

10 May 2013

Via U.S. Mail and Electronic Mail to OCRComplaint@hhs.gov Barbara Holland, Regional Manager Office for Civil Rights U.S. Department of Health and Human Services 150 S. Independence Mall West Suite 372, Public Ledger Building Philadelphia, PA 19106-9111

RE: Civil Rights Complaint

Dear Ms. Holland,

I write on behalf of Quality Trust for Individuals with Disabilities and the National Alliance on Mental Illness of Virginia. Please accept this letter as a Civil Rights Complaint against the Commonwealth of Virginia, which is violating the Americans with Disabilities Act ("ADA") by requiring people with disabilities to live in segregated, institutional settings in order to participate in and benefit from its Auxiliary Grant program.

We ask that your office (1) investigate this matter; (2) find that Virginia's Auxiliary Grant program, as implemented, violates the ADA; and (3) Order Virginia to allow people to participate in and benefit from the program while living in integrated, community-based housing.

I. The Auxiliary Grant is a Virginia State Program to Help People Meet Their Basic Needs.

Virginia's Auxiliary Grant program serves over 6,000 recipients, the majority of whom have disabilities and other physical or mental impairments. The program was created as a "state

supplemental program" to the federal Supplemental Security Income for the Aged, Blind and Disabled ("SSI") Program.¹

According to a 2008 study by the Virginia Secretary of Health and Human Services, attached as Exhibit 1, the Auxiliary Grant program provides participants with funds "to ensure that [they] are able to maintain a standard of living that meets a basic level of need."²

II. The ADA Requires States to Administer their Programs in the Most Integrated Setting Appropriate to the Needs of People with Disabilities.

Title II of the ADA protects people with disabilities from discrimination by state and local governments, stating:

[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.³

Under the ADA, a public entity includes "any state or local government," including "any department, agency, special purpose district or other instrumentality of a State." The Regulations to the ADA require public entities to "administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities."

¹20 C.F.R. § 416.2001 authorizes such programs.

² Auxiliary Grant Portability: A Report on the Feasibility of Restructuring Auxiliary Grants for Certain CSB Case Management Consumers, Virginia Secretary of Health and Human Services ("the 2008 study"). Available at: http://leg2.state.va.us/dls/h&sdocs.nsf/fc86c2b17a1cf388852570f9006f1299/c21440ae68a17fb c852572b900496381/\$FILE/RD30.pdf

³ 42 U.S.C. § 12132.

⁴ 42 U.S.C. § 12131(1)-(2).

⁵ 28 C.F.R. § 35.130(d).

The Regulations define the "most integrated setting" as "a setting that enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible."

In the groundbreaking *Olmstead* decision, the Supreme Court held that "unjustified institutional isolation of persons with disabilities is a form of discrimination" in violation of the ADA.⁷ Explaining its ruling, the Court held:

First, institutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life. Second, confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment. Dissimilar treatment correspondingly exists in this key respect: In order to receive needed medical services, persons with mental disabilities must, because of those disabilities, relinquish participation in community life they could enjoy given reasonable accommodations, while persons without mental disabilities can receive the medical services they need without similar sacrifice.⁸

III. Nothing in Virginia or Federal Law Requires People to Live in Assisted Living Facilities or Adult Foster Care to Participate in and Benefit from the Auxiliary Grant Program.

The Virginia law creating the Auxiliary Grant program, attached as Exhibit 2, makes special provisions for people who receive program benefits <u>and</u> live in assisted living facilities or adult foster care. However, it does not <u>require</u> a person to live in an assisted living facility or adult foster care to participate in or receive benefits from the program. The statute says:

B. Those individuals who receive an auxiliary grant and who reside in licensed assisted living facilities or adult foster care homes shall be entitled to a personal needs allowance when computing the amount of the auxiliary grant. The amount of such personal needs allowance shall be set forth in the appropriation act.

⁶ 28 CFR Pt. 35, App. A (2010).

⁷ Olmstead v. L.C. by Zimring, 527 U.S. 581, 600 (2001).

⁸ *Id.* at 600-601 (citations omitted).

- C. The Board shall adopt regulations for the administration of the auxiliary grants program that shall include requirements for the Department to use in establishing auxiliary grant rates for licensed assisted living facilities and adult foster care homes.
- D. In order to receive an auxiliary grant while residing in an assisted living facility, an individual shall have been evaluated by a case manager or other qualified assessor to determine his need for residential living care....
- E. <u>Assisted living facilities and adult foster care homes providing services to auxiliary grant recipients may accept payments made by third parties for services provided to an auxiliary grant recipient, and the Department shall not include such payments as income for the purpose of determining eligibility for or calculating the amount of an auxiliary grant...⁹</u>

Thus, Auxiliary Grant recipients do not <u>have</u> to live in assisted living facilities or adult foster care homes. The statute merely provides different or additional benefits for those who do: they receive a personal needs allowance; are charged special rates; are evaluated by a case manager; and may have payments made by third parties.

Similarly, federal law does not require Auxiliary Grant recipients to live in assisted living facilities or adult foster care homes. Federal Regulations require only that "state supplemental program" participants receive or "would be eligible" for SSI. 10 Furthermore, the Supreme Court in *Olmstead* held that federal policy no longer has a "preference for treatment in the institution over treatment in the community" but instead encourages and enables States to provide people with disabilities with "community based services." 11

⁹ Va. Code Ann. § 63.2-800, recodified as Va. Code Ann. § 51.5-150 effective 1 July 2013.

¹⁰ 20 C.F.R. § 416.2001

¹¹ 527 U.S. at 601.

IV. The Regulations Implementing the Auxiliary Grant Program Require People to Live in Assisted Living Facilities or Adult Foster Care to Participate in and Benefit from the Program.

The Virginia Department of Social Services issued Regulations, attached as Exhibit 3, to implement the Auxiliary Grant program. Those Regulations state that people <u>must</u> live in assisted living facilities or adult foster care to participate in and benefit from the program. For example, the Regulations define "Auxiliary Grant Program" as:

[A] 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 assisted living facility or in adult foster care....¹²

In addition, the Department of Social Services' Auxiliary Grant Program "Frequently Asked Questions," attached as Exhibit 4, states:

To be eligible for an auxiliary grant in Virginia, an individual must meet all of the following:

- Be 65 or over or be blind or be disabled.
- Reside in a licensed assisted living facility or approved adult foster care home.
- Be a citizen of the United States or an alien who meets specified criteria.
- Have a non-exempted (countable) income less than the total of the auxiliary grant rate approved for the assisted living facility plus the personal needs allowance.
- Have non-exempted resources less than \$2,000 for one person or \$3,000 for a couple.
- Have been assessed and determined to need assisted living facility care or adult foster care placement.

¹² 22 VAC 40-25-10 (emphasis added).

V. Virginia's Auxiliary Grant Program, as Implemented by the Department of Social Services' Regulations, Violates the ADA.

Because the Auxiliary Grant program, as implemented, requires people with disabilities to live in assisted living facilities or adult foster care to receive benefits, the program does not provide services in the "most integrated setting" and violates the ADA.

A. People with disabilities are qualified to participate in the Auxiliary Grant program.

As shown by Exhibit 4, people who are "blind or . . . disabled" are qualified to receive Auxiliary Grant program funds. In its 2008 study, Virginia found that the majority of Auxiliary Grant recipients were rated as "dependent" in activities of daily living like bathing, toileting, dressing and cognitive orientation.¹³

B. Assisted Living Facilities and Adult Foster Care Homes are Institutional Settings.

In its Auxiliary Grant program manual, Virginia admits that assisted living facilities are institutions. The "Place of Application" section of the manual, attached as Exhibit 5, states, "Both public and private pay [assisted living facilities] are considered institutions. . . ."¹⁴

Virginia's admission is correct because all assisted living facilities participating in the Auxiliary Grant program have four or more residents. As a result, they meet the definition of an institution: "an establishment that furnishes (in single or multiple facilities) food, shelter, and some treatment or services to four or more persons unrelated to the proprietor." 42 C.F.R. §

¹³ Exhibit 1 at p. 6.

Auxiliary Grant Program Application Processing Manual, Volume II, Part III, Chapter B, Page 10. The quoted section is available at: http://www.dss.virginia.gov/files/division/dfs/as/auxillary_grants/intro_page/manual/ag_chap b.pdf. The entire manual is available at: http://www.dss.virginia.gov/family/as/auxgrant.cgi

435.1010. Furthermore, 42 C.F.R. § 435.405 states that the definition of institution "includes foster care homes." ¹⁵

C. Assisted living facilities and adult foster care homes are segregated because they are not available throughout Virginia.

In addition to being institutional settings, assisted living facilities and adult foster care homes are not available throughout Virginia, including the most populous areas of the Commonwealth. As the 2008 study found:

[A]ssisted living facilities and adult foster care homes are not found in every locality throughout the Commonwealth . . . The Northern and Fairfax licensing regions have relatively few auxiliary grant beds, and 41 localities have no assisted living beds for auxiliary grant recipients. . . . There are even fewer adult foster care placements (approximately 14 as of September 2007) and they are only found in a handful of localities. ¹⁶

Furthermore, a 2007 study submitted to the Virginia General Assembly, attached as Exhibit 6, found that assisted living facilities housing Auxiliary Grant recipients were more likely to have over 20 residents and be "of concern" due to complaints lodged against them.¹⁷

D. The Department of Health and Human Services, Department of Justice and the United States Court of Appeals for the Fourth Circuit found that state systems like the Auxiliary Grant program violate the ADA.

In a 2006 report, the Department of Health and Human Services found that "board and care homes" like assisted living facilities and adult foster care homes, "are generally not consistent with the ADA and *Olmstead* mandate and that the over reliance on such homes

Even if adult foster care homes do not meet this definition, they are unlawfully segregated. See, *infra* and Exhibit 1 at p. 3.

¹⁶ Exhibit 1 at p. 3.

¹⁷ Final Report: Impact of Assisted Living Regulations, Joint Legislative Audit and Review Commission, at slide 17.

undermines recovery, community integration and the transformation of the public mental health system. . . ."

The Department further found:

[S]tate and federal government should take urgent action to ensure that public funds are no longer expended to support segregating living arrangements such as board and care homes. Rather, these funds (including SSI and SSDI disability benefits, state supplements, rent subsidy benefits and funds available from any other federal, state or local source) should be converted into an individual benefit or voucher that will . . . permit people with psychiatric disabilities to purchase housing of their choice. ¹⁹

Similarly, in a case very much like this one, the Department of Justice found that North Carolina's reliance on "adult care homes" to provide services to people with disabilities violated the ADA because it failed "to provide services to individuals with mental illness in the most integrated setting . . ."²⁰ The Department further found:

The State plans, structures, and administers its mental health service system to deliver services to thousands of persons with mental illness in large, segregated adult care homes, and to allocate funding to serve individuals in adult care homes rather than in integrated settings. Adult care homes are institutional settings that segregate residents from the community and impede residents' interactions with people who do not have disabilities. Most people with mental illness receiving services in adult care homes could be served in more integrated settings, but are relegated indefinitely and unnecessarily to adult care homes because of systemic State actions and policies. ²¹

¹⁸ Transforming Housing for People with Psychiatric Disabilities Report, HHS Pub. No. 4173, at p. 3, available at http://www.bazelon.org/LinkClick.aspx?fileticket= eCPh zd6ZQ%3D&tabid=241.

¹⁹ *Id. See, also,* Exhibit 1 at p. 3.

²⁰ DOJ Findings Letter to North Carolina at p. 2, available at http://www.ada.gov/olmstead/olmstead_cases_list2.htm.

²¹ *Id*.

Relying in large part on the Department's letter, the United States Court of Appeals for the Fourth Circuit held that North Carolina's adult care homes are institutions and "individuals who must enter institutions to obtain . . . services for which they qualify may be able to raise successful [ADA] and Rehabilitation Act claims. . . . "22 The Court then upheld a preliminary injunction holding that North Carolina's system likely violated the ADA and *Olmstead* and requiring North Carolina to provide needed and appropriate services to people with disabilities outside of adult care homes. 23

VI. If the Auxiliary Grant Program is Implemented Consistently with the Language of the Statute Creating it, People with Disabilities could use Program Funds to Live in Integrated, Community-Based Housing Throughout Virginia.

Like North Carolina's system, Virginia's Auxiliary Grant program serves thousands of people with disabilities.²⁴ Like the Department of Justice and *Pashby*, Virginia's 2008 study found "Adults with mental illness [in Virginia] may have the ability to live in more independent settings than [assisted living facilities] with appropriate supportive services."²⁵

Furthermore, the 2008 study found that Auxiliary Grant recipients could afford community-based housing throughout Virginia if they are allowed to use program funds outside of assisted living facilities and adult foster care homes. Program funds could "make studio and one bedroom apartments in almost every locality affordable for a single [Auxiliary Grant]

²² Pashby v. Delia, 709 F.3d 307, 322 (4th Cir. 2013).

²³ *Id.* at 331.

²⁴ A majority of the over 6,000 people participating in the program have physical or mental disabilities. See, generally, Exhibit 1.

²⁵ Exhibit 1 at p. 1.

recipient and two bedroom apartments in every locality affordable for two [Auxiliary Grant] recipients to share."²⁶

All that is required to achieve this result - all that is needed for the Auxiliary Grant program to comply with the ADA - is for the program to be implemented consistently with the language of the statute creating it. As shown, Va. Code Ann. § 63.2-800 does not limit Auxiliary Grant funds to people living in assisted living facilities or adult foster care homes; the Department of Social Services' Regulations created that unlawful limitation.

Accordingly, this Complaint does not seek a fundamental alteration of the Auxiliary Grant program. It only asks that current and future program participants be permitted to use program funds in integrated, community-based housing, consistent with the letter and spirit of the ADA and Virginia law. In particular, we are not asking Virginia to implement the pilot program outlined in the 2008 study, which would have added 1,500 Auxiliary Grant program "slots." In 2010, the Commonwealth chose not to implement the pilot because it concluded that the 1,500 new recipients would be entitled to Medicaid in perpetuity, whether or not the program and "slots" were continued.²⁷

Because our requested remedy will only apply to people granted Auxiliary Grant "slots" through the regular course of the program, and program participants are already entitled to Medicaid, it will not cause an expansion of Virginia's Medicaid program beyond what has already been provided and planned for. In other words, if Virginia never adds another Auxiliary Grant "slot," the 6,000 people currently participating in the program will continue to receive the same program funds and the same Medicaid coverage; they will just be able to use those funds in

²⁶ Exhibit 1 at p. 5.

²⁷ Report on the Proposed Auxiliary Grant Portability Pilot (Item 341.H), dated 1 December 2010, attached as Exhibit 7, at p. 2.

community-based housing. If Virginia chooses to add "slots," new recipients will receive the same funds and coverage as current ones, with no expansion beyond what has been allotted.

VII. Case Examples: People with Disabilities who have been Harmed by the way Virginia Implements its Auxiliary Grant Program.

 AB^{28}

AB has multiple disabilities that cause maladaptive behavior, resulting in nine institutionalizations in the last two years. Assisted living facilities, including those that accept Auxiliary Grant program funds, have refused to accept AB.

AB has been evicted from community-based housing, including assisted living facilities, due to behavioral issues. In the last year, AB has been evicted from or refused admission to assisted living facilities and could only afford to live in an unsupported boarding home.

Recently, AB was again institutionalized.

AB's case management agency believes that AB can live successfully in the community if given access to appropriate supports and services. Unfortunately, AB cannot find an appropriate place to live due to not having enough money to pay rent.

AB is qualified to receive Auxiliary Grant program funding. If allowed to use program funds to pay rent in community-based housing, AB could live in the community and receive supports and services through the case management agency.

Unfortunately, because of the way Virginia implements its Auxiliary Grant program, AB can only use program funds to pay for housing in an assisted living facility or adult foster care.

These options are not available due to the lack of foster care placements and the refusal of

²⁸ To protect the privacy of the people discussed in this section, the fictitious initials "AB" and "CD" have been substituted for their names. Other personally identifiable information, including gender, has also been removed.

auxiliary living facilities to accept AB. Consequently, AB is at risk of continued institutionalization.

CD

CD has multiple disabilities that cause maladaptive behavior, resulting in over 15 institutionalizations. Assisted living facilities, including those that accept Auxiliary Grant program funds, have refused to accept CD.

CD has had a number of unsuccessful community placements due to behavioral issues and has been displaced four times in the past two years. However, CD's case management agency believes that CD can live successfully in the community if given access to appropriate services and supports. Unfortunately, CD cannot find a place to live due to not having enough money to pay rent for community-based housing.

CD is qualified to receive Auxiliary Grant program funding. If allowed to use program funds to pay rent for community-based housing, CD could live in the community and receive supports and services through the case management agency.

Unfortunately, because of the way Virginia implements its Auxiliary Grant program, CD can only use program funds to pay for housing in an assisted living facility or adult foster care.

These options are not available due to the lack of foster care placements and the refusal of assisted living facilities to accept CD. Consequently, CD is at risk of institutionalization.

VIII. Conclusion

As Virginia's 2008 study found, allowing Auxiliary Grant program recipients to use program funds in integrated, community-based housing "would promote more focused recovery and independence and better enable Virginia to provide services in a variety of integrated

settings as contemplated by the Americans with Disabilities Act."²⁹ Unfortunately, the Department of Social Services' Regulations continue to stand as an obstacle to this more-thanworthy goal.

Therefore, we respectfully request that your office investigate this matter and:

- (1) Find that Virginia's Auxiliary Grant program, as implemented, violates the ADA; and
- (2) Take whatever actions are necessary to ensure that Virginia complies with the ADA and allows Auxiliary Grant recipients to use program funds in integrated, community-based housing of their choice.

If you have any questions, please feel free to contact me at (202) 459-4007 or at JMartinis@DCQualityTrust.Org. Thank you, in advance, for your courtesy, cooperation and effort with regard to this matter. I am,

Jonathan G. Martinis Legal Director

Respectfully,

CC: Mira Signer, Executive Director, NAMI-Va.

²⁹ Exhibit 1 at p. 11.





COMMONWEALTH of VIRGINIA

Office of the Governor

Manlyn B. Tavenner Secretary of Health and Human Resources

Memorandum

TO:

The Honorable Timothy M. Kaine

Governor of Virginia

The Honorable John H. Chichester, Chairman

Senate Finance Committee

The Honorable Vincent F. Callahan, Chairman

House Appropriations Committee

The Honorable Phillip A. Hamilton, Chairman

Joint Commission on Health Care

DATE:

January 1, 2008

FROM:

Malityn B. Takerhier

CC:

Joe Flores, Senate Finance Committee, Susan Massart, House Appropriations

Committee, Kim Snead, Joint Commission on Health Care, James S. Reinhard, M.D., Ray Ratke, Frank Tetrick, James Martinez, Michael Shank, Ruth Anne Walker

SUBJECT:

A REPORT ON THE FEASIBILITY OF RESTRUCTURING AUXILIARY GRANTS

FOR CERTAIN CSB CASE MANAGEMENT CONSUMERS

Pursuant to Item 278 C of the 2007 Virginia Acts of Assembly. I am pleased to submit this study report, "Auxiliary Grant Portability: A Report on the Feasibility of Restructuring Auxiliary Grants for Certain CSB Case Management Consumers." We are committed to expanding community-based care for people with disabilities and this report describes how an auxiliary grant could be used to meet the needs of consumers who would benefit from choosing alternative community living arrangements that promote more focused recovery and independence:

Auxiliary Grant Portability

A Report on the Feasibility of Restructuring Auxiliary Grants for Certain CSB Case Management Consumers

Submitted
By
The Secretary of Health and Human Resources

To
The Governor
And
The Chairmen of the
House Appropriations and Senate Finance Committees
And
The Joint Commission on Health Care

January 1st, 2008

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Executive Summary

This is written pursuant to Item 278 C of the 2007 Virginia Acts of Assembly (Chapter 847) which requires a report from the Secretary of Health and Human Resources on the feasibility of restructuring auxiliary grants (AGs) to pay for alternative housing for AG recipients who receive Community Services Board or Behavioral Health Authority (CSB/BHA) case management services. This study concludes that such a restructuring of the AG program is incrementally feasible within existing resources.

An Auxiliary Grant (AG) is a supplement to income for over 6,000 recipients of Supplemental Security Income (SSI) and certain other aged, blind, or disabled individuals. This assistance is available through local departments of social services to ensure that AG recipients are able to maintain a standard of living that meets a basic level of need. Federal regulations allow for more flexibility and variations in eligible housing types than just the current Assisted Living Facility (ALF) and Adult Foster Care options in Virginia. Many States provide for more choice in living arrangements and Wisconsin's program offers a progressive model of housing with individualized supports in natural residential settings.

The auxiliary grant program was not designed exclusively for adults with mental disabilities and numerous requests have been made over the years to restructure the AG program to include alternative types of housing arrangements that better meet the needs of this population. Adults with mental disabilities may have the ability to live in more independent settings than ALFs with appropriate supportive services. In addition, AG-sponsored ALF beds are not available statewide and this may limit those with mental disabilities the opportunity to live near their family or friends. The Commonwealth's recent efforts to improve and promote mental health system transformation and community integration also indicate the need to change the AG program for adults with mental disabilities.

Virginia could create a supported housing program similar to Wisconsin's with Medicaid-funded case management and community mental health services for consumers who are being displaced from AGfunded ALF beds that close. They could be afforded the opportunity to choose alternative living arrangements supplemented with "portable auxiliary grants" used for rental assistance. Adding the standard AG amount to 30% of the standard SSI monthly income would make studio and one bedroom apartments in many localities affordable for a single AG recipient and two bedroom apartments in every locality for two residents to share.

Eligibility for this new program option could be defined for prioritized consumer groups as proposed by an "ABC" model of: Assessing for priority status; Budgeting for individualized needs and housing costs; and Certification by a State or Local entity as a new AG recipient. Only those who are found independent on the Uniform Assessment Instrument for activities of daily living, but dependent in instrumental activities of daily living, are planned for in this proposal.

This first prioritized eligibility group, AG recipients who receive CSB/BHA case management services and who are displaced recipients of AG-funded ALF beds that close, would require few new resources. Additional groups in need, particularly those confined to institutions or living in localities without access to an ALF would require new resources. DMHMSAS research has shown that these costs might be offset by targeting consumers who are experiencing housing instability and numerous psychiatric hospitalizations.

Studies have shown that mental health consumers prefer independent housing with supports, and those displaced by the closure of an AG-funded ALF bed, or waiting to be discharged from a state hospital, or seeking residential services in localities without ALFs, or experiencing housing instability and costly psychiatric hospitalizations should be prioritized for a portable grant in a restructured AG program.

Study Resolution

This report is written pursuant to 2007 Virginia Acts of Assembly (Chapter 847) Item 278 C. which reads: "The Secretary of Health and Human Resources shall report on the feasibility of restructuring auxiliary grants to pay for housing of consumers who receive case management services from a community services board or behavioral health authority and who are found eligible for or are currently receiving auxiliary grants. The feasibility report shall include an assessment of how an auxiliary grant could be used to meet the needs of consumers who would benefit from choosing alternative living arrangements that promote more focused recovery and independence, an estimate of the number of consumers that could be eligible for an auxiliary grant under a restructured program, and an estimate of the potential cost of the restructured program. In developing the feasibility report, the Secretary shall consult with representatives of the assisted living industry, mental health organizations, community services boards; behavioral health authorities, and consumers. The feasibility report shall be provided to the Governor, and the Chairmen of the House Appropriations and Senate Finance Committees, and the Joint Commission on Health Care, by December 1, 2007."

Virginia's Auxiliary Grant is part of a federally defined State Supplementation Program.

Federal Regulatory Authority

State Supplementation Programs are a part of the Supplemental Security Income (SSI) for the Aged, Blind, and Disabled Program and they are defined in federal regulation 20 C.F.R § 416.2001 as follows:

"Any payments made by a State or one of its political subdivisions ... to a recipient of supplemental security income benefits (or to an individual who would be eligible for such benefits except for income), if the payments are made:

- (1) In supplementation of the Federal supplemental security income benefits; i.e., as a complement to the Federal benefit amount, thereby increasing the amount of income available to the recipient to meet his needs; and
- (2) Regularly, on a periodic recurring, or routine basis of at least once a quarter; and
- (3) In cash, which may be actual currency or any negotiable instrument, convertible into cash upon demand; and
- (4) In an amount based on the need or income of an individual or couple."

Virginia Statutory Authority

Virginia's Auxiliary Grants Program, was established as a State Supplement to SSI in 1973 under 8 63.2-800 of the Code of Virginia, to help very low income individuals with disabilities statewide (See Appendix A).

"(A) The Board is authorized to prepare and implement, ... a plan for a state and local funded auxiliary grants program to provide assistance to certain individuals [with disabilities and income that is] ... not sufficient to maintain the minimum standards of need established by the Board. The plan shall be in effect in all political subdivisions in the Commonwealth and shall be administered in conformity with Board regulations."

The Auxiliary Grant (AG) Is Designed to Pay For Assisted Living Facilities and Adult Foster Care The State Board of Social Services defines Auxiliary Grants (AG) as a State Supplementation Program benefit available to residents of assisted living facilities (ALFs) and adult foster care homes:

"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 assisted living facility or in adult foster care with an approved rate" 1 (22 VAC 40-25-10).

ALFs and Adult Foster Care Homes Are Not Found in All Localities in Virginia

According to DSS regulation as described above, very low income individuals with disabilities may only receive an auxiliary grant if they live in an assisted living facility (ALF) or adult foster care, but assisted living facilities and adult foster care homes are not found in every locality throughout the Commonwealth.

The Joint Legislative and Audit Review Committee (JLARC) recently reported that "The Northern and Fairfax licensing regions have relatively few auxiliary grant beds, and 41 localities have no assisted living beds for auxiliary grant recipients." There are even fewer adult foster care placements (approximately 14 as of September 2007) and they are only found in a handful of localities.

Alternative Models to Provide Housing and Services to People with Mental Disabilities

For individuals with disabilities who could live more independently, ALFs may not provide the most integrated community setting. An emerging consensus, promoted by the Federal Center for Mental Health Services of the Substance Abuse and Mental Health Services Administration, contends that:

- Board and care homes serving people with psychiatric disabilities—as currently configured—are generally not consistent with the ADA and the Olmstead mandate.
- Over reliance on such honies undermines recovery, community integration and the transformation
 of the public mental health system called for by the President's New Freedom Commission on
 Mental Health.
- State and federal government should take urgent action to ensure that public funds are no longer expended to support segregating living arrangements such as board and care homes.
- Rather, these funds (including SSI and SSDI disability benefits, state supplements, rent subsidy benefits and funds available from any other federal, state or local source) should be converted into an individual benefit or voucher...

Many states provide for several alternative choices of living arrangements through their SSI State Supplement Programs. As the "Study of Funding for Housing Serving People with Disabilities" (SD12, 2000) and the "Report on Housing Opportunities for Persons with Disabilities in Virginia" (HD86, 2005) describe in detail, most States provide SSI supplement programs that support people in a variety of housing types, as exemplified in Wisconsin's eligible living arrangements. The Wisconsin program provides supplements to recipients in a variety of settings:

- 60% of recipients live independently. This includes recipients living in their own households, in private medical treatment facilities where Medicaid pays 50 percent or less of the cost of their care, or in non-medical institutions. It also includes persons in medical facilities who are classified in a federal Code A living arrangement⁶.
- 26% live in a private non-medical group home or "natural residential setting". This is restricted to recipients who require a supportive living arrangement and reside in private non-medical group homes or in a natural residential setting with support. Eligibility is based on certification, on an individual basis, by the state.
- 8% live independently in their own household with an ineligible spouse⁷.
- 6% are living in the household of another. This includes recipients residing in a federal Code B living arrangement.

Wisconsin's "natural residential setting" arrangement may provide a model for Virginia. Wisconsin defines a "natural residential setting," mentioned above, as a

"community integrated setting where: the person lives in a home or apartment in a neighborhood where non-elderly and nondisabled people also reside; the person has access to services and community resources (e.g., stores, transportation, theaters, restaurants, etc.) typical of the community; and there are regular and informal opportunities for social integration and

interaction with non-elderly and nondisabled people. A residence is not qualified if it is a part of. or on the grounds of, an "institution," although it may be adjacent to an institution."

An individual is eligible for the Wisconsin SSI Supplement in a natural residential setting when he is assessed on an individual basis and certified by the state as needing 40 hours or more per month of supportive home care (e.g., personal care such as bathing, eating, etc.), daily living skills training (e.g., personal hygiene, housekeeping, shopping, etc.), community support program services (e.g., case management, symptom management, vocational services, etc.), or some combination thereof (See Appendix B Assessment Worksheets)". This is an example of the model of supportive housing most preferred by consumers because it provides an individualized array of services provided to them in regular, non-institutional residential settings.

Medicaid funded Mental Health Support Services (MHSS) are available to eligible AC recipients in Virginia. These services would be critical to establishing a Wisconsin-like natural setting model in the Commonwealth. Virginia Medicaid's Mental Health Case Management and Montal Health Support Services (MHSS), which are already available to eligible community consumers including residents of ALFs, offer an array of supports that may help them better thrive in more independent "natural residential settings." Case Management Services and MHSS are designed to be rehabilitative in nature, with the expectation to maintain community stability and independence in the most appropriate, least restrictive environment. The following lable compares ALFs. Mental Health Case Management, and MHSS programs:

	Assisted Living Facilities	MH Case Management	Mental Health Supports	
Criteria for acceptance Services Provided	Dependent rating in one of seven activities of daily living, or dependent rating in one of four instrumental activities of daily living, or dependent on medication administration. Meals provided	Documentation of serious mental illness as defined by diagnosis, level of disability and duration. Assessment shows need for service. Based on individualized assessment: Assist the individual directly	Clinical need arising from a condition due to mental, behavioral, or emotional illness that results in significant functional impairments in major life activities. Based on individualized assessment: provide skills training and assistance with	
	provided Social and recreational activities provided Minimal assistance with care of funds and personal possessions. Individuals supervised to assure safety Medication administered	in developing or obtaining needed community resources Coordinate services and treatment planning with other agencies Enhance community integration opportunities Make collateral contacts with significant others Education and counseling regarding the service plan Individualized, client-specific activity	shopping, meal planning, nutrition Based on individualized preferences inform and assist in developing recreational activities and leisure skills. Direct support to assist with money management budgeting, legal needs Symptom assessment and symptom management. Psychoeducation Medication management Help in maintaining housing Skills training in accessing community resources	
Qualifications of Sorvice Provider (general)	Able to carry out responsibilities, communicate effectively in English, complete required orientation in	Qualified Case Manager (1	Qualified Mental Health Professional 12	
Expected outcome	Resident lives in a safe, clean environment	Individual lives independently in the community in the least restrictive environment	Individual lives independently in the community in the least testrictive environment	

With these critical Medicaid services available to some AG recipients, Virginia could apply the Wisconsin "natural residential setting" model of individualized services, provided to consumers living in non-institutional housing of their choice, if the auxiliary grant were made available to assist them with the cost of housing. Many SSI recipients in Virginia cannot afford housing on their own. The 2007 average Fair Market Rental (FMR) rate in Virginia varies between 52% and 160% of SSI monthly income for a studio apartment and between 63% and 182% for a one bedroom apartment, while the U.S. Department of Housing and Urban Development (HUD) guidelines define housing affordability as no more than 30% of monthly income. Rental assistance programs such as HUD's Housing Choice Voucher make up the cost difference, but unfortunately, Housing Choice Vouchers are often not available and the waiting lists are long and slow moving in most States including Virginia,

The table below shows how by adding the standard AG amount to 30% of the standard SSI rate can make available between \$625 and \$1,250 per month for one or two individuals to use for rent (\$784 and \$1,568 in northern Virginia, respectively). This amount of rental assistance would make studio and one bedroom apartments in almost every locality affordable for a single AG recipient and two bedroom apartments in every locality affordable for two AG recipients to share. This would be a welcome improvement to many AG recipients who must now share their ALF bedroom with one or two, and sometimes three roommates. (Appendix C provides a list of Virginia FMR rates by area.)

2007 SSI Rate = \$623	Va	PD 8
2007 Affordable Housing Rate @ 30% of SSI	\$187	\$187
Plus the 2007 Auxiliary Grant Amount	438	597
Equals Total Available Income Per Month - Each	\$625	\$784
Total Available Income Per Month - For Two	\$1,250	\$1,568

Recipients in such AG-supported apartments could be sustained with supportive residential services. These and other necessary supports could be individually planned with the AG recipient and provided by local Community Services Board staff through the array of Medicaid-funded mental health community services. Such services would help AG recipients achieve higher levels of independence and more focused recovery in living arrangements where they could learn and practice daily living skills and become more integrated into community living.

If Virginia had contracted for the Federal Social Security Administration to administer its State Supplement pursuant to 20 C.F.R. § 416.2005, only a limited number of living arrangements would be permissible. However, since Virginia administers the State Supplement directly, eligibility for the AG does not need to be defined by the living arrangement ("If the State chooses to administer such payment itself, it may establish its own criteria for determining eligibility requirements as well as the amounts"13). Instead, eligibility could be defined by consumer-related characteristics, including a determination of need for specific services as described above. New auxiliary grant categories could be created as long as they meet the 20 C.F.R. § 416.2001 criteria (i.e., they are tied to the SSI benefit, provided on a recurring basis at least once a quarter, paid in cash or check, and are based on need or income of the recipient). A restructured auxiliary grant program which prioritizes and responds to the needs of different consumer groups is therefore feasible, and the size, cost, and growth of such a program will depend upon how these consumer groups are defined,

Fiscal Year 2007 Auxiliary Grant/Case Management Recipients

To estimate the number of consumers who may be eligible for a restructured AG program, and to estimate the potential cost of the restructured program, a review of Medicaid assessment and service records was conducted. These records included 2,812 individuals who were enrolled in case management services from a community services board or behavioral health authority and who also received auxiliary grants

during Fiscal Year 2007 (FY07). Their average length of stay in the program during the year was 9.8 months, with 2,296 of these "AG/CM" recipients on average in service each month. The average recipient had been in the program for 4.2 years by the end of FY07, ranging from less than a month to more than 34 years. Other demographic characteristics were found as follows:

- 55% of AG/CM recipients were male
- 63.5% were White and 35.5% were Black/African-American.
- Their average age was 53 years old
 - o 42% were age fifty or younger
 - o 39% were between the ages of 51 and 65
 - o 19% were over the age of 65

Approximately 83% of AG/CM recipients (2,331) had Uniform Assessment Instrument (UAI) scores available for review in records provided by the Department of Medical Assistance Services (DMAS). The UAI is used to measure functional status as a basis for differentiating among levels of long-term care needs. Functional status is the degree of independence with which an individual performs Activities of Daily Living (ADLs), and Instrumental Activities of Daily Living (IADLs).

For this study, ADLs, IADLs, and scores in three additional items were noted when rated Dependent (D). which means that the individual needs at least the assistance of another person to safely complete the activity and therefore would not be appropriate for the proposed natural residential setting. These ADLdependent individuals require a level of supervised care that is higher than that proposed for the restructured portable AG program. A total of 1,216 (52%) AG/CM recipients were rated dependent in some ADL or cognitive orientation, indicating that these individuals need daily help in performing the following personal care tasks:

ADL Dependent	Number of AG/CM Recipients
 Bathing 	980
Dressing	684
* Bladder Control (Continent	ce) 448
Toileting	326
 Eating/Feeding 	243
· Bowel Control (Continence	226
 Transferring 	221

A Dependence rating in Orientation to Person, Place, and Time indicated that 620 recipients also need daily personal supervision. The remaining 1,115 AG/CM recipients (48%), who were in service an average of 9.9 months in FY07, had independent ratings in ADLs, but Dependence ratings in IADLs. This indicates a need for help in performing the following social tasks that are not necessarily done every day but which are critical to living independently, Such assistance can be provided in the proposed natural residential setting by a combination of case management and mental health support services as described above.

IADL Dependent	Number of AG/CM Recipients
Meal Preparation	1,017
 Money Management 	1,011
 Housekeeping 	930
Laundry	897

Dependence in two additional UAI items also indicates a need for additional help in managing mental health issues essential to successful independent living. Problems related to either getting or taking medicine (1,053 recipients); and behavior problems (148 recipients).

Over 95,500 Medicaid claims were submitted to DMAS for services to AG/CM recipients in FY07 and both AG/CM groups utilized similar levels of Medicaid services. Three quarters of these claims were for psychosocial rehabilitation (clubhouse), case management, mental health support, and personal case services as outlined below.

FY07 Medicald Service	FY07 Claims	Percent of Total	Cumulative Percent
Psychosocial Rehabilitation Services	31,027	32.5	32.5
Mental Health Case Management	18,514	19.4	.51,8
Mental Health Support Services	12,177	12.7	64.6
Mental Retardation Case Management	5,737	6.0	70.6
Personal Care Services	4,313	4.5	75.1
All Other Medicaid Service Claims	21,715	24.9	100

With the exception of Personal Care and MR Waiver services, both the AG/CM group needing supervised care and the AG/CM group suitable for independent living received similar levels of Medicaid-funded services in FY07 at a comparable annual cost per recipient (approximately \$7,000 to 8,000).

Recipients and Payments by Medicaid Service	ADL/Orientation Dependent Recipients (%)	Average Number of FY07 Claims	IADL-Only Dependent Recipients (%)	Average Number of FY07 Claims
Case Management	1,210 (100)	8.7	1,114 (100)	8.9
Mental Health Support Services	313 (26)	17.2	244 (22)	17.5
Psychosocial Rehabilitation	423 (35)	37.7	459 (41)	22.8
Personal Care	373 (31)	8.9	56 (5)	8.1
MR Waiver	74 (6)	18.9	40 (4)	13,4
All Other	779 (64)	14,6	600 (54)	12.3

FY07 Payments by Medicaid Service	Total for ADL/Orientation Dependent Recipients	Average per ADL/Orientation Dependent Recipient	Total for IADL-Only Dependent Recipients	Average per IADL Dependent Recipient
Case Management	\$3,416,496	\$2,824	\$3,228,432	\$2,898
Mental Health Support Services	\$1,901,823	\$6,076	\$1,308,912	\$5,364
Psychosocial Rehabilitation	\$2,663,119	\$6,296	\$2,861,611	\$6,234
Personal Care	\$284,892	\$764	\$37,479	\$669
MR Waiver	\$1,431,825	\$19,349	\$266,971	\$6,674
Subtotal - most common services	\$9,698,155	\$8,015	\$7,703,405	\$6,915
All Other	\$834,330	\$1,071	\$521,665	\$869
Total Services	\$10,532,485	\$9,086	\$8,225,070	\$7,784

Estimated Number of AG/CM Recipients and Costs in a Restructured AG Program

According to DMAS data, therefore, an estimated 48% of individuals who currently receive case management services from a community services board or behavioral health authority, and who also receive auxiliary grants, could likely live independently with the supports provided by Medicaid case management and mental health support services. The current average array of their most common services cost \$8,381 per year (\$6,915 for 9.9 service months annualized). If these were reprogrammed into four hours of mental health support services per month (\$3,984 to \$4,368 per year, rural vs. urban) and monthly case management (\$3,912 per year), the total annual cost would be between \$7,896 and \$8,280. There would be no increased cost in services, but rather an annual savings of between \$101 and \$485

In addition to estimating service costs, the FY07 DMAS data was also used to determine the potential housing costs for AG/CM recipients in a portable AG program. Applying the HUD fair market rental rate to CSB areas within which current recipients reside results in an average rental assistance cost of \$551 per month per one bedroom unit; an amount which is \$74 less than what could be made available through the auxiliary grant as described above (see Appendix D: HUD Fair Market Rental Rates by CSB/BHA Area).

Limited New Costs to Replace Loss of AG-funded ALF beds with Restructured Portable Grants In recent years, unexpended auxiliary grant fund balances have been identified. In the 2004-2006 biennium "savings of \$0.9 million general funds associated with a small surplus in the auxiliary grant program." was reprogrammed; and in the Governor's current 2008 budget reduction plan, \$0.5 million is recouped because "Spending in the auxiliary grant program continues to fall short of annual projections."

These balances build up because of a reduction in available AG-funded ALF beds. According to DSS reports, there were 1,751 fewer adult cases of AG payments made in FY 2007 than in the previous year. On average each month, this equates to 147 fewer AG-funded adults. As AG-funded ALF beds close, auxiliary grants once used to support them could be utilized in a restructured program and a new group of eligible SSI State Supplement recipients defined as those AG recipients displaced by the closures.

If the restructured auxiliary grant program were limited to individuals displaced from ALF beds that close, and ALF beds are reduced at the FY07 rate, approximately 70 to 147 individuals would be funded to live independently through a portable auxiliary grant with case management and mental health support services provided at no extra cost, and perhaps an average monthly savings, to the Commonwealth.

Offset New Costs: Expand a Restructured AG Program to Targeted New Eligibility Groups
If the restructured auxiliary grant program were extended to other groups of case management recipients who receive UAI ratings of independent in ADLs and cognitive orientation but dependent in IADLs, such as those who are waiting for discharge from state hospitals (57 patients were ready for discharge but waiting over 30 days for ALF placements as of November 2007) or living in localities without ALF beds, the average monthly cost per person is estimated to be \$1,136 per ALF placement (\$438 in AG payments plus \$698 in common Medicaid services) or between \$1,096 and \$1,128 per portable AG (\$438 in AG payments plus \$658 and \$690 in common Medicaid services).

These projected costs might be offset if eligibility groupings were targeted to consumers who would otherwise utilize more expensive health care resources. An example may be drawn from the number of AG/CM recipients described above who were in the program in calendar year 2005 (1,799 or 64% of the study cohort) and who were discharged from a local psychiatric hospital that year (206 or 11%). Of those, 89 (43%) had more than one discharge (total = 338) during the year totaling 2,889 bed days (32 days on

average per person). This local psychiatric hospital care alone cost an estimated \$1,938,000 for the year, or \$21,775 per person.

This finding is consistent with recent Department of Mental Health, Mental Retardation and Substance Abuse Services studies that identified homeless adults with mental illness as having multiple annual admissions costing over \$26,000 on average. Housing instability was found to closely correlate with high utilization of psychiatric inpatient care, and the average homeless CSB consumer as compared to the average housed CSB consumer, had four times the number of admissions, three times the number of bed days, and three times the total estimated cost for local psychiatric inpatient care. ¹⁶ Another target eligibility group for a restructured AG, therefore, could be defined as consumers who have experienced housing instability and numerous psychiatric hospitalizations.

A Portable Auxiliary Grant Eligibility and Planning Process: The "ABC" Model

A restructured auxiliary grant program which includes a larger array of consumer groups in varying living arrangements might at first appear to be overly complicated. However, a simple to understand process of eligibility determination and certification can be described as the "ABC" model: Assess, Budget, and Certify.

· A: Assess New Auxiliary Grant Applicants

In a restructured AG program, applicants would be assessed by case managers as they are currently, but additional items would be added to their eligibility determination, i.e., their inclusion in the new prioritized groups. Existing AG recipients displaced from AG-funded ALF beds that close would be assessed for their interest in utilizing portable auxiliary grants. In addition, if funding was available, consumers waiting in state hospitals, or living in localities without ALFs, or other targeted consumers could be assessed for their interest in choosing between an ALF and a portable auxiliary grant.

• B: Budget for Their Needs

An individualized service plan would be developed by the applicant with their treatment providers, in this case their CSB case managers, to include the cost of available housing within HUD's Fair Market Rental (FMR) Rates (See Appendix C). The cost to meet the housing and individual service needs of applicants to the restructured AG program would be approved by local DSS offices similarly to how auxiliary grant amounts are now approved.

· C: Certify New Auxiliary Grant Recipients

Finally, once applicants are determined to be eligible under one of the newly defined AG categories and individualized service plans with housing costs are approved by the local CSB and DSS office as appropriate to the individual needs, the applications would be reviewed and certified at the State or local level on a case by case basis.

Rationale for A Restructured Auxiliary Grant Program

Mental Health Consumers Prefer Independent Housing With Supports

There have been numerous study findings over the years confirming that many mental health consumers prefer alternative independent living arrangements with supports to ALFs:

"Clients most preferred environments that ensured living alone in settings of low behavioral government-subsidized housing, For-profit boarding houses were preferred over psychiatric group homes, and homelessness, long-term hospitalization, and crisis accommodations were least preferred."

- "Consumers consistently reported that they would prefer to live in their own house or apartment, to live alone or with a spouse or romantic partner, and not to live with other mental health consumers. Consumers reported a strong preference for outreach staff support that is available on call; few respondents wanted to live with staff" 18
- "Results from studies of established programs indicate that support services for consumers should include working with individuals to formulate their housing and support goals; financial assistance in acquiring long-term stable housing; help in searching for an apartment and moving assistance in managing money and participating in leisure activities; assistance with medication; ongoing monitoring of needs; crisis support; and peer support."

Other Auxiliary Grant Program Restructuring Consideration: Local Match

Virginia is one of only five SSI State Supplement participating States that requires a local match to the SSI supplement (See House Document 86, 2005). This policy has engendered local opposition to AG-expansion proposals. For this proposed restructured auxiliary grant program, the General Assembly might wish to allow CSB contributions of its State General Funds, or other available CSB resources, to be used as local match.

Study Methodology and Consultations

This study was completed by conducting reviews of pertinent State and Federal requirements, other States' SSI Supplement programs, previous Virginia-specific study reports, and research studies on mental health housing and residential services. In addition, representatives from the following organizations were consulted:

Virginia Assisted Living Association (VALA)
Virginia Association of Nonprofit Homes for the Aging (VANHA)
Virginia Adult Home Association (VAHA)
Independent Home Ownership Group
Richmond Behavioral Health Authority (RBHA)
Highlands Community Services Board (HCSB)
Virginia Association of Community Services Boards
National Alliance on Mental Illness, (NAMI) Virginia

Family and Consumer Support Services Committee of the SWVA Regional Behavioral Health Board
Regional Consumer Empowerment and Recovery Council of Southwest Virginia
Virginia Department of Social Services

Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services
United States Social Security Administration

Staff of Community Services Boards and Behavioral Health Authorities who work closely with ALF residents felt strongly that the proposed portable auxiliary grant would likely work well with some, but not all, of their ALF consumers. They stated that ALFs are the only feasible placement for some consumers at a certain point, but ALF services can be counterproductive for others who want to learn independent living skills to move forward in their recovery. The provision of mental health support services to consumers in their own home or apartment is seen as the best intervention for them,

While recognizing the need for housing the residents displaced from an ALF that closes, some ALF operators expressed concerns that the proposed program might create vacancies in their own homes. Others worried that the proposed portable AG program might leave residents without adequate support

and supervision, given the difficulties the mental health system is already experiencing. Several noted the current problem they experience in accessing CSB services and supports to ALFs, including assessments and reassessments. All of the ALF association representatives noted their low reimbursement rates and felt that an increase in the rate would help to ensure the availability of the resources needed to care for AG recipients.

Conclusion: A Restructured Portable Auxiliary Grant Program is Feasible

A restructured auxiliary grant program that allows some well defined groups of CSB case management recipients to use the grant for rental assistance while learning independent living skills as consumers of mental health support services is feasible and affordable for the Commonwealth to implement. A portable auxiliary grant would promote more focused recovery and independence and better enable Virginia to provide services in a variety of integrated settings as contemplated by the Americans with Disabilities Act.

JLARC Final Report: Impact of Assisted Living Facility Regulations, July 9, 2007

State Assistance Programs for SSI Recipients, U.S. Social Security Administration, January 2006

'Ineligible spouse' means someone who lives with the recipient as husband or wife and is not eligible for SSI benefits. Federal Code B living arrangement, means living in the household of another person who is not the recipient's child or

spouse, and receiving food and shelter from within that household.

Wisconsin's SSI supplement policy clarifies need as the eligibility criteria: "It is the need rather than receipt of services which determines eligibility. Similarly, it does not matter who provides the service-a paid provider, family, or other informal caregiver-or whether no one currently provides it, as long as it is needed." State SSI-E Administration Policy, Wisconsin Department of Health and Family Services, 2004. in 22VAC40-72-170. Staff general qualifications.

It Qualified Case Manager must have knowledge of services, systems and programs available in the community, knowledge of the nature of serious mental illness, knowledge of different types of assessments and their use in treatment planning, knowledge of freatment modalities and intervention techniques, knowledge of service planning techniques, knowledge of use of medications and knowledge of applicable state and federal laws; skills in identifying an individual's need for resources, services, and other supports, skills in coordinating services, and ability to engage and sustain ongoing relationships with individuals receiving services.

Qualified Mental Health Professional is a clinician in the human services field who is trained or experienced in providing psychiatric services or mental health services to individuals with a mental health diagnosis: physician; psychiatrist; psychologist-master's degree in psychology with at least one year of clinical experience; social worker - bachelor's or master's degree from an accredited school of social work with at least one year of clinical experience; registered nurse with at least one year of clinical experience; mental health worker as defined as: individual with bachelor's degree in human services or related field with one year of clinical experience; or a Registered Psychiatric Rehabilitation Provider with the International Association of Psychosocial Rehabilitation Services as of January 1, 2001; or an individual with a bachelor's degree in an unrelated field with at least 15 semester credits in a human service field and has at least three years of clinical experience; or four years' clinical experience working directly with individuals with mental illness or mental retardation 20 C.F.R. § 416.2005(c)

Governor Warner's proposed 2004 - 2006 Biennial Budget Briefing

15 PY 2008 Budget Reduction Plan

16 "Comparing Homeless Management Information Systems and Mainstream Health Care Databases to Identify Cost Offsets for "Housing First" in Richmond Virginia's Continuum of Care," Shank, M., Virginia DMHMRSAS, 2007 Housing accommodation preferences of people with psychiatric disabilities, Owen C, Rutherford V, Jones M, et al:

Psychiatric Services 47:628–632, 1996

Respectively of Surveys of mental health consumers' preferences for housing and support services. Tanzman B: Hospital and Community Psychiatry 44:450-455, 1993

¹⁹ Housing and Supports for Persons With Mental Illness: Emerging Approaches to Research and Practice, Carling, P. Hosp Community Psychiatry 44: 439-449, 1993

AG recipients usually receive monthly Federal Supplemental Security Income (SSI) benefits up to \$623 and the AG brings their total monthly income up to \$1,061 (\$1,220 in Northern Virginia, Planning District 8).

Adult foster care homes are a local option and they must be approved by the local departments of social services. They are currently only found in Bland County and Montgomery County, and the cities of Chesapeake, Portsmouth, and Virginia Beach. Transforming Housing for People With Psychiatric Disabilities Report, HHS Pub. No. 4173. Rockville, MD; Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, 2006.

^{6 &#}x27;Federal Code A living arrangement' means living in the recipient's own household; in a foster or family care situation; having no permanent living arrangement, living in an institution (excludes immates of public institutions) for all or part of a month provided that Medicaid does not pay more than 50% of the cost of their care; or living alone or with a child, spouse, or persons whose income may be deemed to the recipient

Appendix A: Virginia Auxiliary Grant Statute

§ 63.2-800. Auxiliary grants program; administration of program.

A. The Board is authorized to prepare and implement, effective with repeal of Titles I, X, and XIV of the Social Security Act, a plan for a state and local funded auxiliary grants program to provide assistance to certain individuals ineligible for benefits under Title XVI of the Social Security Act, as amended, and to certain other individuals for whom benefits provided under Title XVI of the Social Security Act, as amended, are not sufficient to maintain the minimum standards of need established by the Board. The plan shall be in effect in all political subdivisions in the Commonwealth and shall be administered in conformity with Board regulations.

Nothing herein is to be construed to affect any such section as it relates to Temporary Assistance for Needy Families, general relief or services to persons eligible for assistance under Public Law 92-603 enacted by the Ninety-second United States Congress.

- B. Those individuals who receive an auxiliary grant and who reside in licensed assisted living facilities or adult foster care homes shall be entitled to a personal needs allowance when computing the amount of the auxiliary grant. The amount of such personal needs allowance shall be set forth in the appropriation act.
- C. The Board shall adopt regulations for the administration of the auxiliary grants program that shall include requirements for the Department to use in establishing auxiliary grant rates for licensed assisted living facilities and adult foster care homes. At a minimum these requirements shall address (i) the process for the facilities and homes to use in reporting their costs, including allowable costs and resident charges, the time period for reporting costs, forms to be used, financial reviews and audits of reported costs; (ii) the process to be used in calculating the auxiliary grant rates for the facilities and homes; and (iii) the services to be provided to the auxiliary grant recipient and paid for by the auxiliary grant and not charged to the recipient's personal needs allowance.
- D. In order to receive an auxiliary grant while residing in an assisted living facility, an individual shall have been evaluated by a case manager or other qualified assessor to determine his need for residential living care. An individual may be admitted to an assisted living facility pending evaluation and assessment as allowed by Board regulations, but in no event shall any public agency incur a financial obligation if the individual is determined ineligible for an auxiliary grant. For purposes of this section, "case manager" means an employee of a human services agency who is qualified and designated to develop and coordinate plans of care. The Board shall adopt regulations to implement the provisions of this subsection.

(1973, c. 264, § 63.1-25.1; 1974, cc. 44, 45; 1981, c. 21; 1985, c. 229; 1991, c. 532; 1993, cc. 957, 993; 1995, c. 649; 2002, c. 747.)

Appendix B: Wisconsin Assessment for Natural Residential Setting

DEPARTMENT OF HEALTH AND FAMILY SERVICES Division of Disability and Elder Services DDE-817 (Rev. 12/2003).

STATE OF WISCONSIN Completion of this form is required by Section 49.77(3s)(b). Wis. Stats.

ASSESSMENT WORKSHEET FOR NATURAL RESIDENTIAL SETTING

Name - S	SIF	Recipient			r			
ν.	mer	erson resides with a spous of the spouse of parent is ay yelcally or mentally incapat	vov from the	FAR	mence for altrances of an	minimum and n	Finish	inti the management in a name t
		E HOME CARE (SHC)						
If the pers	on	requires the essistance of	another pers	on i	n the following areas, ente	er the appro	xima	ate hours per month.
		Person			•	Respite		
	1	Eatingmeats		8.	Planningraccessing leisure time activities	·	15.	Respite
	2.	Changing position in bed		9	Finance/bill paying			
······································	3,	Transferring from bed/wheelchair	. H** Haqiindiyaana	10.	Physically accessing medical care	Other		
	4.	Using the toilet and/or conrolling bladder or howel	Chore	41.	On-site supervision	vito mannista p	16.	Other (specify)
***************************************	5	Personal mobility	Equipment of the last	12.	-Grocery shopping/food preparation/clean-up	***************		TOTAL MONTHLY HOURS OF SHC
	6	Bathing, grooming/ dressing	Ann Annieron	13	Housework/laundry			
minus minus	7	Medical support	**************************************	14.	Yard work/snow shoveling			
DAILYLI	VIN	G SKILLS TRAINING (DL	ST)					
If the pers	Øħ	needs training in the follow	ing greas, e	nter	the approximate number	of hours per	me	nlh.
	1:	Personal hygiene grooming, and dressing	, pari de consequiernas	6.	Purchasing necessities: food/clothes	4 00.000,000,000,000,000,000,000,000,000,	.10.	Accessing public/private transportation
	2.	Planning/preparing food/clean-up	Assemble	7,	Socialization skills/leisure activities	, 4-1,-1-1111111111111111111111111111111	đГ.	BIRTH to 3 program for children
	3	Laundry activities	yoʻroo ili toʻoroo ili toʻo	8	Developing appropriate sexual behaviors	and million discount.	12,	Medical support
miranopadoroppa	4.	Housekeeping	der Martin and Anton Appendix and Appendix a	9.	Parenting skills family relationships		13,	Consumer training
real property and the second	5	Budgeting and/or using the banking system					14.	Other (specify)
						,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,		TOTAL MONTHLY HOURS OF DLST

IP THE TOTAL HOURS OF SHC AND DEST NEEDED ARE 40 OR MORE HOURS PER MONTH, THE PERSON IS ELIGIBLE FOR SSLE.

Keep in agency case file

Appendix B: Wisconsin Assessment for Natural Residential Setting -2

DEPARTMENT OF HEALTH AND FAMILY SERVICES Division of Disability and Elder Services DDE-817A (Rev. 12/2003)

STATE OF WISCONSIN Completion of this form is required by Section 49 77(3s). Wis Stats

ASSESSMENT WORKSHEET FOR NATURAL RESIDENTIAL SETTING

COMMUNITY SUPPORT PROGRAM

***************************************	*, **	is chronically mentally ill or is a chronic alcoholic is, enter the approximate number of hours per n Case planning, monitoring and review	ютна,		
1			Marine de divines internations	- 14.	Transportation
***************************************	2	Case management	erlana and annue mana	15	Assistance in learning daily living task
, ————————————————————————————————————	 3.	Assessment/diagnosis			(e.g., personal grooming, laundry, planning prepating food, purchasing necessities, housekeeping, financial
	<u>.</u> 4,	Assistance in obtaining needed benefits (e.g., financial support, legal services,			management, training in the use of available transportation)
		money management)	***************************************	16.	Crisis intervention
- Annual Control	- 5.	Advocacy	trackton on Alshaira, yearson	17.	Vocational services
on and the state of	- 6.	Education, support, and consultation to clients' families and other major supports	*************************************	18.	Acquiring/maintaining adequate housing
National and religion of the last spice	7.	Supportive counseling/psychotherapy		19.	Social/recreational activities
	_ 8.	Assertive outreach	My in the constant	20.	Coordination of services with other human service programs.
	ĝ,	Symptom management	: www.instantontontontontontontontontontontontonton	.21:	On-site supervision needed to protect health, safety, welfare
***************************************	10.	Medical support/oblaving health,care	***	22.	Respite to family or other major supports
	11.	Referrál	12 marganista	23.	Other (specify)
	12:	Socialization and interpersonal			
problem and the contract front to problem.	, 13.	Assistance with and training in community functioning (e.g., family relationships, parenting)			TOTAL MONTHLY HOURS OF CSP

IF THE TOTAL HOURS OF CSP NEEDED ARE 40 OR MORE HOURS PER MONTH, THE PERSON IS ELIGIBLE FOR SSI-E.

Keep in agency case file

Appendix C: HUD Fair Market Rental Rates by Virginia Locality/Metro Area

HUD 2007 Fair Market Rental Rates				
By Virginia Localities and Metro Areas	0 BR	1 BR	2 BR	3 BR
Franklin County, VA HMFA	326	.390	502	600
Lee	3.25	393	502	645
Page	340	397	521	672
Pulaski County, VA HMFA	381	403	502	719
Henry	387	403	502	644
Martinsville city	387	403	502	644
Kingsport-Bristol-Bristol, TN-VA MSA	376	404	502	673
Danville, VA MSA	353	405	523	652
Mecklenburg	329	410	506	62 i
Wythe	326	413	502	658
Alleghany	326	418	502	610
Clifton Forge city	326	418	502	610
Covington city	326	418	502	610
Tazewell	418	419	502	645
Giles County, VA HMFA	327	424	502	640
Norton city	418	426	502	653
Wise	418	426	502	653
Bland	418	433	502	640
Buchanan	418	433	502	640
Grayson	418	433	502	640
Russell	327	434	502	614
Shenandoah	414	443	542	723
Brunswick	431	445	519	647
Lunenburg	431	445	519	647
Bath	429	446	554	765
Highland	429	446	554	765 765
Dickenson	418	448	502	655
Buena Vista city	401	451	502	731
Lexington city	401	451	502	731
Rockbridge	401	451	502	731
Smyth	415	451	502	638
Buckingham	418	451	502	645
Charlotte	418	451	502	645
Nottoway	418	451	502	713
Augusta	438	451	588	841
Staunton city	438	451	588	841
Waynesboro city	438	451	588	841
Halifax	326	453	502	674
Patrick	416	453	502	
Carroll	417	453 453	502	622
Galax city:			•	602
Lynchburg, VA MSA	417	453	502	602
	450	461	556	686
Accomack	343	469.	528	642
Emporia city	432	469	520	628
Greensville	432	469	520	628

HUD 2007 Fair Market Rental Rates				
By Virginia Localities and Metro Areas	0 BR	IBR	2.BR	3 BR
Roanoke, VA HMFA	446	474	613	778
Prince Edward	487	488	587	703
Madison	443	494	597	826
Rappahannock	443	494	597	826
Lancaster	403	496	604	743
Middlesex	403	496	604	736
Northampton	403	496	604	736
Northumberland	403	496	604	736
Richmond	403	496	604	736
Westmoreland	408	497	627	860
Essex	404	499	614	836
Harrisonburg, VA MSA	451	501	610	855
Franklin city	363	502	557	689
Southampton	363	502	557	689
Floyd	461	502	556	773
Winchester, VA-WV MSA	491	510	673	929
Louisa County, VA HMFA	462	524	597	714
Blacksburg-Christiansburg-Radford, VA HMFA	488	534	598	820
Warren County, VA HMFA	473	550	685	963
Orange	403	554	617	898
King George	636	637	76 6	1,114
Culpeper	631	642	760	983
Charlottesville, VA MSA	557	669	792	1,026
*Richmond, VA HMFA	651	705	788	1,051
*Virginia Beach-Norfolk-Newport News, VA-NC MSA	700	735	844	1,164
*Washington-Arlington-Alexandria, DC-VA-MD HMFA	995	1,134	1,286	1,659
Note HMFA = HUD Metro FMR Areas				The state of the s

Appendix D: HUD Fair Market Rental Rates by CSB/BHA Area

CSB/BHA	AG/CM Recipients	1 BR FMR	Averaged # of Localities in Area
Alleghany Highlands	82	418	.1
Arlington	11	1,134	1.
Blue Ridge	246	474	1.
Central Virginia	95	461	I
Chesapeake	73	735	1
Chesterfield	21	705	1
Colonial MH/MR	42	<i>7</i> 35	1
Crossroads	81	499	6
Cumberland Mountain	137	429	3
Danville-Pittsylvania	77	405	1
District 19	155	548	3
Eastern Shore	43	483	2
Fairfax-Falls Church	45	1,134	1
Goochland-Powhatan	2	705	1
Hampton-Newport News	123	735	1
Hanover	9	· 705	1
Harrisonburg-Rockingham	25	501	I
Hemico Area MH/MR	97	705	1
Highlands	233	404	i
Loudoun County	2	1,134	1
Mid Peninsula-Nrthm Neck	72	497	6
Mount Rogers	80	439	6
New River Valley	52	466	4
Norfolk	93	735	T I
Northwestern	69	475	4
Piedmont	73	412	4
Planning District 1	115	415	1 3
Portsmouth DBHS	15	735	1
Prince William	4	1,134	<u> </u>
Rapp-Rapidan	28	637	1
Rappabannock Area	1 14	.563	3
Region Ten	85	562	3
Richmond BHA	259	705	3
Rockbridge Area	34	443	
Southside	<u> </u>		5
Valley	72 36	436	3
		450	4
Virginia Beach	17	735	1 1
Western Tidewater	78	580	3
Total	2,802	\$550	

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EXHIBIT 2

§ 63.2-800. (Repealed effective July 1, 2013) Auxiliary grants program; administration of program.

A. The Board is authorized to prepare and implement, effective with repeal of Titles I, X, and XIV of the Social Security Act, a plan for a state and local funded auxiliary grants program to provide assistance to certain individuals ineligible for benefits under Title XVI of the Social Security Act, as amended, and to certain other individuals for whom benefits provided under Title XVI of the Social Security Act, as amended, are not sufficient to maintain the minimum standards of need established by the Board. The plan shall be in effect in all political subdivisions in the Commonwealth and shall be administered in conformity with Board regulations.

Nothing herein is to be construed to affect any such section as it relates to Temporary Assistance for Needy Families, general relief or services to persons eligible for assistance under Public Law 92-603 enacted by the Ninety-second United States Congress.

- B. Those individuals who receive an auxiliary grant and who reside in licensed assisted living facilities or adult foster care homes shall be entitled to a personal needs allowance when computing the amount of the auxiliary grant. The amount of such personal needs allowance shall be set forth in the appropriation act.
- C. The Board shall adopt regulations for the administration of the auxiliary grants program that shall include requirements for the Department to use in establishing auxiliary grant rates for licensed assisted living facilities and adult foster care homes. At a minimum these requirements shall address (i) the process for the facilities and homes to use in reporting their costs, including allowable costs and resident charges, the time period for reporting costs, forms to be used, financial reviews and audits of reported costs; (ii) the process to be used in calculating the auxiliary grant rates for the facilities and homes; and (iii) the services to be provided to the auxiliary grant recipient and paid for by the auxiliary grant and not charged to the recipient's personal needs allowance.
- D. In order to receive an auxiliary grant while residing in an assisted living facility, an individual shall have been evaluated by a case manager or other qualified assessor to determine his need for residential living care. An individual may be admitted to an assisted living facility pending evaluation and assessment as allowed by Board regulations, but in no event shall any public agency incur a financial obligation if the individual is determined ineligible for an auxiliary grant. For purposes of this section, "case manager" means an employee of a human services agency who is qualified and designated to develop and coordinate plans of care. The Board shall adopt regulations to implement the provisions of this subsection.
- E. Assisted living facilities and adult foster care homes providing services to auxiliary grant recipients may accept payments made by third parties for services provided to an auxiliary grant recipient, and the Department shall not include such payments as income for the purpose of determining eligibility for or calculating the amount of an auxiliary grant, provided that the payment is made:
- 1. Directly to the assisted living facility or adult foster care home by the third party on behalf of the auxiliary grant recipient;
- 2. Voluntarily by the third party, and not in satisfaction of a condition of admission, stay, or provision of proper care and services to the auxiliary grant recipient, unless the auxiliary grant recipient's physical needs exceed the services required to be provided by the assisted living facility as a condition of participation in the auxiliary grant program pursuant to subsection C; and
- 3. For specific goods and services provided to the auxiliary grant recipient other than food, shelter, or specific goods or services required to be provided by the assisted living facility or adult foster care home as a condition of participation in the auxiliary grant program pursuant to subsection C.
- F. Assisted living facilities and adult foster care homes shall document all third-party payments received on behalf of an auxiliary grant recipient, including the source and amount of the payment and the goods and services for which such payments are to be used. Documentation related to the third-party payments shall be provided to the Department upon request.

G. Assisted living facilities and adult foster care homes shall provide each auxiliary grant recipient with a written list of the goods and services that are covered by the auxiliary grant pursuant to subsection C, including a clear statement that the facility may not charge an auxiliary grant recipient or the recipient's family additional amounts for goods or services included on such list.

(1973, c. 264, § 63.1-25.1; 1974, cc. 44, 45; 1981, c. 21; 1985, c. 229; 1991, c. 532; 1993, cc. 957, 993; 1995, c. <u>649</u>; 2002, c. <u>747</u>; 2012, cc. <u>128</u>, <u>387</u>.)



22VAC40-25-10. Definitions.

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

"Adult 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 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 assisted living facility or in adult foster care and who has applied for financial assistance under the Auxiliary Grants Program.

"Assisted living" means a level of service provided by an 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 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 assisted living facility or in adult foster care with an approved rate.

"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.

"Newly licensed assisted living facility" means a facility that has been licensed for 12 months or less.

"Other operating expense" means expenses incurred by the provider for activities that are not directly related to the care of residents.

"Other operating revenue" means income earned by the provider for activities that are not directly related to the care of residents.

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

"Personal needs allowance" means an amount of money reserved for meeting 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, 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 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 a licensed assisted living facility or an approved adult foster care provider with an approved rate.

"Residential living" means a level of service provided by an 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.

"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.

Statutory Authority

§§ 63.2-217 and 63.2-800 of the Code of Virginia; § 416.2001 of the Social Security Act.

Historical Notes

Derived from VR615-01-51 § 1, eff. February 1, 1996; amended, Virginia Register Volume 23, Issue 20, eff. August 1, 2007.

22VAC40-25-20. Assessment.

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

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 annually, and whenever there is a significant change in the individual's level of care, and a determination is made that the individual needs residential or assisted living care in an assisted living facility or adult foster care.

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.

Statutory Authority

§§ 63.2-217 and 63.2-800 of the Code of Virginia; § 416.2001 of the Social Security Act.

Historical Notes

Derived from VR615-01-51 § 2, eff. February 1, 1996; amended, Virginia Register Volume 23, Issue 20, eff. August 1, 2007.

22VAC40-25-30. Basic services.

The rate established 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 provided in accordance with 22VAC40-72 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, 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;

- (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; and
- g. General supervision for safety.

Statutory Authority

§§ 63.2-217 and 63.2-800 of the Code of Virginia; § 416.2001 of the Social Security Act.

Historical Notes

Derived from VR615-01-51 § 3, eff. February 1, 1996; amended, Virginia Register Volume 23, Issue 20, eff. August 1, 2007.

22VAC40-25-40. 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 provider for any item or service not requested by the recipient. The provider shall not require an auxiliary grants recipient or his personal representative to request any item or service as a condition of admission or continued stay. The provider must inform the recipient or his personal representative of a charge for any requested item or service not covered under the auxiliary grant and the amount of the charge. The personal needs allowance is expected to cover the cost of the following items and services:

- 1. Clothing;
- 2. Personal toiletries not included in those to be provided by the provider or if the recipient requests a specific type or brand of toiletries;
- 3. Personal items including tobacco products, sodas, and snacks beyond those required in subdivision 1 c of 22VAC40-25-30;
- 4. Hair care services:
- 5. Over-the-counter medication, medical copayments 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 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 provider for basic services as outlined by regulations;
 - 4. Provider laundry charges in excess of \$10 per month.

Statutory Authority

 $\S 53.2-217$ and 63.2-800 of the Code of Virginia; $\S 416.2001$ of the Social Security Act.

Historical Notes

Derived from VR615-01-51 § 4, eff. February 1, 1996; amended, Virginia Register Volume 23, Issue 20, eff. August 1, 2007.

22VAC40-25-45. 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;
 - 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 22VAC40-770.

Statutory Authority

§§ 63.2-217 and 63.2-800 of the Code of Virginia; § 416.2001 of the Social Security Act.

Historical Notes

Derived from Virginia Register Volume 23, Issue 20, eff. August 1, 2007.

22VAC40-25-50. Establishment of rate.

A. Submission of an audit report to the department is required for an assisted living facility to accept residents who receive an auxiliary grant.

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

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

D. Assisted living facilities that have been in licensed operation in excess of 12 months shall 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 audit report shall be reviewed by the department. The approved rate shall be the established rate as set forth in the appropriation act 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.

Statutory Authority

§§ 63.2-217 and 63.2-800 of the Code of Virginia; § 416.2001 of the Social Security Act.

Historical Notes

Derived from VR615-01-51 § 5, eff. February 1, 1996; amended, Virginia Register Volume 23, Issue 20, eff. August 1, 2007.

22VAC40-25-60. 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 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.

Statutory Authority

§§ 63.2-217 and 63.2-800 of the Code of Virginia; § 416.2001 of the Social Security Act.

Historical Notes

Derived from VR615-01-51 § 6, eff. February 1, 1996; amended, Virginia Register Volume 23, Issue 20, eff. August 1, 2007.

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22VAC40-25-70. Audits.

A. All financial information reported by an assisted living facility on the annual audit report shall be reconcilable to the residence's general ledger system or similar records. The audit shall account separately for the personal needs allowance of auxiliary grant recipients. All reports are subject to audit by the department. Financial information that is not reconcilable to the 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 22VAC40-770, 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.

Statutory Authority

§§ 63.2-217 and 63.2-800 of the Code of Virginia; § 416.2001 of the Social Security Act.

Historical Notes

Derived from VR615-01-51 § 7, eff. February 1, 1996; amended, Virginia Register Volume 23, Issue 20, eff. August 1, 2007.

EXHIBIT 4

Auxiliary Grants - How is Eligibility Determined?

Before an individual can receive assistance from the Auxiliary Grant Program, eligibility for the program must be determined by the local department of social services in the locality where the individual has residence. Residence for auxiliary grant eligibility is determined by the city or county within the state where the person last lived outside of an institution or adult foster care home. Any records or statements can be used to determine residency. If residency cannot be determined, or if the individual is from out-of-state, residency is where the individual is living at the time of application.

To be eligible for an auxiliary grant in Virginia, an individual must meet all of the following:

- Be 65 or over or be blind or be disabled.
- Reside in a licensed assisted living facility or approved adult foster care home.
- Be a citizen of the United States or an alien who meets specified criteria.
- Have a non-exempted (countable) income less than the total of the auxiliary grant rate approved for the assisted living facility plus the personal needs allowance.
- Have non-exempted resources less than \$2,000 for one person or \$3,000 for a couple.*
- Have been assessed and determined to need assisted living facility care or adult foster care placement.

Auxiliary grant benefits are paid by the local department of social services where recipient residency has been established. Checks are mailed directly to the recipient or a payee, who in turn pays the assisted living facility for services provided.



3. Place of Application

Initial applications and renewals are to be filed in the Virginia locality in which the individual last resided outside of an institution or an adult foster care home.

Note: Both public and private pay ALFS are considered institutions for AG purposes. ALFS are facilities licensed by Virginia Department of Social Services, Division of Licensing Programs for four or more individuals. Institutions also include hospitals, mental health facilities, nursing facilities, etc.

3.1. Filed In Wrong Locality

If the application is filed in a locality in which an individual does not have residence, the receiving agency must immediately forward the application to the locality of residence. The date of application will be the date it was received in the first agency.

- For example Ms. Smith lived in Hampton prior to going into the ALF. The locality that is responsible for eligibility is Hampton D.S.S.
- Ms. Smith moved in temporarily with her son who lives in Newport News before relocating to the Alf. Hampton D.S.S. is responsible for determining eligibility for AG.
- Ms. McCoy lived with her daughter in Virginia Beach for about a year and has no other residence in Virginia Beach. She has abandoned her home in Hampton with the intent to live in Virginia Beach with her daughter before going into an ALF. Virginia Beach is responsible for determining eligibility for AG.

3.2. Non-Virginia Resident

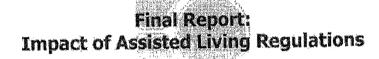
If the person did not have a prior residence in a Virginia locality or it cannot be determined where the individual last resided, the agency that serves the area in which the individual's adult living facility/adult foster care home is located will be responsible for determining initial and continuing eligibility.

4. <u>Date of Application</u>

The date of application is the date the signed application is received by a local department of social services. If the application is filed in a locality in which an individual does not

EXHIBIT 6

Joint Legislative Audit and Review Commission



Joint Commission on Health Care Briefing October 17, 2007

JLARC

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Study Mandate

Item 21E of the Appropriation Act directs JLARC to report on impact of new regulations for assisted living facilities Joint Legislative Audit and Review Commission



Final Report: Impact of Assisted Living Regulations

Joint Commission on Health Care Briefing October 17, 2007



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Study Mandate

Item 21E of the Appropriation Act directs JLARC to report on impact of new regulations for assisted living facilities

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In This Presentation

- Assisted Living in Virginia
- New Law and Its Implementation
- Assisted Living Facilities of Concern
- Cost Impact of New Law and Regulations

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Assisted Living at a Glance

- What is assisted living?
 - Non-medical residential settings provide personal and health care services and 24-hour supervision
- Who oversees Virginia's ALFs?
 - Licensed by Department of Social Services if 4 or more residents
 - Other regulations by Department of Health and Department of Health Professions
- What are key characteristics of ALFs in Virginia?
 - 583 licensed facilities: 4 to 500 beds (average: 55)
 - 32,000 statewide capacity
 - 81% private pay

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ALF Population & Facility Size Increasing

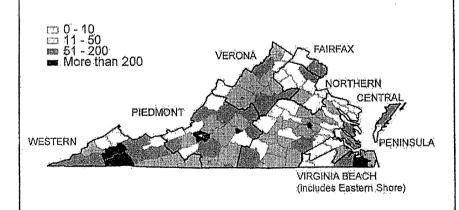
- Capacity grew 207% from 1979 to 2007 from 10,420 to 31,964
 - Outpaced 43% State population growth
- Number of Virginians 85 and older expected to double between 2000 and 2030

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Auxiliary Grant Beds Not Available in 41 Localities



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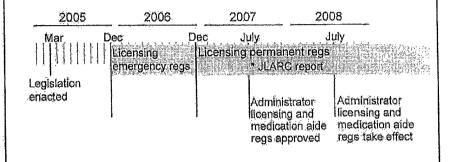
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2005 Legislation Required 3 Sets of Regulations

- Board of Social Services (DSS) licensing authority enhanced
 - Increased maximum fine to \$10,000
 - Streamlined license suspension
 - Required DSS to issue emergency regulations
- Board of Nursing (BON) to register medication aides
 - Aides must pass State exam and register by July 2008
 - ALFs must develop medication management plans
- Board of Long-Term Care Administrators (BLTCA) to license ALF administrators
 - Draft licensure regs developed, not yet finalized

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Regulations Phase In Over Time



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ALF Administrator Licensing Delayed

- Governor questioned BLTCA draft regulations
 - Need for both national and State exam
 - Required amount of administrator-in-training hours
 - Sufficiency of candidate pool
- BLTCA met July 10 and adopted changes
 - Dropped test on State law
 - Changed initial licensure requirements, lowering required time as: Administrator-in-Training
 - Altered 'preceptor' requirements
- Draft regulations now in Governor's Office

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Finding

■ 114 ALFs (20%) had significant compliance problems and/or verified complaints

"Quality" Not Defined in Statute or Regulation

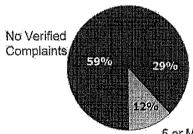
- To identify ALFs of concern, JLARC used data on compliance with standards and verified complaints
 - DSS staff monitor ALFs for compliance
 - Complaints investigated by
 - Long-Term Care Ombudsman in Area Agencies on Aging
 - · DSS Adult Protective Services
 - . DSS Division of Licensing Programs

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1 in 8 ALFs Had 5 or More Verified Complaints in 2006



1 to 4 Verified Complaints

5 or More Verified Complaints (ALFs of Concern)

N = 583

5 = Average number of verified complaints, for ALFs with complaints

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1 in 9 ALFs Had a Recent History of Problems Meeting Standards

89%
No Compliance
Problems

At least one type of problem complying with standards (ALFs of Concern) such as

- Provisional license
- Adverse enforcement action
- Enforcement watch
- Above-average number of high-risk health and safety violations (5 or more)

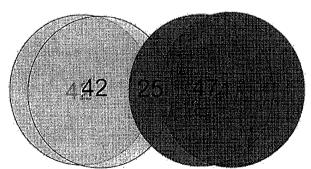
N = 583

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25 ALFs Had Both Verified Complaints and Compliance Problems in 2006



Complitunce Problems

Comptaint laints

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Characteristics of ALFs of Concern

- Larger: capacity of 20 or more
- More prevalent in 4 of 8 DSS regions: Western, Fairfax, Piedmont, Verona
- Serve more auxiliary grant recipients
 - 23 per ALF (compared to 11 for all ALFs)
 - 40% of capacity (compared to 31% for all ALFs)



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One Year Later: ALFs Of Concern as Identified in JLARC 2006 Status Report

Status	Number	Percent
Improved; No Longer "Of Concern"	56	41%
Closed	12	9%
Closed & Reopened Under New Ownership	10	7%
Remain "Of Concern"	59	43%
Total	137	100%

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Finding

- Quality of key services continues to be a problem
 - Medication administration
 - Staffing
 - Access to mental health services

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Medication Administration Still of Concern

- 18% of verified licensing complaints were medicationrelated (22% last year)
- 8 of 10 most frequently cited high-risk health and safety violations were medication-related (same as last year)
- Most frequent problems (same as last year)
 - Failure to follow physicians' prescriptions and orders
 - Inadequate documentation
 - Inadequate staff training
- Registration of medication aides required by 2005 law takes effect in July

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Adequacy of Staffing and Training Still of Concern

- Second-most frequent licensing complaint
- More than 400 complaints of resident abuse or neglect verified in 168 ALFs
- Staffing a factor in three-fourths of adverse enforcement actions issued

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Finding

New law and regulations will require new fees and increase costs

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Fees and Training Costs Increasing

- ALF administrator licensing draft standards
 - High school or GED, exam, annual fee, training and education requirements (some exceptions)
- Medication aide registration standards
 - Annual fee, training, exam
- DSS standards
 - On-site quarterly reviews of special diets by dietitian or nutritionist

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Facility Costs Increasing

- Air conditioning by June 2007 for "largest common area used by residents"
 - Estimates exceed \$10,000 for older ALFs
 - Air conditioning in all areas used by residents in 2012
 - Many but not all ALFs already air conditioned
- Connection to temporary electrical power required by July 2007



Typical Costs Imposed by New Law and Regulations

	Cost per "Average" ALF	
Administrator Licensing	\$200 + training	
Medication Alde Registration	\$120 + training	
Dietitian Review of Special Diets	\$120-1,200/year	
Temporary Electrical Power	0-\$6,000 +	
Air Conditioning	0-\$10,000 +	
Total Potential Costs	\$440-17,520 +	

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Finding

Auxiliary grant increases have not accounted for cost of new requirements; the rate remains below market prices

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Auxiliary Grant Has Increased

- More than 50% of ALFs are partly or totally dependent on State auxiliary grant funding
 - Majority of residents receive auxiliary grant funding in at least 208 ALFs;
 another 100 ALFs have at least one auxiliary grant recipient
- As of July, the auxiliary grant rate is \$1,061 per month, with \$75 personal allowance

SSI	\$ 623
State	\$ 350
Local	\$ 88
Total	\$1,061

■ Rate is not tied to cost or quality of care

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ALFs Serving Auxiliary Grant Recipients Have Less Revenue Available

Avg Annual Operating Revenue \$1,55 million

\$331,000

Revenue Source

>50% from >50% from auxiliary grant private pay

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Key Findings

- As new law and regulations phase in, some ALFs continue to experience problems
 - Medication administration, staffing, mental health services
- Auxiliary grant beds may not be available in the areas they are needed
 - 41 localities have none
- New law and regulations impose added costs on ALFs and ALF staff but adjustments to auxiliary grant rate have not been adequate - the rate remains well below the market

JLARC Staff for This Report

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For More Information

http://jlarc.state.va.us

(804) 786-1258

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EXHIBIT 7



COMMONWEALTH of VIRGINIA

JAMES W. STEWART, III COMMISSIONER DEPARTMENT OF

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December 1, 2010

TO:

The Honorable Robert F. McDonnell Governor of Virginia

The Honorable Charles J. Colgan Chairman, Senate Finance Committee

The Honorable Lacey E. Putney Chairman, House Appropriations Committee

FROM:

James W. Stewart, III

Commissioner, Department of Behavioral Health & Developmental Services

Re:

Report on the Proposed Auxiliary Grant Portability Pilot (Item 341.H.)

The purpose of this memorandum is to report on the proposed Auxiliary Grant (AG) portability pilot authorized in Item 341.H. of the 2009 Appropriation Act, which reads as follows:

The Department of Social Services. Department of Mental Health, Mental Retardation and Substance Services, Community Services Boards, and local departments of social services may conduct a pilot for portable Auxiliary Grants to pay for housing of consumers who (i) have lived in an assisted living facility for more than 6 months, (ii) receive an Auxiliary Grant, (ii) receive Medicald-funded case management and support services from a community services board or behavioral health authority, (iii) meet residential assisted living level of care criteria, (iv) are determined by the community services board or behavioral health authority to be good candidates for living in the community based upon the Uniform Assessment Instrument, and (v) have a plan of care in place developed by a community services board or behavioral health authority to ensure that needs can be met in the community. Priority shall be given to individuals meeting the above criteria who reside in assisted living facilities that give notice of closure or of discontinuing acceptance of Auxiliary Grant recipients as residents. The Department of Mental Health, Mental Retardalion and Substance Abuse Services shall, with cooperation by the Department of Social Services, evaluate any pilot to determine

The Honorable Robert F. McDonnell The Honorable Charles J. Colgan The Honorable Lacey E. Putney December 1, 2010 Page 2 of 2

the impact on portable Auxiliary Grant recipients, community services boards and local departments of social services. A report of the evaluation findings and recommendations shall be submitted to the Governor and Chairmen of the House Appropriations and Senate Finance Cammittees by December 1, 2010.

As former Secretary Tavenner informed you in October of last year (see attached) the pilot, as defined in the Appropriation Act, could not be implemented. Staff from the Departments of Social Services (DSS) and Behavioral Health and Developmental Services (DBHDS), with representatives from local DSS offices and community services boards (CSBs), began planning in 2009 to implement the pilot but stopped once the following impediments were identified:

1. Medicaid Eligibility: Auxiliary Grant recipients are categorically eligible for Medicaid, which would have been billed to cover services for the new portable-AG recipients. However, it was determined that, under 42CFR § 435.234(b)(6), this eligibility category is fied to the fact that assisted living facilities (ALFs) are considered "domiciliary facilities or other group living arrangements as defined under SSI". The supported housing in alternative settings proposed in the pilot would not meet that criteria.

Many portable-AG participants would have likely been eligible for Medicaid as Supplemental Security Income (SSI) recipients, but not all; therefore the pilot could not ensure that their "needs can be met in the community". The federal regulations at § 435.234(b)(9) allow for other "reasonable groups of individuals, as specified by the State, receiving State-administered supplementary payments" to be eligible for Medicaid, but adding another category would require changes to Virginia's Medicaid Plan.

2. Auxiliary Grant Maintenance of Effort: Under Social Security Administration (SSA) maintenance of effort (MOE) rules for SSI supplements, Virginia must maintain AG payments to any category of eligible recipients at the same payment level as the previous year (with some leeway according to when the category was established). This payment amount is measured either by the current AG rate (the Payment Levels Method) or total amount of AG payments (Total Expenditures Method.) If a new portable AG category was created for the pilot, it would establish a new baseline rate that could not be discontinued once the pilot ended without having some effect on Virginia's remaining MOE obligations. Under SSA regulation 20CFR § 416,2096, for Virginia to be eligible to receive Medicaid reimbursement, MOE compliance in the AG program is required.

We regret that we were unable to demonstrate alternative uses of the Auxiliary Grant for individuals with behavioral health disorders through this pilot and look forward to working with the Department of Social Services and our other partners to pursue other opportunities as they may arise.

Enclosure