

f. Have authorization for emergency medical care for each adult ~~in care~~; and

g. Have first aid supplies easily accessible in case of accidents.

4. Admission or ~~retention~~ continued residence of adults in an adult foster care home is prohibited when the adult's care needs cannot be met by the provider as determined by the assessment of ~~by the adult services worker~~ local department or by the adult's ~~physician~~ health care professional.

F. The ~~adult day services~~ and adult foster care provider shall provide recreational and other planned activities appropriate to the needs, interests, and abilities of the adults ~~in care~~.

G. All providers of ~~adult services~~ shall immediately report any suspected abuse, neglect, or exploitation of any adult in care to the local department or to the 24-hour toll-free hotline (hotline number: 888-83-ADULT). Providers covered by this regulation are mandatory reporters in accordance with § 63.2-1606 of the Code of Virginia. Failure to report could result in the imposition of civil penalties.

H. The adult foster care provider shall ensure that adults in care have adequate, properly fitting, and seasonal clothing and that all clothing is properly laundered or cleaned and altered or repaired as necessary.

22VAC30-120-50. Standards for the home of the adult foster care ~~or adult day services~~ provider.

A. Physical accommodations requirements include:

1. The home shall have appropriate space and furnishings for each adult receiving care ~~in the home to include~~ including:

a. Space to keep clothing and other personal belongings;

b. Accessible and adequate basin and toilet facilities;

c. Comfortable sleeping or napping furnishings;

d. For adults unable to use stairs unassisted, sleeping space on the first floor of the home;

e. Adequate space for recreational activities; and

f. Sufficient space and equipment for food preparation, service, and proper storage.

2. All rooms used by adults shall be heated in winter, dry, and well-ventilated.

3. All doors and windows used for ventilation shall be appropriately screened.

4. Rooms used by adults ~~in care~~ shall have adequate lighting for activities and the comfort of adults.

5. ~~The provider and any adult in care shall have access to a working telephone in the home~~ home shall have a working telephone that the adult shall be permitted to use.

6. The home shall be in compliance with all local ordinances.

7. Additional standards for adult foster care include:

a. No more than two adults shall share a sleeping room unless they request and consent in writing to sharing such a sleeping arrangement.

b. There shall be space in the household for privacy outside of the sleeping rooms for the adult to entertain visitors and talk privately.

c. There shall be at least one toilet, one basin, and one tub or shower for every five persons residing in the home.

B. Home safety requirements include:

1. The home and grounds shall be free from litter, and debris, and present no hazard to the safety of the adults receiving care safety hazards.

2. The provider shall permit a fire inspection of the home by appropriate authorities if conditions indicate a need for approval and the local department requests it.

3. The provider shall have a written emergency plan that includes, but is not limited to, fire or natural disaster and rehearse the plan at least twice a year and natural disasters. The provider shall rehearse the plan at least twice per year and review the plan with each new adult placed in admitted to the home. The written plan shall be provided to the local department upon request.

4. ~~Attics or basements used by adults in receiving care shall have two emergency exits. One of the emergency exits shall lead directly outside and may be a door or an escapable window. The provider shall ensure the adult is able to evacuate all living spaces safely during an emergency. The provider shall include emergency evacuation procedures in the written emergency plan and shall consider the adult's ability to ambulate during an emergency.~~

5. Possession of any weapons, including firearms, in the home shall be in compliance with federal, state, and local laws and ordinances. The provider shall store all weapons, firearms, and ammunition in a locked cabinet with safety mechanisms activated. ~~The key or combination to the cabinet shall not be accessible to the adult in care. Any glass cabinets used to store any weapons, including firearms, shall be shatterproof owned by the provider or other household members in a manner that prohibits access by the adult. If the provider permits an adult to possess weapons, firearms, or ammunition in the home, the provider shall have a written policy detailing such permissions, and the provider shall require the adult to safely store all weapons, firearms, or ammunition. The provider may have a written policy prohibiting all weapons, firearms, and ammunition in the home, and the provider may choose not to accept into care an adult if the adult possesses weapons, firearms, or ammunition.~~

6. The provider shall protect adults from household pets that may be a health or safety hazard. Household pets shall be inoculated as required by state or local ordinances. Documentation of inoculations shall be made available upon local department request.

7. The provider shall keep cleaning supplies and other toxic substances stored away from food and out of the reach of adults in receiving care ~~who are mentally incapacitated.~~

8. The provider shall provide and maintain at least one approved, properly installed, and operable battery-operated smoke detector, at a minimum, in each sleeping area and on each additional floor. Existing installations that have been approved by the state or local fire marshal are exempted from this requirement.

C. Sanitation requirements include:

1. The provider shall permit an inspection of the home's private water supply and sewage disposal system by the local health department if conditions indicate a need for approval and the local department requests it.

2. The home and grounds shall be free of garbage, debris, insects, and rodents that would present a hazard to the health of the adult in-care adults.

D. Capacity standards include:

1. The provider shall not exceed the maximum allowable capacity for the type of care provided and approved by the local department.

~~2. The adult day services provider shall not accept more than three adults in the home at any one time. A provider who has more than three adults receiving day services shall be licensed by the Department of Social Services.~~

~~3 2. The adult foster care provider shall not accept more than three adults for the purpose of receiving room, board, supervision, or special services, regardless of relationship of any adult to the provider. A provider who accepts more than three adults for these purposes shall be licensed as an assisted living facility by the Department of Social Services.~~

E. The adult foster care provider shall display the Adult Protective Services hotline number and the toll free number of the State Long-term Care Ombudsman in a manner and method accessible to adults in the home.

22VAC30-120-60. Record requirements for adult foster care and ~~adult day services providers.~~

A. The provider shall maintain written, legible, and current information on each adult ~~in~~ receiving care.

B. Information on the adult ~~in care~~ shall include:

1. ~~Identifying~~ The adult's identifying information ~~on the adult in care;~~

2. Name, address, and home and work telephone numbers of the adult's responsible persons;

3. Name and telephone number of person to be called in an emergency ~~when~~ if the adult's responsible person cannot be reached;

4. Name, address, and home and work telephone numbers of persons authorized to ~~pick up~~ transport the adult ~~in care;~~

5. Name of persons not authorized to call or visit the adult ~~in care;~~

6. Date of admission and discharge of the adult ~~in care;~~

~~7. Daily attendance records, where applicable. Daily attendance records are required for adult day services;~~

~~87. Medical~~ Pertinent medical information ~~pertinent to the health care of the adult in care;~~

~~98. Correspondence related to the adult in care as well as other written adult information about the adult provided by the local department; and~~

~~109. Placement agreement between the provider and the adult and his~~ the adult's responsible person, ~~where~~ if applicable.

C. ~~Adult~~ All records are confidential and shall not be shared without the approval of the adult ~~in care or the adult's responsible person,~~ except as required under federal and state law.

D. The local department ~~and its representatives~~ shall have access to all records.

E. The department ~~and its representative~~ shall have access to all records.

22VAC30-120-70. Approval period.

The approval period for a ~~provider~~ all providers may be up to 24 months when the provider meets the standards. ~~In the case of adult day services and adult foster care, the home shall also meet the standards.~~

22VAC30-120-80. Allowable variance.

A. ~~The grant or denial of a variance is within the discretion of the local department. The provider may request an allowable a~~ variance on a standard if the variance does not jeopardize the safety and proper care of the any adult or prospective adult receiving care or violate federal, state, or local law and the local department approves the request.

B. ~~The local department shall consult with the state adult services consultant prior to granting an allowable variance~~ The allowable variance, if granted by the local department, shall be documented in writing with a copy maintained by the local department and the provider.

C. ~~The allowable variance shall be in writing with a copy maintained by the local department and the provider.~~ The local department and the provider shall develop a plan to meet the applicable standard for which the allowable variance has been granted.

D. ~~The local department and the provider shall develop a plan to meet the applicable standard for which the allowable variance has been granted.~~ The variance shall be requested by the provider and if granted by the local department, issued prior to the approval of the provider or at the time of the provider's renewal.

E. ~~The allowable variance shall be requested and granted by the local department, prior to the approval of the provider or at the time of the provider's renewal.~~

22VAC30-120-90. Emergency approval.

A. Emergency approval of a provider may be granted under the following conditions:

1. The court orders emergency placement; or
2. The adult or his the adult's responsible person requests placement or service in an emergency.

B. ~~A representative of~~ For emergency approval of an adult foster care provider, the local department shall visit the provider's home prior to the emergency placement to ensure that minimum safety standards are evident and that the provider is capable of providing the care prior to the emergency placement of the adult in adult foster care or adult day services for the adult.

C. For emergency approval of an in-home provider, ~~the representative of~~ the local department shall interview the provider to ensure that the emergency provider is capable of providing the needed services.

D. Emergency approval of a provider shall not exceed 30 calendar days.

E. The provider ~~must~~ shall meet all applicable standards if services ~~shall~~ are to be provided beyond the 30-day emergency approval ~~or if the emergency approval is extended beyond 30 days.~~

22VAC30-120-100. Provider monitoring.

A. ~~For adult day services or adult foster care providers, the local department representative~~ shall visit the home of the provider as often as necessary, but at least semi-annually to monitor the performance of the provider.

B. ~~For home-based care~~ in-home providers, the local department representative shall interview the provider face-to-face as often as necessary, but at least semi-annually, to monitor the performance of the provider. At least one monitoring visit shall occur in the home of each adult who is receiving care.

C. Provider monitoring shall include interviews with adults receiving care from the provider.

D. The adult ~~in care~~ or his the adult's responsible person shall have access to all provider monitoring reports ~~completed by the local department~~ for that specific adult and that adult's provider upon request.

22VAC30-120-110. Renewal process.

The local department shall reapprove the provider prior to the end of the approval period if the provider continues to meet the standards and if the local department continues to offer this service. In the case of adult day services or adult foster care providers, the home also shall continue to meet the standards.

22VAC30-120-120. Inability to meet standards.

A. If the provider cannot meet the standards ~~for adult services approved providers set forth in this chapter~~, the local department shall grant provisional approval, suspend approval, or revoke approval depending on the duration and nature of noncompliance.

B. The local department may grant provisional approval if noncompliance with the standards set forth in this chapter does not jeopardize the safety or proper care of the adults ~~in care~~. Provisional approval shall not exceed ~~three months~~ 90 calendar days.

C. The local department may suspend approval if noncompliance with the standards set forth in this chapter may jeopardize the safety and proper care of the ~~adults in care~~ adults. Suspension shall not exceed ~~three months~~ 90 calendar days. During the suspension, the provider ~~can give no~~ shall not provide care to adults ~~referred by the local department~~ receiving services arranged by the local department.

D. If the provider is found to be out of compliance with the standards set forth herein ~~in this chapter~~, and cannot meet standards within ~~three months~~ 90 calendar days, and a variance is not granted, the approval shall be revoked.

E. The local department shall immediately revoke its approval if noncompliance with the standards set forth in this chapter jeopardizes the health, safety and proper care of the adults ~~in care~~. ~~Adults in adult foster care and adult day services shall be removed within five calendar days from the date of the decision. The local department shall terminate services and find alternative services for all affected adults who are receiving adult foster care no later than five calendar days from the date of the local department's revocation decision. For in-home providers, the local department shall find alternative services for the adult no later than 30 calendar days from the date of the local department's revocation decision.~~

F. The decision to grant provisional approval, suspend approval or revoke approval shall be in writing with the effective date of the decision noted.

22VAC30-120-130. Relocation of ~~out-of-home~~ adult foster care provider.

A. If the ~~out-of-home provider moves~~ adult foster care provider relocates within the locality, the local department approving the provider shall determine continued compliance with standards related to the home as soon as possible, but no later than 30 calendar days after relocation to avoid disruption of services to the adult ~~in~~ receiving care.

B. If an ~~out-of-home provider moves outside of the locality that approved the provider~~, the local department in the new place of residence may accept the provider approval of the initial local department based upon the recommendation of the initial local department or may initiate the approval process itself. If the adult foster care provider relocates within the Commonwealth to a locality other than the locality that originally approved the adult foster care provider, the local department that originally approved the adult foster care provider ("original local department") shall notify the local department in the new locality ("new local department") of the relocation. If the new local department offers adult foster care services, the new local department may accept the adult foster care provider approval from the original local department based upon the recommendation of the original local department or the new local department may initiate an approval process. If the new local department does not offer adult foster care services, the original local department shall request written permission from the new

local department for the adult foster care provider to continue to provide adult foster care services for the original local department.

22VAC30-120-140. Right to review.

A. The provider shall have the right to request that the decision of the local department be reviewed by the ~~local director of social services~~ the local department.

B. The provider must request the review within 10 calendar days from the effective date of the ~~notice of action~~ local department's decision.

C. The director's decision at the conclusion of the review is final.

22VAC30-120-150. Rights of adults in receiving care.

A. ~~Adults in the receiving care of from~~ local department-approved providers shall have the rights and responsibilities specified in this section. The provisions of this section shall not be construed to restrict or abridge any right that any adult has under the law. The provider shall ~~establish policies and procedures to ensure that adults in care or the adult's responsible person are aware of and understand the following rights:~~ The adult and, if appropriate, the adult's responsible person shall acknowledge in writing receipt of this information, which shall be filed in the adult's record.

B. Adults receiving care from local department-approved providers shall have the right:

1. ~~To be fully informed, prior to the beginning of the provision of services, (i) of his rights and of all rules and expectations governing his conduct and responsibilities; and (ii) charges, if any, for the services to be provided the adult and, if appropriate, his responsible persons shall acknowledge, in writing, receipt of this information, which shall be filed in his record;~~

2. ~~To be fully informed, prior to the beginning of the provision of services, of services available and of related charges, if any; this shall be reflected by the adult's written acknowledgment of having been so informed, which shall be filed in his record~~ To be free from adult abuse, neglect and exploitation; to be free from forced isolation, threats, or other degrading or demeaning acts against him; and to be treated with courtesy, respect, and consideration as a person of worth, sensitivity, and dignity;

3. ~~Unless a conservator of such person has been appointed, to be free to manage his personal finances and funds; to be entitled to access to personal account statements reflecting financial transactions made; and, when receiving adult foster care, to be given at least a quarterly accounting of financial transactions made on his behalf~~ To be free to voice grievances and recommend changes in policies and services without fear of reprisal;

4. ~~To be afforded confidential treatment of his personal affairs and records and to approve or refuse their release to any individual outside the home except as otherwise provided in law and except in case of his transfer to another setting~~ when services may need to be transferred to another provider;

5. ~~When receiving adult foster care or adult day services, to be transferred or discharged only when provided with a statement of reasons, or for nonpayment for his stay, and to be given advance notice of at least 30 days; upon notice of discharge or upon giving reasonable advance notice of his desire to move, the adult shall be afforded reasonable assistance to ensure an orderly transfer or discharge; such actions shall be documented in his record; the local department that made the placement shall be given advance notice of at least 30 days for any transfer or discharge~~ To be encouraged to function at his highest mental, emotional, physical, and social potential;

~~6. An adult receiving adult foster care or adult day services may be discharged immediately if his physical or mental health conditions or his behavior places himself or others at risk of serious bodily harm or injury; the discharge must be to a setting that will ensure the protection of the adult's health, safety and welfare; the local department that made the placement must be notified of the emergency discharge as soon as practicable but no later than 24 hours after the emergency discharge. To be afforded the opportunity to participate in the planning of his program of care and medical treatment and the right to refuse medical treatment unless there has been a court adjudication of incapacity;~~

~~7. In the event a medical condition should arise while he is under the care of the provider, to be afforded the opportunity to participate in the planning of his program or care and medical treatment and the right to refuse treatment; To be afforded privacy including:~~

~~a. In the care of his personal needs except when assistance may be needed;~~

~~b. In any medical examination or health-related consultations that the adult may have;~~

~~c. In any communications; and~~

~~d. During visitation with other persons; and~~

~~8. When receiving care from an adult foster care or adult day services provider, to not be required to perform services for the home except as voluntarily contracted pursuant to an agreement for services that states the terms of consideration or remuneration and is documented in writing and retained in his record; To be free of physical, mechanical or chemical restraints.~~

~~9. To be free to select health care services from reasonably available resources;~~

~~10. To be free from mental, emotional, physical, sexual, and financial abuse or exploitation; to be free from forced isolation, threats, or other degrading or demeaning acts against him; and, when receiving care from an adult foster care or adult day services provider, to not have his known needs neglected or ignored by the provider;~~

~~11. To be treated with courtesy, respect, and consideration as a person of worth, sensitivity, and dignity;~~

~~12. To be free to voice grievances and recommend changes in policies and services, free of coercion, discrimination, threats, or reprisal;~~

~~13. When receiving care from an out-of-home local department-approved provider, to be permitted to retain and use his personal clothing and possessions as space permits unless to do so would infringe upon rights of other adults;~~

~~14. To be encouraged to function at his highest mental, emotional, physical, and social potential;~~

~~15. To receive and send uncensored, unopened mail;~~

~~16. To refuse medication unless there has been a court finding of incapacity;~~

~~17. To choose which services are included in the service agreement and to receive all physician-prescribed treatments. Adults also have the right to refuse services, if doing so does not endanger the health or safety of other adults;~~

~~18. To be free of physical, mechanical or chemical restraint except in the following situations and with appropriate safeguards, including training for the provider on the use of restraints:~~

~~a. As necessary to respond to unmanageable behavior in an emergency situation that threatens the immediate safety of the adult or others; and~~

- ~~b. As medically necessary, as authorized in writing by a physician, to provide physical support to a weakened adult;~~
- ~~19. To be free of prescription drugs except where medically necessary, specifically prescribed, and supervised by the attending physician;~~
- ~~20. To be accorded respect for ordinary privacy in every aspect of daily living, including but not limited to the following:~~
- ~~a. In the care of his personal needs except as assistance may be needed;~~
 - ~~b. In any medical examination or health-related consultations that the adult may have at the home;~~
 - ~~c. In communications, in writing, or by telephone;~~
 - ~~d. During visitations with other persons;~~
 - ~~e. When receiving adult foster care from an out-of-home provider, in the adult's room or portion thereof; adults shall be permitted to have guests or other adults in their rooms unless to do so would infringe upon the rights of other adults; staff shall not enter an adult's room without making their presence known except in an emergency or in accordance with safety oversight requirements included in these regulations administered by the Commissioner for Aging and Rehabilitative Services; and~~
 - ~~f. When receiving care from an out-of-home provider, in visits with his spouse; if both are adults of the home they are permitted, but not required, to share a room unless otherwise provided in the adult's agreements; and~~
- ~~21. Is permitted to meet with and participate in activities of social, faith-based, and community groups at his discretion unless medically contraindicated as documented by his physician in his medical record.~~

C. In addition to subsection B, adults receiving care from an adult foster care provider shall have the following additional rights:

1. To be free to manage his personal finances and funds, to be entitled to access personal account statements reflecting financial transactions made, and to be given at least a quarterly accounting of financial transactions made on his behalf unless a conservator has been appointed by a court to manage the adult's financial affairs;
2. To be permitted to retain and use personal clothing and possession as space permits unless to do so would infringe upon the rights of other adults;
3. To be permitted to have guests in the adult's room or portion thereof unless to do so would infringe upon the rights of other adults;
4. To have the adult foster care provider only enter the room after the provider makes his presence known except in a case of emergency or pursuant to oversight as required in these regulations;
5. To be permitted but not required to share a room with a spouse also residing in the home;
6. To be permitted to participate in social, faith-based, and other community activities at the adult's discretion unless contraindicated as documented by the adult's health care professional;
7. To be notified before the adult's room or roommate is changed;
8. To be free from searches of personal belongings without the adult's or the adult's responsible person's permission, unless the adult foster care provider has reason to suspect that the adult possesses items that are illegal or prohibited in the provider's home and the adult or the adult's responsible person is present during the search;

9. To be discharged only when the provider gives the adult, the adult's responsible person, and the local department that made the placement a 30 calendar day written notice stating the reason for discharge;

10. To be afforded reasonable assistance to ensure an orderly discharge upon notice of discharge or upon the adult giving notice of his desire to move; and

11. To not be required to perform services in the home except as voluntarily contracted pursuant to an agreement for the service provision that states the terms of consideration or remuneration and is documented in writing and retained in the adult's record.

~~BD. If the adult is unable to fully understand and exercise the rights and responsibilities contained in this section, the local department shall require that a responsible person, of the adult's choice when possible, designated in writing in the adult's record, be made aware of each item in this section and the decisions that affect the adult or relate to specific items in this section; an adult shall be assumed capable of understanding and exercising these rights unless a physician determines otherwise and documents the reasons for such determination in the adult's record. The adult foster care provider shall ensure that any assistants providing care also understand and uphold the rights included in this section.~~

~~C. The out-of-home provider shall make available in an easily accessible place a copy of these rights and responsibilities and shall include in them the name and telephone number of the Adult Protective Services Hotline as well as the toll-free telephone number for the Virginia Long-Term Care Ombudsman Program and any state ombudsman program serving the area.~~

~~D. The out-of-home provider shall make its policies and procedures for implementing this section available and accessible to adults, relatives, agencies, and the general public.~~

~~E. Each out-of-home provider shall provide appropriate staff training to implement each adult's rights included in this section.~~

~~F. Adults in care have the right to be fully informed in advance about recommended care and treatment and of any recommended changes in that care or treatment.~~

~~G. Adults in care have the right to freedom from searches of personal belongings without the adult or responsible person's permission, unless the care provider has reason to suspect that the adult possesses items that are illegal or prohibited in the out-of-home provider setting and the adult is present during the search.~~

~~H. When receiving care from an out-of-home provider, adults have the right to be notified before the adult's room or roommate is changed.~~

~~I. When receiving care from an out-of-home provider, adults have the right to communicate privately and without restriction with any other adult who does not object to the communications.~~

22VAC30-120-160. Responsibilities of adults in adult foster care or adult day services.

A. Adults in receiving care shall follow the rules of the provider unless these rules are in violation of adults' rights.

B. Adults in receiving care, or the local department or the adult's responsible person, when appropriate if applicable, shall give a ~~two-week~~ two weeks written notice of the intent to leave the placement.

C. Adults in receiving care, the adult's responsible person, if applicable, shall notify providers if there are changes in the adult's health status.