

# VIRGINIA ACTS OF ASSEMBLY -- 2016 SESSION

## CHAPTER 567

*An Act to amend and reenact § 51.5-160 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 37.2-421.1, relating to auxiliary grants; supportive housing.*

[H 675]

Approved March 29, 2016

**Be it enacted by the General Assembly of Virginia:**

**1. That § 51.5-160 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 37.2-421.1 as follows:**

**§ 37.2-421.1. Supportive housing providers.**

A. The Department may enter into an agreement for the provision of supportive housing for individuals receiving auxiliary grants pursuant to § 51.5-160 with any provider licensed to provide mental health community support services, intensive community treatment, programs of assertive community treatment, supportive in-home services, or supervised living residential services. Such agreement shall include requirements for (i) individualized supportive housing service plans for every individual receiving supportive housing services, (ii) access to skills training for every individual receiving supportive housing services, (iii) assistance with accessing available community-based services and supports for every individual receiving supportive housing services, (iv) recipient-level outcome data reporting, (v) adherence to identified supportive housing program components, (vi) initial identification and ongoing review of the level of care needs for each recipient, (vii) ongoing monitoring of services described in the recipient's individualized supportive housing service plan, and (viii) annual inspections by the Department or its designee to determine whether the provider is in compliance with the requirements of the agreement.

B. Supportive housing provided or facilitated by providers entering into agreements with the Department pursuant to this section shall include appropriate support services in the least restrictive and most integrated setting practicable for the recipient. Residential settings where supportive housing services are provided shall (i) comply with federal habitability standards, (ii) provide cooking and bathroom facilities in each unit, (iii) afford dignity and privacy to the recipient, (iv) include rights of tenancy pursuant to the Virginia Residential Landlord and Tenant Act (§ 55-248.2 et seq.), (v) provide rental levels that leave sufficient funds for other necessary living expenses, and (vi) not admit or retain recipients who require ongoing, onsite, 24-hour supervision and care or recipients who have any of the conditions or care needs described in subsection D of § 63.2-1805.

C. The Department may revoke any agreement pursuant to subsection A if the Department determines that the provider has violated the terms of the agreement or any federal or state law or regulation and enter into an agreement with another provider to ensure uninterrupted supportive housing to the auxiliary grant recipient.

**§ 51.5-160. Auxiliary grants program; administration of program.**

A. As used in this section:

"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 supportive housing or an assisted living facility. For public pay individuals, a "qualified assessor" is an employee of a public human services agency trained in the completion of the uniform assessment instrument. For individuals receiving services from a community services board or behavioral health authority, a "qualified assessor" is an employee or designee of the community services board or behavioral health authority.

"Supportive housing" means a residential setting with access to supportive services for an auxiliary grant recipient in which tenancy as described in subsection B of § 37.2-421.1 is provided or facilitated by a provider licensed to provide mental health community support services, intensive community treatment, programs of assertive community treatment, supportive in-home services, or supervised living residential services that has entered into an agreement with the Department of Behavioral Health and Developmental Services pursuant to § 37.2-421.1.

B. The Commissioner 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 *who (i) are ineligible for benefits under Title XVI of the Social Security Act, as amended, and to certain other individuals or 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 regulations promulgated by the Commissioner and (ii) reside in supportive housing, an assisted living facility licensed by the Department of Social Services pursuant to Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2, or an adult foster care home approved by a local board of social services pursuant to § 63.2-1601.* The plan shall be in effect in all political subdivisions in the

Commonwealth and shall be administered in conformity with regulations of the Commissioner.

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 P.L. 92-603.

~~B. Those individuals who receive an auxiliary grant and who reside in licensed assisted living facilities or adult foster care homes~~ *C. Auxiliary grant recipients* 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. D.~~ The Commissioner 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; *and (iv) the process for supportive housing providers, assisted living facilities, and adult foster care homes to report and certify maintenance of the personal needs allowance and compliance with regulations for administration of the auxiliary grants program.*

~~D. E.~~ 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 *using the uniform assessment instrument* to determine his need for residential living care *upon admission and annually thereafter, or whenever there is a change in the individual's condition that appears to warrant a change in the resident's approved level of care.* An individual may ~~be admitted to~~ *select* an assisted living facility pending evaluation and assessment *or as allowed by regulations of the Commissioner; but. At the time of the first or any subsequent annual reassessment, the individual may select supportive housing or an assisted living facility, subject to the evaluation and reassessment of the individual and availability of the selected housing option. In such cases, the individual may continue to receive an auxiliary grant while residing in supportive housing as allowed by regulations of the Commissioner. However, in no event shall any public agency incur a financial obligation if the individual is determined ineligible for an auxiliary grant.*

The Commissioner shall adopt regulations to implement the provisions of this subsection.

~~E. F.~~ Provisions of Chapter 5 (§ 63.2-500 et seq.) of Title 63.2, relating to the administration of public assistance programs, shall govern operations of the auxiliary grant program established pursuant to this section.

~~F. G.~~ Assisted living facilities ~~and~~, adult foster care homes, *and supportive housing providers* 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, *or supportive housing provider* 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 *or supportive housing provider* as a condition of participation in the auxiliary grant program pursuant to subsection ~~C~~ D; 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, *or supportive housing provider* as a condition of participation in the auxiliary grant program pursuant to subsection ~~C~~ D.

~~G. H.~~ Assisted living facilities ~~and~~, adult foster care homes, *and supportive housing providers* 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.

~~H. I.~~ Assisted living facilities ~~and~~, adult foster care homes, *and supportive housing providers* 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~~ D, including a clear statement that the facility, *home, or provider* may not charge an auxiliary grant recipient or the recipient's family additional amounts for goods or services included on such list.

**2. That the Commissioner for Aging and Rehabilitative Services shall promulgate regulations to implement the provisions of this act to be effective within 180 days of its enactment.**

**3. That the Commissioner for Aging and Rehabilitative Services shall develop guidance documents for implementation of the provisions of this act no later than January 1, 2017. In developing such guidance documents, the Commissioner for Aging and Rehabilitative Services shall provide notice**

to the public and opportunity for public comment and public participation.

4. That the provisions of this act shall not become effective if they conflict with any federal law or regulation or any guidance document provided by the U.S. Social Security Administration.

5. That the Department of Medical Assistance Services shall seek to amend the state plan for medical assistance under Title XIX of the Social Security Act, and any waivers thereof, to implement the necessary changes pursuant to the provisions of this act. The Department of Medical Assistance Services shall have authority to implement such changes upon approval by the Centers for Medicare and Medicaid Services and prior to the completion of the regulatory process.

6. That the number of auxiliary grant recipients in the supportive housing setting shall not exceed 60.