



COMMONWEALTH OF VIRGINIA  
*Virginia Board for People with Disabilities*


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April 26, 2017

TO: Tishaun Harris Ugworji, AG Program Manager,  
Department of Aging and Rehabilitative Services

FROM: Heidi L. Lawyer 

RE: VBPD Comment on Auxiliary Grant Program Regulations

I am writing on behalf of the Virginia Board for People with Disabilities (the Board) to provide comments on the proposed amendments to the Auxiliary Grant Regulations related to third-party payments. The Board appreciates this opportunity to provide input on this important program. The proposed regulatory changes clarify the circumstances in which those who provide services to Auxiliary Grant (AG) recipients may accept payments from third parties to cover goods and services beyond those that must be provided as a condition of participating in the Auxiliary Grant program. These changes are consistent with legislation adopted during the 2012 legislative session, which was prompted by a Joint Legislative Audit and Review Commission (JLARC) report published in January 2012.

In 2016, the Virginia General Assembly further revised Virginia Code § 51.5-160 to allow individuals who reside in Supportive Housing to receive Auxiliary Grants if they meet other eligibility criteria specified in the Code. This statutory change is not reflected in the proposed regulations as published, which continue to limit the availability of Auxiliary Grants to individuals who reside in Assisted Living Facilities (ALF's), or Adult Foster Care Homes (AFC Homes). The Board understands that an amendment to the Auxiliary Grant regulations to conform the regulations to the 2016 Act is underway. The Board supports these changes, and the recommendations that follow assume the inclusion of Supportive Housing in the regulations.

The Board recommends the following changes to the proposed regulations to strengthen the provisions related to third party payments:

1. Require ALFs, AFC Homes, and Supportive Housing providers to maintain a copy of the list of goods and services that shall be covered by the Auxiliary Grants referenced in 22VAC30-80-45(F), which shall be signed by the AG recipient or authorized representative as acknowledgement of receipt and shall be made available to the Department upon request.

The Board supports the requirement contained in the proposed regulations that AG recipients and their authorized representatives receive notice of the goods and services that the AG shall cover, “including a clear statement that the facility shall not charge an individual or the individual’s family or authorized representative additional amounts for goods or services included on this list.” This requirement protects AG recipients and their families by ensuring that they have the information that they need to protect against wrongful charges for goods and services that are intended to be covered by the Auxiliary Grant. The Board believes that this provision should be made even stronger, however, by requiring a signed copy of the notice provided pursuant to this provision to be obtained and maintained by the service provider and made available to the Department upon request. This will provide added assurance that AG recipients and their families are apprised of their rights and that Auxiliary Grants and third party payments are properly expended.

This recommendation can be effectuated by appending the following sentence to the end of 22VAC30-80-45(F): *ALFs, AFC homes, and Supportive Housing providers shall have each AG recipient or authorized representative sign this list as acknowledgement of receipt and shall retain a copy of the signed list, which shall be made available to the department upon request.*

2. Clarify the goods and services that ALFs, AFC Homes, and Supportive Housing providers must provide as a condition of participating in the AG program by more clearly defining vague terms, such as “minimal assistance,” “occasional bladder or bowel incontinence,” and “arranging transportation.”

The 2012 JLARC study on Auxiliary Grants that precipitated the changes to the AG statute noted inconsistencies in the interpretation of vague regulatory terms by administrators, and recommended clarifying language to minimize such inconsistent interpretations. Specifically, the report states:

DSS should clarify the specific services ALFs are required to provide for AG recipients... [S]ome administrators believe they are providing more than the required “minimal assistance” with “occasional” incontinence needs for residents who need a relatively high number of incontinence products.

Some administrators also feel that having to pay for or provide transportation as well as staff members to accompany AG recipients to medical appointments is beyond the requirement to “secure health care and transportation.” While it is reasonable to expect that these activities are included in the requirement to “secure transportation” since all AG recipients should have transportation to medical treatment, regardless of their access to third-party resources, DSS should clarify this requirement. (p. 27)

The Board believes that the proposed regulations do not sufficiently clarify the meaning of these terms. The proposed regulations do clarify in 22VAC30-80-30(2)(a) that “minimal assistance” with personal hygiene shall have the same meaning as “minimal assistance” as defined in 22VAC40-72-10. “Minimal assistance” is defined in 22VAC40-72-10 as “dependency in only one activity of daily living or dependency in one or more of the instrumental activities of daily living as documented on the uniform assessment instrument.” It is unclear, however, whether the frequency of a needed service should be taken into account in determining whether assistance is “minimal”.

It is also unclear what “minimal assistance” means in relation to other services, such as “arranging transportation,” or “making and keeping appointments” as used in 22VAC30-80-30 (2)(d). Would minimal assistance include the provision of staffing support to assist an individual in traveling to an appointment, for instance? These terms should be further clarified, either within these regulations or in supplemental guidance, to avoid conflicting interpretations by administrators and consequent inconsistent practices.

3. Prohibit the acceptance of third party payments in excess of the actual cost of providing the goods and/or services for which they are accepted.

Third party payments should only be used to provide services and goods to AG recipients over and above that required to be provided to these recipients as a condition of participation in the AG program. ALFs, AFC Homes, and Supportive Housing providers should not be allowed to use third party payments as an added source of revenue, or to offset the costs of providing goods and services that must be provided as a condition of participation in the program. This can be ensured by prohibiting the acceptance of a third party payment in excess of the actual cost of providing the goods and/or services for which the payment is submitted. The Board recommends, therefore, the addition of the following language as subpart G in 22VAC30-80-45 to effectuate this recommendation: *Third party payments shall not be accepted in excess of the actual cost of providing the goods and/or services for which the third party payments are submitted.*

4. Revise 22VAC30-80-45(C) to clarify that third-party payments may be accepted only after the goods or services for which the payments are submitted have been provided.

Pursuant to 22VAC30-80-45(C), third-party payments may be accepted if they are “made by persons or entities for goods or services *to be provided* to the AG recipient.” This language

suggests that these payments may be accepted in advance of the provision of the goods or services for which the payments are made. Immediately following this, however, 22VAC30-80-45(C)(1) states that these payments will not be included as income for the purposes of determining eligibility for or determining the amount of an AG payment only if the payment is made “after the goods or services have been provided.” This inconsistency should be cleared up by amending 22VAC30-80-45(C) to ensure that third-party payments may only be accepted for goods or services *that have been provided to* an AG recipient.

Once again, we appreciate the opportunity to comment. If you have any questions or need further information please don't hesitate to contact me or John Cimino, the Board's Director of Public Policy ([John.Cimino@vbpd.virginia.gov](mailto:John.Cimino@vbpd.virginia.gov)).