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SENATE BILL NO. 1269

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance and Appropriations
on January 24, 2023)

(Patron Prior to Substitute—Senator Edwards)

A BILL to amend and reenact § 51.5-160 of the Code of Virginia and to amend the Code of Virginia by adding in Article 9 of Chapter 14 of Title 51.5 a section numbered 51.5-160.1, relating to auxiliary grants; independent community living.

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 in Article 9 of Chapter 14 of Title 51.5 a section numbered 51.5-160.1 as follows:

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

A. As used in this section:

"Independent community living" means a housing setting in which an individual lives and receives necessary community-based services to assist with activities of daily living, including instrumental activities of daily living, in the least restrictive and most integrated setting practicable in accordance with regulations adopted pursuant to 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 or independent community living. 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, 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, or independent community living. 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.

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.

D. The Commissioner shall adopt regulations for the administration of the auxiliary grants program that shall include the establishment of auxiliary grant rates for adult foster care homes and licensed assisted living facilities. Such regulations shall also include (i) the process for reporting and certification; (ii) 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 (iii) 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; and (iv) for auxiliary grant recipients who reside in independent community living, the process for ensuring that the recipient is residing in a safe setting and is receiving necessary community-based services in accordance with the recipient's individualized service plan and that such services are provided in accordance with other applicable programs.

E. In order to receive an auxiliary grant while residing in supportive housing or, an assisted living facility, or independent community living, 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 select, subject to availability, supportive housing or, an assisted living facility, or independent community living pending evaluation and assessment or as allowed by regulations of the Commissioner. 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.

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.

G. Assisted living facilities, 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, 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 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, adult foster care home, or supportive housing provider as a condition of participation in the auxiliary grant program pursuant to subsection D.

H. Assisted living facilities, 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.

I. Assisted living facilities, 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 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.

J. The provisions of this section related to independent community living shall apply only to the extent such provisions are permissible under federal law and regulations and any guidance document provided by the U.S. Social Security Administration.

§ 51.5-160.1. Independent community living.

To the extent permissible under federal law and regulations and any guidance document provided by the U.S. Social Security Administration, each local board of social services shall provide for the delivery of services to auxiliary grant recipients in independent community living in accordance with § 51.5-160 and regulations promulgated pursuant thereto. Local boards of social services shall develop processes to (i) identify auxiliary grant recipients who are appropriate candidates for independent community living; (ii) establish and monitor individualized service plans for auxiliary grant recipients in independent community living; (iii) ensure auxiliary grant recipients in independent community living are provided assistance with accessing available community-based services; and (iv) review, on an ongoing basis, the level of care needs of each auxiliary grant recipient in independent community living.

2. That the Commissioner for Aging and Rehabilitative Services shall develop an implementation plan for expanding the auxiliary grants program established pursuant to Article 9 (§ 51.5-159 et seq.) of Chapter 14 of Title 51.5 of the Code of Virginia to recipients residing in independent community living, the services that may be provided to such recipients, the identification of such recipients, and whether current auxiliary grant program levels are sufficient when considering the state and local components of the program. The Commissioner shall report the findings of such study and assessment to the Chairmen of the Senate Committee on Finance and Appropriations, the House Committee on Appropriations, the Senate Committee on Education and Health, and the House Committee on Health, Welfare and Institutions by November 1, 2023. For purposes of this act, "independent community living" means a housing setting in which an individual lives and receives necessary community-based services to assist with activities of daily living, including instrumental activities of daily living, in the least restrictive and most integrated setting practicable.

122 3. That the provisions of the first enactment of this act act shall not become effective unless they
123 are reenacted by the 2024 Session of the General Assembly.