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## Proposed Regulation Agency Background Document

<b>Agency name</b>	Department for Aging and Rehabilitative Services
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	22 VAC 30-120
<b>VAC Chapter title(s)</b>	Adult Services Approved Providers
<b>Action title</b>	Revisions to Adult Services Approved Providers
<b>Date this document prepared</b>	January 11, 2021

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

The intent of the proposed action is to make needed amendments to 22 VAC 30-120, Adult Services Approved Providers. 22VAC30-120 establishes standards for providers who are approved by local departments of social services (LDSS) to provide services, such as homemaker, chore, or companion services, and adult foster care (AFC) to adults.

This regulatory action seeks to review all current regulation content and (1) clarify regulation content that may be unclear, inconsistent, or obsolete; and (2) incorporate person-centered language throughout the regulation.

### Acronyms and Definitions

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

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AFC-Adult Foster Care  
DARS-Department for Aging and Rehabilitative Services  
LDSS or local department-Local department of social services

### Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”*

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This regulatory action is the result of a determination by DARS that 22VAC30-120 needed to be updated to clarify regulation content that may be unclear, inconsistent, or obsolete, and incorporate person-centered language throughout the regulation.

### Legal Basis

*Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.*

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Section 51.5-145 of the Code of Virginia gives DARS the responsibility for the planning and oversight of adult services including homemaker, chore, and companion services. 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. In addition, § 63.2-1601 gives the Commissioner of DARS the authority over regulations related to the recruitment and approval for the provision of adult foster care services. Finally, § 51.5-131 of the Code of Virginia authorizes the Commissioner of the DARS to promulgate regulations necessary to carry out the provisions of the laws of the Commonwealth administered by DARS.

### Purpose

*Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it’s intended to solve.*

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This regulation will amend relevant content that describes the standards a local provider must meet in order to be approved by the LDSS. The standards ensure that an adult’s health and safety remain a primary focus when services are provided to older adults and individuals with disabilities.

Many services provided by LDSS approved homemaker, chore, companion and adult foster care providers promote the well-being of adults by strengthening the support systems, including family supports, that enable adults to live in community-based settings for as long as possible.

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.

The regulations do not pertain to entities, such as home health agencies, that may also provide homemaker or companion services. Those entities are regulated by other state agencies and therefore subject to those regulations.

### **Substance**

*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.*

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Proposed changes include clarifying definitions and other regulation text as well as amending content that is obsolete or inconsistent. There is some content regarding the adult foster care providers’ need to ensure that weapons are not accessible to adults receiving care, which is more stringent than federal law and must be amended. Regulatory content has been carefully analyzed to ensure requirements adequately address the safety of the adult who is receiving services, while also balancing the adult’s right to self-determination. Person-centered language has been incorporated throughout the regulation. Other revisions to the regulation included comments made by regulatory workgroup members.

### **Issues**

*Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.*

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- (1) The primary advantage of the proposed amendments is to clarify language that was unclear, inconsistent, or outdated.
- (2) Amendments to the regulation clarify, but do not increase, LDSS staffs’ responsibilities with regard to approving and monitoring providers.

There are no disadvantages to the public or the Commonwealth.

### **Requirements More Restrictive than Federal**

*Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.*

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There are no federal requirements that address local department approved providers.

### **Agencies, Localities, and Other Entities Particularly Affected**

*Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. “Particularly affected” are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or*

*regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.*

**Other State Agencies Particularly Affected**

No other state agencies are particularly affected by the regulation.

**Localities Particularly Affected**

No LDSS or locality is disproportionately impacted by the proposed regulation. Chore, companion, or homemaker services are offered in each locality though some localities contract with service providers that are regulated by other state agencies. Those localities and entities are not affected by these regulations. AFC is an optional program for the locality to provide and fewer than 20 localities choose to provide this program.

**Other Entities Particularly Affected**

The amendments to the regulation affect individuals who are currently operating as local department-approved providers or may wish to become approved providers, but the changes have been made to either clarify the responsibilities of the provider or ensure that the adult receives the most appropriate type of care. These regulations do not affect businesses, such as home care agencies, that are regulated by other state agencies.

**Economic Impact**

*Pursuant to § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is change versus the status quo.*

**Impact on State Agencies**

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including:                  a) fund source / fund detail;                  b) delineation of one-time versus on-going expenditures; and                  c) whether any costs or revenue loss can be absorbed within existing resources</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 performed with existing Division funding.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>There is no projected cost to state agencies associated with the changes to these regulations.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>The changes help clarify regulatory content for DARS, LDSS, and providers. The changes improve content that may be unclear, inconsistent, or obsolete, and incorporate person-centered language.</p>

**Impact on Localities**

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>There is no projected cost to LDSS by amending the regulation. The amendments do not add additional responsibilities to LDSS regarding the approval process.</p> <p>The proposed amendments may introduce some administrative costs for local departments if and when they have to evaluate an individual to be a provider when specifically requested by an adult recipient.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>The changes help clarify regulatory content for LDSS and providers. The changes improve content that may be unclear, inconsistent, or obsolete, and incorporate person-centered language.</p>

**Impact on Other Entities**

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>The amendments to the regulation affect individuals who are currently operating as local department-approved providers or may wish to become approved providers, but the changes have been made to either clarify the responsibilities of the provider or ensure that the adult receives the most appropriate type of care.</p> <p>These regulations do not affect businesses, such as home care agencies, that are regulated by other state agencies.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that:</p> <ul style="list-style-type: none"> <li>a) is independently owned and operated and;</li> <li>b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</li> </ul>	<p>Small businesses are not impacted by this regulation. The proposed regulatory content does not create additional requirements on small businesses.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to:</p> <ul style="list-style-type: none"> <li>a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses;</li> <li>b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change;</li> <li>c) fees;</li> <li>d) purchases of equipment or services; and</li> <li>e) time required to comply with the requirements.</li> </ul>	<p>The regulatory action does not change any reporting or recordkeeping requirements for LDSS or the providers. The regulatory action has no impact on the development of real estate for commercial or residential purposes.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>The regulation has the beneficial impact of ensuring approved providers understand their responsibilities and provide appropriate care and</p>

	uphold the safety and well-being of older adults and other adults who may need these supports.
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### Alternatives to Regulation

*Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.*

No alternative action was considered because the Code of Virginia gives the DARS Commissioner oversight over these regulations. Amending the regulations is the least burdensome method to accomplish this purpose.

### Regulatory Flexibility Analysis

*Pursuant to § 2.2-4007.1B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.*

No alternatives to the regulatory action were considered, as § 51.5-146 of the Code of Virginia gives DARS the responsibility for the planning and oversight of homemaker, chore, and companion services. 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. In addition, § 63.2-1601 gives the Commissioner of DARS the authority over regulations related to the recruitment and approval for the provision of AFC services.

The regulatory action does not change recordkeeping or reporting requirements for small businesses.

### Periodic Review and Small Business Impact Review Report of Findings

*If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable.*

*In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments*

received concerning the regulation; (3) the complexity of the regulation; (4) the extent to the which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

DARS is required to promulgate regulations related to services for adults pursuant to the Code of Virginia. The regulation does not overlap, duplicate or conflict with federal law. The regulation clarifies LDSS' responsibilities in approving local department providers.

**Public Comment**

*Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.*

No public comments were received during the NOIRA.

**Public Participation**

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.*

The Department for Aging and Rehabilitative Services (DARS) is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, (iii) the potential impacts of the regulation, and (iv) the agency's regulatory flexibility analysis stated in that section of this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted 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](mailto:paige.mccleary@dars.virginia.gov); or 804-662-7605 or 804-662-9531 (fax). 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:

- Teebe Negasi, Fairfax County Department of Family Services
- Jacqueline Prescod, Manassas Park Department of Social Services
- Robin Salo, Roanoke County Department of Social Services
- Angie Martin, Tazewell County Department of Social Services.

Efforts to recruit local department approved providers to participate in the workgroup were unsuccessful.

**Detail of Changes**



List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Throughout the regulation the term “client” was replaced by “adult” and “adult in care” was replaced by “adult receiving care.” These changes were determined to be more person-centered.

Additionally, all references and content addressing “adult day services provider” were stricken. It appears that the Code of Virginia does not authorize the approval of adult day services providers, but it does authorize approval of homemaker, chore and companion providers and AFC providers.

In several areas of the regulation, the term “health care professional” replaces more narrow terms such as physician or health care department. As adults may receive medical care from physician’s assistants and nurse practitioners, it was felt that a broader term, health care professional, needed to be incorporated in the regulations.

Finally, the title of the chapter has been amended to more accurately reflect that local department’s approve providers.

The following chart identifies additional changes beyond those identified above:

**Table 1: Changes to Existing VAC Chapter(s)**

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
10		Defines terms used throughout the regulation	Comported the definition of adult to definition in Code of Virginia.  Comported the definition of adult foster care to definition in the Code of Virginia.  Comported the definition of adult neglect to definition in the Code of Virginia.  Struck the definition of adult services as use of the term is not germane to this regulation.  Clarified the definition of assistant.  Clarified the definition of chore provider.  Struck the definition of client as it has been replaced throughout the chapter with “adult”.



			<p>Clarified the definition of companion provider.</p> <p>Added definition of health care professional.</p> <p>Struck definition of home-based services as use of the term is not germane to this regulation.</p> <p>Clarified definition of homemaker provider.</p> <p>Clarified definition of in-home provider.</p> <p>Clarified definition of instrumental activities of daily living.</p> <p>Clarified the definition of local department-approved provider.</p> <p>Struck the definition of out-of-home provider as it was no longer needed.</p> <p>Clarified definition of personal care services.</p> <p>Added definition of personal toiletries to comport with term used in Auxiliary Grant regulations.</p> <p>Clarified definition of responsible person.</p> <p>Added a definition of significant change.</p>
20		<p>Provides basic information about the types of providers a local department may approve.</p>	<p>Struck unnecessary language and simplified content.</p> <p>Clarified the licensing language for providers.</p> <p>Added clarification that if an adult identifies a possible provider that the local department shall initiate the approval process within the boundaries the local department's program. This change supports the adult's choice in providers.</p> <p>Clarified requirements for approving providers outside of the local department's jurisdiction.</p>
30		<p>Addresses standards for all providers.</p>	<p>Established consistent age of 18 for all providers and assistants to providers.</p> <p>Clarified criminal background check requirements to align closely with language in 63.2-1601.1 of the Code of Virginia.</p>

			<p>Removed language that permitted a local department the ability to grant a variance for a conviction of a barrier crime. State law does not permit granting a variance for a barrier crime conviction.</p> <p>Changed term “elderly” to “older adults.”</p> <p>Clarified which individuals need proof they are free from tuberculosis.</p> <p>Clarified the notification requirement for adult foster care providers when there are changes that may affect the provider’s status.</p>
40		Describes standards of care to which providers must adhere.	<p>Changed firefighters to more accurate term fire department.</p> <p>Clarified process for adult foster care provider to inform local department of extended absence and that the substitute provider during the extended absence shall also meet the standards for approval.</p> <p>Added that all providers shall notify the local department of any significant changes to the adult’s mental or physical condition. This is an additional requirement to ensure the safety and wellbeing of the adult.</p> <p>Clarified who is authorized to transport the adult and added that providers must help the adult arrange backup transportation when the provider is unable to provide it.</p> <p>Made technical change to D3 to make language more succinct.</p> <p>Clarified requirement that provider must be able to meet the adults needs before providing services or continuing to provide services.</p> <p>Changed “drugs” to “medications.”</p> <p>Clarified requirements and language regarding the adult’s receipt of appropriate medication.</p> <p>Added that the local department shall be notified if the adult is injured or has an accident.</p> <p>Used “continued residence” to replace less person-centered term “retention.”</p>

			<p>Changed adult services worker to local department.</p>
50		<p>Describes additional standards for adult foster care providers.</p>	<p>Changed title of section.</p> <p>Made grammatical change.</p> <p>Required adult foster care provider to allow adult to use the home telephone.</p> <p>Clarified that consent to share a sleeping room must be made in writing.</p> <p>Added that number of household members per bathroom facilities.</p> <p>Made grammatical change in B1.</p> <p>Made grammatical change and added that the written plan for emergencies in the adult foster care home shall be made available to local department upon request.</p> <p>Added a requirement that the written plan for emergencies must be rehearsed twice per year and that adults must be able to safely evacuate living spaces during emergencies. The written plan should include procedures for such evacuations.</p> <p>Clarified requirements for the adult foster care provider to keep weapons away from adults receiving care in the home. Added that providers may prohibit weapons and providers can decline to serve an adult who possesses weapons.</p> <p>Specified that toxic substances are to be kept away from all adults receiving care, not just those with mental incapacity.</p> <p>Added language requiring the adult foster care provider to display the number for APS hotline and the State Long-term Care Ombudsmen. This language was moved from another section.</p>
60		<p>Describes record requirements for the adult foster care provider.</p>	<p>Made grammatical changes throughout section and struck unnecessary language.</p>
70		<p>Describes approval period for providers.</p>	<p>Removed unnecessary language.</p>
80		<p>Describes process for granting a variance.</p>	<p>Struck need for LDSS to consult with the state APS program prior to granting a</p>

			<p>variance. Issuing a variance is a local decision.</p> <p>Reorganized the language in the section.</p>
90		Describes the emergency approval process.	<p>Distinguished procedures for all providers from those for adult foster care providers.</p> <p>Clarified length of emergency approval.</p> <p>Removed unnecessary language.</p> <p>Made grammatical change.</p>
100		Describes monitoring of provider by local department.	<p>Added requirement that at least one monitoring visit shall occur in the home of each adult who is receiving care from an in-home provider.</p> <p>Clarified that monitoring reports are only available for the specific adult and provider. Sharing all monitoring reports would violate confidentiality of other adults receiving care.</p>
110		Describes renewal process.	Clarified that renewal can only occur if the local department continues to offer the service.
120		Describes process when a provider is unable to meet the standards.	<p>Made technical changes to content for clarity.</p> <p>For consistency changed three months to 90 days. The term “days” is used in other sections of the regulation.</p> <p>Described process for terminating services and finding alternative services that ensures the safety of the adult.</p>
130		Describes procedures to address the relocation of a provider.	Clarified the actions the LDSS needs to take if the provider relocates within the jurisdiction or outside of the jurisdiction.
140		Describes the process for the provider to request a review of the LDSS’s actions	<p>Made grammatical changes.</p> <p>Added that the local department’s director’s decision is final.</p>
150		Describes rights of adults receiving care.	<p>Changed title of section.</p> <p>Reorganized section to group rights of adults receiving any type of care separately from those rights for adults receiving adult foster care.</p>

			<p>Struck references to written authorization for restraints and training on restraints. Providers should not use restraints under any circumstances.</p> <p>Combined separately delineated rights that are similar in scope into single paragraphs.</p> <p>Struck rights that were duplicative of previously stated rights.</p>
160		Describes responsibilities of adults receiving adult foster care.	<p>Changed title of section.</p> <p>Made technical changes for clarity.</p>

If a new VAC Chapter(s) is being promulgated and is not replacing an existing Chapter(s), use Table 2.

**Table 2: Promulgating New VAC Chapter(s) without Repeal and Replace**

New chapter-section number	New requirements to be added to VAC	Other regulations and laws that apply	Change, intent, rationale, and likely impact of new requirements

If the regulatory change is replacing an **emergency regulation**, and the proposed regulation is identical to the emergency regulation, complete Table 1 and/or Table 2, as described above.

If the regulatory change is replacing an **emergency regulation**, but changes have been made since the emergency regulation became effective, also complete Table 3 to describe the changes made since the emergency regulation.

**Table 3: Changes to the Emergency Regulation**

Emergency chapter-section number	New chapter-section number, if applicable	Current <u>emergency</u> requirement	Change, intent, rationale, and likely impact of new or changed requirements since emergency stage