

AUXILIARY GRANTS PROGRAM: LEVELS OF CARE AND RATE SETTING

22 VAC 40-25-10. Definitions.

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

~~"Adult care residence" means any place, establishment, or institution, public or private, operated or maintained for the maintenance or care of four or more adults who are aged, infirm, or disabled and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Mental Health, Mental Retardation and Substance Abuse Services, but including any portion of such facility not so licensed, and (ii) the home or residence of an individual who cares for or maintains only persons related to him by blood or marriage, and (iii) a facility or any portion of a facility serving infirm or disabled persons between the ages of 18 and 21, or 22 if enrolled in an educational program for the handicapped pursuant to §22.1-214 of the Code of Virginia, when such facility is licensed by the Virginia Department of Social Services as a child-caring institution under Chapter 10 (§ 63.1-195 et seq.) of Title 63.1 of the Code of Virginia, but including any portion of the facility not so licensed. Included in this definition are any two or more places, establishments, or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more aged, infirm or disabled adults.~~

"Adult foster care (AFC)" means a locally optional program that provides room and board, supervision, and special services to an adult who has a physical or mental health

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need. Adult foster care may be provided for up to three adults by any one provider who is approved by the local department of social services.

"Applicant" means an adult currently residing or planning to reside in an ~~adult care residence~~ assisted living facility or in adult foster care and who has applied for financial assistance under the Auxiliary Grants Program.

~~"Approved rate" means a rate established by the Department of Social Services' Division of Financial Management for use by eligibility workers in local departments in determining Auxiliary Grants Program payments for eligible recipients.~~

"Assisted living" means a level of service provided by an ~~adult care residence~~ assisted living facility for adults who may have physical or mental impairments and require at least moderate assistance with the activities of daily living. Included in this level of service are individuals who are dependent in behavior pattern (i.e., abusive, aggressive, disruptive) as documented on the uniform assessment instrument.

"Assisted living facility" means any congregate residential setting that provides or coordinates personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for the maintenance or care of four or more adults who are aged, infirm or disabled and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Mental Health, Mental Retardation and Substance Abuse Services, but including any portion of such facility not so licensed; (ii) the home or residence of an individual who cares for or maintains only persons related to him by blood or marriage; (iii) a facility or portion of a facility serving infirm or disabled persons between the ages

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of 18 and 21, or 22 if enrolled in an educational program for the handicapped pursuant to § 22.1-214 of the Code of Virginia, when such facility is licensed by the department as a children's residential facility under Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 of the Code of Virginia, but including any portion of the facility not so licensed; and (iv) any housing project for persons 62 years of age or older or the disabled that provides no more than basic coordination of care services and is funded by the U.S. Department of Housing and Urban Development, by the U.S. Department of Agriculture, or by the Virginia Housing Development Authority. Included in this definition are any two or more places, establishments or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more aged, infirm or disabled adults. Maintenance or care means the protection, general supervision and oversight of the physical and mental well-being of an aged, infirm or disabled individual.

"Audit report" is an annual report prepared by the assisted living facility's private auditor. The auditor shall determine that the financial statements of the auditee are presented fairly and in conformity with generally accepted accounting principles.

"Auxiliary Grants Program" means a state and locally funded assistance program to supplement income of a Supplemental Security Income (SSI) recipient or adult who would be eligible for SSI except for excess income, who resides in an ~~adult care residence~~ assisted living facility or in adult foster care with an approved rate.

~~"Case manager" means an employee of a public human services agency having a contract with the Department of Medical Assistance Services to provide case management services and who is qualified to perform case management activities.~~

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~~"Cost report" means Adult Care Residences Cost Report.~~

"Department" means the Virginia Department of Social Services.

"Established rate" means the auxiliary grant rate as set forth in the appropriation act or as set forth to meet federal maintenance of effort requirements.

~~"Minimum rate" means the rate used to determine eligible auxiliary grant recipient reimbursement prior to the establishment of the residence's approved rate.~~

"Newly licensed ~~adult care residence~~ assisted living facility" means a ~~residence~~ facility that has been licensed for 12 months or less and ~~is submitting a cost report for the first time for the establishment of a rate in excess of the minimum rate.~~

~~"Nonoperating~~ Other operating expense" means expenses incurred by the ~~residence~~ provider for activities ~~other than those that are not~~ directly related to the care of residents.

~~"Nonoperating~~ Other operating revenue" means income earned by the ~~residence~~ provider for activities ~~other than those that are not~~ directly related to the care of residents.

"Operating costs" means the allowable expenses incurred by ~~an adult care residence a~~ provider for activities directly related to the care of residents.

"Personal needs allowance" means an amount of money reserved for meeting ~~minimal~~ the adult's personal needs when computing the amount of the auxiliary grant.

"Personal representative" means the person representing or standing in the place of the recipient for the conduct of his affairs. This may include a guardian, conservator,

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attorney-in-fact under durable power of attorney, next-of-kin, descendent, trustee, or other person expressly named by the recipient as his agent.

"Provider" means an assisted living facility that is licensed by the Department of Social Services or an adult foster care provider that is approved by a local department of social services.

"Provider agreement" means a document that the assisted living facility must complete and submit to the department when requesting to be licensed as an assisted living facility provider and approved for admitting auxiliary grant recipients.

"Qualified assessor" means an ~~entity contracting with the Department of Medical Assistance Services (DMAS) to perform nursing facility preadmission screening or to complete the uniform assessment instrument for a home and community-based waiver program including an independent physician contracting with DMAS to complete the uniform assessment instrument for residents of the adult care residence, or any hospital which has contracted with DMAS to perform nursing facility preadmission screening.~~ individual who is authorized to perform an assessment, reassessment, or change in level of care for an applicant to or resident of an assisted living facility.

"Rate" means the approved auxiliary grant rate.

"Recipient" means an adult approved to receive financial assistance under the Auxiliary Grants Program when residing in ~~an adult care residence~~ a licensed assisted living facility or an approved adult foster care provider with an approved rate.

~~"Residence" means an adult care residence.~~

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"Residential living" means a level of service provided by an ~~adult care residence~~ assisted living facility for adults who may have physical or mental impairments and require only minimal assistance with the activities of daily living. Included in this level of service are individuals who are dependent in medication administration as documented on the uniform assessment instrument. ~~This definition includes independent living facilities that voluntarily become licensed.~~

"Uniform assessment instrument" means the department-designated assessment form. It is used to record assessment information for determining the level of service that is needed.

"Virginia Department of Medical Assistance Services (DMAS)" means the single state agency designated to administer the Medical Assistance Program in Virginia.

22 VAC 40-25-20. Assessment.

A. In order to receive payment from the Auxiliary Grants Program for care in an ~~adult care residence~~ assisted living facility or in adult foster care, applicants shall have been assessed by a ~~case manager or other~~ qualified assessor using the uniform assessment instrument and determined to need residential ~~living care~~ or assisted living care or adult foster care.

~~B. In order to continue receiving payment from the Auxiliary Grants Program, recipients residing in adult care facilities on February 1, 1996, shall have been assessed by a case manager or other qualified assessor no later than 12 months from February 1, 1996, and determined to need residential care or assisted living care in an adult care residence. Provisions shall be made by the department in Auxiliary Grants Program~~

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~~policy for grandfathering in those recipients who do not meet the criteria for residential care.~~

~~G.~~ B. As a condition of eligibility for the Auxiliary Grants Program, a uniform assessment instrument shall be completed on a recipient prior to admission, at least once ~~every 12 months~~ annually, and whenever there is a significant change in the individual's level or care, and a determination is made that the individual needs residential or assisted living care in an ~~adult care residence~~ assisted living facility or adult foster care.

~~D.~~ C. The assisted living facility or adult foster care provider are prohibited from charging a security deposit or any other form of compensation for providing a room and services to the recipient. The collection or receipt of money, gift, donation or other consideration from or on behalf of a recipient for any services provided is prohibited.

22 VAC 40-25-30. Basic services.

The rate established ~~by the department for an adult care residence providing residential living care or assisted living care under~~ the Auxiliary Grants Program shall cover the following services:

1. Room and board.

a. Provision of a furnished room;

b. Housekeeping services based on the needs of the recipient;

c. Meals and snacks ~~by licensing regulations, including extra portions of food at mealtime and special diets;~~ provided in accordance with [22 VAC 40-71 22VAC 40-72] including, but not limited to, food service, nutrition, number and timing of meals, observance of religious dietary practices, special diets, menus for meals and snacks,

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and emergency food and water. A minimum of three well-balanced meals shall be provided each day. When a diet is prescribed for a resident by his physician, it shall be prepared and served according to the physician's orders. Basic and bedtime snacks shall be made available for all residents desiring them and shall be listed on the daily menu. Unless otherwise ordered in writing by the resident's physician, the daily menu, including snacks, for each resident shall meet the guidelines of the U.S. Department of Agriculture's Food Guide Pyramid, taking into consideration the age, sex and activity of the resident. Second servings shall be provided, if requested, at no additional charge. At least one meal each day shall include a hot main dish.

d. Clean bed linens and towels as needed by the recipient and at least once a week.

2. Maintenance and care.

a. Minimal 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, and care of needs associated with menstruation or occasional bladder or bowel incontinence;

b. Medication administration as required by licensing regulations including insulin injections;

c. Provision of generic personal toiletries including soap and toilet paper;

d. Minimal assistance with the following:

(1) Care of personal possessions;

(2) Care of funds if requested by the recipient and ~~residence~~ provider policy allows this practice, and are in compliance with [22 VAC 40-71-440 through 22 VAC 40-71-460,

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Standards and Regulations for Licensed Assisted Living Facilities 22 VAC 40-72-440 through 22 VAC 40-72-460, Standards for Licensed Assisted Living Facilities];

(3) Use of the telephone;

(4) Arranging transportation;

(5) Obtaining necessary personal items and clothing;

(6) Making and keeping appointments; and

(7) Correspondence- ;

e. Securing health care and transportation when needed for medical treatment;

f. Providing social and recreational activities ~~as required by licensing regulations; and~~

g. General supervision for safety.

22 VAC-25-40. Personal needs allowance.

A. The personal needs allowance is included in the monthly auxiliary grant payment to the resident and must be used by the auxiliary grant recipient for personal items. These funds shall not be commingled with the funds of the provider. The personal needs allowance for the recipient shall not be charged by the ~~residence~~ provider for any item or service not requested by the ~~resident~~ recipient. The ~~residence~~ provider shall not require ~~a resident~~ an auxiliary grants recipient or his personal representative to request any item or service as a condition of admission or continued stay. The ~~residence~~ provider must inform the ~~resident~~ recipient or his personal representative ~~requesting an item or service for which a charge will be made that there will be a charge for the item or service and what the charge will be~~ of a charge for any requested item or service not covered under the auxiliary grant and the amount of the charge. The personal needs

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allowance is expected to cover the cost of the following ~~categories of~~ items and services:

1. Clothing;
2. Personal toiletries not included in those to be provided by the ~~adult care residence provider~~ or if the recipient requests a specific type or brand of toiletries;
3. Personal ~~comfort~~ items including tobacco products, sodas, and snacks beyond those required by ~~licensing regulations~~ in subdivision 1 c of 22 VAC 40-25-30;
4. ~~Barber and beauty shop~~ Hair care services;
5. Over-the-counter medication, medical co-payments and deductibles, insurance premiums;
6. Other needs such as postage stamps, dry cleaning, laundry, direct bank charges, personal transportation, and long distance telephone calls;
7. Personal telephone, television, or radio;
8. Social events and entertainment offered outside the scope of the activities program;
9. Other items agreed upon by both parties except those listed in subsection B of this ~~regulation~~ section.

B. The personal needs allowance shall not be encumbered by the following:

1. Recreational activities required by licensing regulations (including any transportation costs of those activities);
2. Administration of accounts (bookkeeping, account statements);
3. Debts owed the ~~residence~~ provider for basic services as outlined by regulations;

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4. ~~Charges for laundry by the adult care residence which exceed~~ Provider laundry charges in excess of \$10 per month.

22 VAC 40-25-45. Conditions of participation in the Auxiliary Grants Program.A. Provider agreement for assisted living facilities.

1. As a condition of participation in the Auxiliary Grants Program, the assisted living facility provider is required to complete and submit to the department a signed provider agreement as stipulated below. The agreement is to be submitted with the application to be a licensed assisted living facility.

2. The assisted living facility provider shall agree to the following conditions in the provider agreement to participate in the Auxiliary Grants Program:

a. Provide services in accordance with all laws, regulations, policies, and procedures that govern the provision of services in the facility;

b. Submit an annual financial audit by June 30 of each year;

c. Care for auxiliary grant recipients in accordance with the requirements herein at the current established rate;

d. Refrain from charging the recipient, his family, or his authorized personal representative a security deposit or any other form of compensation as a condition of admission or continued stay in the facility;

e. Accept the auxiliary grant payment as payment in full for services rendered, except as permitted herein;

f. Account for the resident's personal needs allowance separate and apart from other facility funds;

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g. Provide the local department of social services a 60-day written notice when a recipient is to be discharged from the facility;

h. Provide a 60-day written notice to the department in the event of the facility's closure or ownership change; and

i. Return to the local department of social services all auxiliary grant funds received after the death or discharge date of an auxiliary grant recipient in the facility.

B. As a condition of participation in the Auxiliary Grants Program, the adult foster care provider shall be approved by a local department of social services and comply with the requirements set forth in 22 VAC 40-770.

22 VAC 40-25-50. ~~Establishment of~~ Established rate.

A. ~~Submission of a cost~~ an audit report to the department's Division of Financial Management, ~~Bureau of Cost Accounting~~ department is required to ~~establish a rate in excess of the minimum rate~~ for an assisted living facility to accept residents who receive an auxiliary grant.

~~B. The rate shall be calculated based on operating cost data reported on the cost report. Total operating costs shall be reduced by any nonoperating revenue, less nonoperating expenses. If nonoperating expenses exceed nonoperating revenue, no adjustment is made. These costs are then adjusted in accordance with department policy to recognize operation changes, growth, and inflation. Based on the greater of actual filled bed days or 85% of bed capacity, a monthly rate per resident shall be calculated.~~

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~~C. The established rate shall be the lesser of the calculated rate or the maximum authorized monthly rate established by state regulations as set forth in the Appropriations Act.~~

~~D. Rates~~ B. The rate shall be valid for ~~12 months~~ unless the ~~residence~~ assisted living facility is required to submit a new ~~cost~~ audit report as a result of (i) significant operational changes as defined by department policy, ~~or~~ (ii) the ~~residence~~ assisted living facility changes ownership, ~~or~~ (iii) the ~~residence~~ assisted living facility changes location, or (iv) the adult foster care provider is no longer approved by the local department of social services.

~~E. Newly licensed adult care residences shall operate for a minimum of 90 days prior to submission of a cost report for the purpose of establishing a rate. During the first 90 days of operation, the adult care residence's rate shall be the minimum rate. When cost reports are submitted no later than 60 days after the end of the first 90 days of operation, the effective date of the rate shall be made retroactive to the residence's date of licensure. When cost reports are submitted more than 150 days after licensure, the effective date of the rate shall be no later than the first day of the second month following receipt of the cost report by the department's Division of Financial Management.~~

C. The auxiliary grant rate for recipients authorized to reside in an assisted living facility or in adult foster care is the established rate as set forth in the appropriation act, plus the personal needs allowance minus the recipient's countable income. The effective

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date is the date of the individual's approval by the local department of social services for an auxiliary grant.

~~F. Adult care residences~~ D. Assisted living facilities that have been in licensed operation in excess of 12 months shall ~~establish an initial approved rate by submitting a cost report for the preceding calendar year~~ submit an annual audited financial report by June 30 for the preceding calendar year. In lieu of an audited financial report, facilities that are licensed for 19 or fewer beds may submit an audited report that includes only the following: validation that resident funds are held separately from any other funds of the facility; number of resident beds occupied during the reporting period; operating revenue and expenses; and average monthly cost per resident. ~~The cost audit report shall be reviewed by the department's Division of Financial Management and the approved rate established~~ department. The approved rate shall be the lesser of the ~~calculated rate or the maximum authorized established rate established by state regulations as set forth in the Appropriations~~ appropriation act. ~~The approved rate shall become effective no later than the first day of the second month following the month the cost report is received by the department's Division of Financial Management~~ or as set forth by changes in the federal maintenance of effort formula. The approved rate will be retroactive to the first month of the calendar year. If a provider fails to submit an annual audit report for a new calendar year, the provider will not be authorized to accept new auxiliary grant recipients.

~~G. After the initial approved rate is established, cost reports shall be submitted annually to the department's Division of Financial Management. If a provider that has previously~~

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~~established a rate fails to submit a cost report, the rate for residential living care shall become the minimum rate at the end of the twelfth month from the date the last rate was set.~~

22 VAC 40-25-60. Reimbursement.

Any moneys in excess of the provider's established rate contributed toward the cost of care pending public pay eligibility determination shall be reimbursed to the recipient or contributing party by the ~~adult care residence~~ assisted living facility or adult foster care provider once eligibility for public pay is established and that payment received. The auxiliary grants payment shall be made payable to the recipient, who will then reimburse the provider for care. If the recipient is not capable of managing his finances, his personal representative is responsible for reimbursing the provider. In the event an assisted living facility is closed or sold, the facility shall provide verification that all recipient funds, including auxiliary grants funds, have been transferred and shall obtain a signed receipt from the new owner or new facility. In the event of a recipient's death or discharge, the provider shall give to the resident's personal representative a final accounting of the recipient's funds within 30 calendar days of the event. All auxiliary grants funds received after the death or discharge date shall be returned to the department as soon as practicable. Providers who do not comply with the requirements of this regulation may be subject to adverse action.

22 VAC 40-25-70. Audits.

A. All financial information reported by an ~~adult care residence~~ assisted living facility on the ~~cost report~~ annual audit report shall be reconcilable to the residence's general

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ledger system or similar records. The audit shall account separately for the personal needs allowance of auxiliary grant recipients. All ~~cost~~ reports are subject to audit by the department ~~of Social Services~~. Financial information ~~which~~ that is not reconcilable to the ~~residence's~~ provider's general ledger or similar records could result in retroactive adjustment of the rate and establishment of a liability to the provider. Records shall be retained for three years after the end of the reporting period or until audited by the department, whichever is first.

B. All records maintained by an adult foster care provider, as required by 22 VAC 40-770, shall be made available to the department or the approving local department of social services upon request. All records are subject to audit by the department. Financial information that is not reconcilable to the provider's records could result in retroactive adjustment of the rate and establishment of a liability to the provider. Records shall be retained for three years after the end of the reporting period or until audited by the department, whichever is first.

I certify that this regulation is full, true, and correctly dated.

Danny Brown, Chairman
State Board of Social Services
February 14, 2007