



Final Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22 VAC 40-25
Regulation title	Auxiliary Grant Program
Action title	Clarify Reimbursement Procedures
Date this document prepared	February 14, 2007

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

This regulatory action updates terminology and establishes guidelines and expectations relative to (1) the requirements to participate in the Auxiliary Grant program, (2) minimum services to be provided, and (3) establishment of reimbursable rates and reporting requirements. Changes include: only the recipient or representative is authorized to cash or deposit the Auxiliary Grant payment; providers must submit an annual audit report instead of the current annual cost report; and providers are prohibited from charging additional fees to recipients. The term "adult care residence" is replaced with "assisted living facility." Changes since publication of the proposed regulation replace references to the 22 VAC 40-71 with 22 VAC 40-72, to reflect recent regulatory action.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

The State Board of Social Services took final action on 22 VAC 40-25, Auxiliary Grant Program, on February 14, 2007.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Federal authority is found in Title XX of the Social Security Act, Section 416.2001. The State statute providing the mandate for this regulation is found in the *Code of Virginia*, § 63.2-217 and § 63.2-800.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The amendment to this regulation is necessary to bring it into compliance with the Code of Virginia and to provide guidelines to protect the health, safety, or welfare of vulnerable adults who meet the criteria for the Auxiliary Grants program.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

The major changes include language changes to bring the regulation into compliance with current *Code of Virginia*, updating of terminology to provide consistency with other Department regulations, and the addition of requirements for an annual audit report and a provider agreement for assisted living facilities. In addition, *Code of Virginia* references are updated in response to October 2002's recodification of the Social Services section of the *Code* where § 63.1 was repealed and replaced with § 63.2.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;
 - 2) the primary advantages and disadvantages to the agency or the Commonwealth; and
 - 3) other pertinent matters of interest to the regulated community, government officials, and the public.
- If there are no disadvantages to the public or the Commonwealth, please indicate.

The advantage of making these changes is to bring the regulation into compliance with previously promulgated changes. This helps to ensure that Auxiliary Grants services are provided in a consistent manner across the state in the 120 local departments of social services. There are no disadvantages to the public and Commonwealth.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
30	References were added to 22 VAC 40-71, Standards and Regulations for Licensed Assisted Living Facilities.	References replaced with 22 VAC 40-72, Standards for Licensed Assisted Living Facilities.	22 VAC 40-71 was recently repealed and replaced with the new regulation.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
Two assisted living providers	The Auxiliary Grant rates are too low and do not cover provider costs or resident’s basic needs.	This regulation clarifies reimbursement procedures. Auxiliary Grant rates are set by the General Assembly, not by the Board.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
22 VAC 40-25-10		“Adult foster/family care” is used.	Added the term and definition for “adult foster care” to comply with other policy and regulatory changes. Nationally, “adult foster care” is the accepted term for this type of care.

22 VAC 40-25-10		The terms “nonoperating expense” and “nonoperating revenue” are used.	Changed the term “nonoperating” to “other”, with regard to assisted living facilities, to bring consistency to documents.
22 VAC 40-25-10			The term “personal representative” and the definition are added. The change is to bring consistency with other Department policies and regulations.
Throughout		The term “adult care residence” is used.	The term “adult care residence” is stricken and replaced with “assisted living facility”. The definition is expanded for consistency with the definition in the Division of Licensing Programs regulation.
Throughout			References to the <i>Code of Virginia</i> , § 63.1, are updated with the recodified <i>Code of Virginia</i> § 63.2. The change complies with previous <i>Code</i> changes.
Throughout		The term “cost report” is used.	The term “cost report” is stricken and replaced with “annual audit report”. The change is to bring the regulation into compliance with the <i>Code of Virginia</i> , § 63.2-800 (C).
Throughout		The term “approved rate” is used.	The term “approved rate” is stricken and replaced with “established rate” and the definition is expanded. The change is to bring the regulation into compliance with current practice.
Throughout			The terms and definitions for “provider” and “provider agreement” are added to bring the regulation into compliance with other State agency regulations.
22 VAC 40-25-20		Outdated terminology is used.	Updated terminology to provide consistency with definitions. Added prohibition of providers from charging the recipients additional costs or fees. This change has been implied in the current regulation and brings the regulation into compliance with other Department policies and current practice.
22 VAC 40-25-30			Added references to 22 VAC 40-72 and expanded on the requirements for meals and snacks and care of funds.
22 VAC 40-25-40			Expanded on the requirements that 1) the personal needs allowance is for the recipient’s personal items, 2) the funds shall not be co-mingled with the facility’s funds, and 3) that the provider is prohibited from charging the recipient an additional cost for any services.

	22 VAC 40-25-45		Added the requirement and conditions for the provider to complete and submit a provider agreement to the Department at the time of application to be a licensed assisted living facility.
22 VAC 40-25-50		Outdated language is used.	Updated the language to be consistent with definitions. Added the term "adult foster care". Updated the regulation to include the requirement to submit an "annual audit report" and Division of Finance requirements. Added wording to clarify the auxiliary grant rate calculation.
22 VAC 40-25-60			Added wording that the Auxiliary Grants payment is made payable to the recipient, and the recipient is obligated to pay the provider. Updated the regulation with the appropriate procedures to follow when a facility is sold, closes, or moves and also if the recipient dies.
22 VAC 40-25-70		There are no current requirements for an annual audit or audited cost report.	All financial information reported by an "assisted living facility" on the "annual audit report" shall be reconcilable to the provider's general ledger or similar records. This change is to bring the regulation into compliance with Federal and state regulations.

Regulatory flexibility analysis

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

There are no alternative methods for clarification of Auxiliary Grant reimbursement procedures or for bringing program regulations into compliance with federal and state requirements.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

Appropriate services are provided to the recipients who meet the program criteria to ensure that they are able to maintain a standard of living that meets a basic level of need. This regulation encourages self-sufficiency, self-pride, and the assumption of responsibility for vulnerable adults.