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## Final Regulation Agency Background Document

<b>Agency name</b>	Department for Aging and Rehabilitative Services
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	22VAC30-120
<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>	November 23, 2022

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 22VAC30-120, 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, 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  
VDSS – Virginia Department of Social Services

### Statement of Final Agency Action

*Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.*

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On May 3, 2022, the Commissioner of DARS approved the amendments to the Adult Services Approved Providers (22VAC30-120).

### Mandate and Impetus

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.*

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There are no changes to the information previously submitted.

### 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.

### **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**

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.*

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There are no changes to the information previously submitted.

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

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.*

Other State Agencies Particularly Affected

There are no changes to the information previously submitted.

Localities Particularly Affected

There are no changes to the information previously submitted.

Other Entities Particularly Affected

There are no changes to the information previously submitted.

**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.*

There were not any public comments received on the proposed revisions to the Adult Services Approved Providers regulations.

**Detail of Changes Made Since the Previous Stage**

*List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. 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. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements
10			Struck "Virginia Department of Social Services" from the definition of "local department-approved provider".	In-home providers and adult foster care providers are not licensed by VDSS.

20			<p>In subsection A, struck the reference to VDSS.</p> <p>In subsection C, struck “not required” and provided alternate language to local departments on accepting provider applications in some situations. Also struck the reference to VDSS.</p>	<p>VDSS does not have a role in licensing in home or adult foster care providers.</p> <p>Clarified the process for receiving provider applications when the local department has a sufficient number of approved providers or does not offer the service. The intent is to strengthen LDSS communication with possible provider applicants about the local approval process. VDSS does not have a role in licensing in home or adult foster care providers.</p>
50			<p>In subdivision A 7, adds to the requirements regarding roommate consent that the consent should be documented annually and in writing, which could include through electronic mail.</p> <p>In subdivision B 4, updates the phrasing to emphasize that it is the provider’s responsibility to ensure that the adult can be safely evacuated during an emergency.</p>	<p>Clarified the expectation that the consent should be documented in writing, which can include e-mail, and that it should be updated annually.</p> <p>Clarified the expectation for providers with regard to emergency situations and adults in their care.</p>

**Detail of All Changes Proposed in this Regulatory Action**

*List all changes proposed in this action and the rationale for the changes. 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. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Put an asterisk next to any substantive changes.*

Current chapter-	New chapter-section	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
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section number	number, if applicable		
10		Defines terms used throughout the regulation	<p>Comported the definition of adult to definition in Code of Virginia.</p> <p>Comported the definition of adult foster care to definition in the Code of Virginia.</p> <p>Comported the definition of adult neglect to definition in the Code of Virginia.</p> <p>Struck the definition of adult services as use of the term is not germane to this regulation.</p> <p>Clarified the definition of assistant.</p> <p>Clarified the definition of chore provider.</p> <p>Struck the definition of client as it has been replaced throughout the chapter with "adult".</p> <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		Provides basic information about the types of providers a local department may approve.	<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		Addresses standards for all providers.	<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		Describes additional standards for adult foster care providers.	<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 annually in writing, which could include email.</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 providers are responsible for ensuring that adults can be safely evacuated during emergencies. The written</p>



			<p>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		Describes record requirements for the adult foster care provider.	Made grammatical changes throughout section and struck unnecessary language.
70		Describes approval period for providers.	Removed unnecessary language.
80		Describes process for granting a variance.	<p>Struck need for LDSS to consult with the state APS program prior to granting a 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>