# Policy Options

**Joint Commission on Health Care**
***Affordability of Assisted Living Facilities***

**OPTION 1**
The Joint Commission on Health Care could introduce a budget amendment to increase the base Auxiliary Grant rate to $2,500 per month. (Page 12)

**OPTION 2**
The Joint Commission on Health Care could introduce a budget amendment to provide a one-time, lump sum payment to ALFs that serve a new AG resident, above the number of AG residents that they currently serve. (Page 14)

**OPTION 3**
The Joint Commission on Health Care could introduce legislation amending the Code of Virginia to expand the list of eligible living arrangements for the Auxiliary Grant program to allow AG recipients to remain in the community and coordinate their own care as needed. The legislation should include an enactment clause directing DARS to submit changes to the AG Program's eligible living settings to the Social Security Administration for approval. (Page 22)

**OPTION 4**
The Joint Commission on Health Care could introduce a budget amendment directing DBHDS and DARS to develop a plan to create a separate, increased rate for AGSH. The budget amendment should include language directing DARS to submit a rate change for AGSH to the Social Security Administration for approval. (Page 24)

**OPTION 5**
The Joint Commission on Health Care could introduce a budget amendment providing funds to increase the personal needs allowance for AG recipients, and include language that the AG personal needs allowance will increase at the same rate as future cost of living AG rate increases. (Page 26)

**OPTION 6**
The Joint Commission on Health Care could introduce a Chapter 1 bill directing DSS to update ALF regulations to require ALF administrators to notify the appropriate DARS and local CSB staff at least 60 days prior to closure if they currently have residents on the Auxiliary Grant or Discharge Assistance Program. (Page 27)

**OPTION 7**
The Joint Commission on Health Care could introduce a Chapter 1 bill directing the Virginia Department of Social Services to share access to assisted living facility licensing data with Auxiliary Grant program staff at the Department of Aging and Rehabilitative Services to enable real-time access to the licensing status of ALFs across the state. (Page 28)

# *Using HUD Project-Based Vouchers in Assisted Living Communities*

*Project-Based Vouchers Can Cover Housing Costs in Assisted Living*

July 5, 2022

The U.S. Department of Housing and Urban Development's largest rental assistance program is the Housing Choice Voucher program. More than half of the housing assistance provided by HUD is through the Housing Choice Voucher program (2.6 million of HUD's 5.1 million subsidized units).

While Housing Choice Vouchers are usually "tenant-based" and the housing assistance moves with tenants when they move, public housing authorities have the authority to "project-base" a certain number of their vouchers to units in privately owned buildings.

Typically, local public housing authorities (sometimes called public housing agencies or something else altogether) administer Housing Choice Vouchers for a jurisdiction. There are more than 3,000 public housing authorities in the United States. Most PHAs administer Housing Choice Vouchers as well as own and operate public housing.

To project-base vouchers, PHAs enter into contracts with building owners and agree to provide rental subsidy through project-based vouchers to a certain number of units for a set amount of time. When someone moves from a project-based voucher apartment, the project-based voucher stays with the apartment. Project-based vouchers can be "stuck" to units in assisted living communities to cover shelter costs, offering affordability to residents and steady rental income to owners.

> *Think of project-based vouchers as sticking to a unit for a set number of years rather than to a household.*

## Using Vouchers in Assisted Living

Just as a market-rate housing owner or a Low Income Housing Tax Credit owner might partner with a PHA to have project-based vouchers in some of its units to bring affordability to those units (and revenue to the building), so too might an assisted living community.

Within HUD rules, project-based vouchers can be used in an assisted living community (see HUD's definition of assisted living, p. 3) to cover the shelter cost of the unit. Project-based vouchers can help assisted living developments by providing a steady, contracted stream of rent subsidy for a set amount of time.

While many PHAs project-base some of their vouchers, we estimate that few PHAs project-base vouchers in assisted living communities.

## Working with Your Local PHA to Project-Base Vouchers in Assisted Living

Determining whether and how your local PHA administers project-based vouchers is the first step for assisted living communities interested in having project-based vouchers onsite.

When you reach out to your local PHA, ask to speak with the administrator / director of the voucher program. If it is a small PHA, you might be able to speak directly with the executive director of the PHA. You'll want to find out if the PHA already project-bases some of its vouchers, or if it is open to doing so (or in project-basing more vouchers than it currently does).

It is important to note that the "choice" part of Housing Choice Vouchers is one of the voucher program's central features. Housing Choice Vouchers theoretically give assisted households tremendous choice in where to live – ideally, in any unit that meets rent and housing quality standards. By project-basing vouchers, this "choice" component becomes complicated as households with project-based vouchers *can* move with a regular Housing Choice Voucher after living in a project-based voucher unit for a year and then only when a Housing Choice Voucher unit becomes available. When a tenant does move, the project-based voucher remains with the contracted unit regardless. As you talk with your PHA colleagues, relay the benefits affordable assisted living brings to the broader jurisdiction served by the PHA.

Each PHA must have a Housing Choice Voucher administrative plan. The administrative plan describes the policies the PHA has adopted in those areas where the PHA has discretion, including whether and how it will project-base vouchers. These plans are updated when necessary (because PHA policies change or HUD/Congress impose new elements that must be included). HUD does not approve these plans; they are official PHA policy as soon as they are approved by the PHA Board of Commissioners.

If the PHA does project-base vouchers, the administrative plan will include how the PHA will solicit applications from owners/developers to participate in its project-based voucher program as well as the PHA's selection process. Project-based voucher sites must meet HUD's site and neighborhood standards for new construction and for existing and rehabilitated housing. Project-based voucher sites are also subject to environmental reviews. In addition, the administrative plan will spell out things like site-based waiting lists and vacancy payments in project-based voucher sites.

PHAs must comply with numerous federal, and often state and local, laws and regulations. Fewer than 100 PHAs are part of an ongoing demonstration called "Moving to Work." PHAs in this demonstration do not have to comply with many federal requirements for their voucher and public housing programs; these agencies may choose to run project-based voucher programs on their own terms instead of following federal requirements. If your local PHA is part of the Moving to Work demonstration (see link to list below), it may operate its project-based voucher program very differently than most other PHAs.

**Basics: Housing Choice Vouchers**

**What are they called?** HCVs are sometimes called tenant-based vouchers, vouchers, Section 8 vouchers, or certificates. Formally, HUD's "certificate" and "voucher" programs all became "Housing Choice Vouchers" per the 1998 Quality Housing and Work Responsibility Act.

**Do tenants pay rent?** Households with Housing Choice Vouchers pay no more than 30% of their adjusted income toward rent (in some cases, no more than 40% of adjusted income) and the HCV covers the rest of the rent, up to an approved amount jointly formed by HUD and the local PHA.

**What rents do owners receive?** HUD sets annual Fair Market Rents and Small Area Fair Market Rents. PHAs are then allowed to calibrate the actual value of their vouchers to 90 – 110% of FMR, with some exceptions. Units must not only fit within allowed rent levels but also meet Housing Quality Standard inspections performed by the PHA prior to lease-up and move-in (as well as inspections after lease-up).

**Who is eligible for vouchers?** In general, at least 75% of households admitted to a PHA's Housing Choice Voucher program during the PHA's fiscal year must have incomes at or below 30% of the area median income. All Housing Choice Voucher assisted households must have incomes at or below 50% of the area median income.

## Basics: Project-Based Vouchers

**Share of Housing Choice Vouchers that can be Project-Based.** PHAs may use up to 20% of their authorized number of vouchers for project-based vouchers, subject to the availability of annually appropriated funds. A PHA can also use an additional 10% of its vouchers to provide units for certain types of individuals (formerly homeless individuals and families, veterans, persons with disabilities, and older adults) or where tenant-based vouchers are difficult to use.

**Share of a Building that can have Project-Based Vouchers.** Project-based vouchers can be attached to the greater of: 25% of the units in a given property or 25 units. There are exceptions to this limit for certain circumstances, including for buildings exclusively for older adults or other households eligible for supportive services that are made available to the voucher-assisted residents of the project.

**Contract.** PHA project-based voucher contract terms can be from one to 20 years, with the possibility to renew at the conclusion of the initial term. The PHA and the owner execute an agreement to enter into a housing assistance payments (HAP) contract. The HAP contract establishes the initial rents for the units and the contract term, and describes the responsibilities of the PHA and the owner, including income certifications, inspections, and rent adjustments.

**Waiting lists.** PHAS are authorized to use special preferences to select applicants for project-based voucher units. Establishing such preferences is necessary when residents will also have to qualify for an assisted living community's services.

### HUD's "Assisted Living" Definition in HUD Notice PIH 2012-40 (HA):

*In accordance with the definition under Section 232(b) of the National Housing Act (12 USC 1715w(b)), an assisted living facility is a public facility, proprietary facility, or facility of a private nonprofit corporation that:*
*(1) is licensed and regulated by the State (or if there is no State law providing for such licensing and regulation by the State, by the municipality or other political subdivision in which the facility is located);*
*(2) makes available to residents supportive services to assist the residents in carrying out activities of daily living, such as bathing, dressing, eating, getting in and out of bed or chairs, walking, going outdoors, using the toilet, laundry, home management, preparing meals, shopping for personal items, obtaining and taking medication, managing money, using the telephone, or performing light or heavy housework, and which may make available to residents home health care services, such as nursing and therapy; and*
*(3) provides separate dwelling units for residents, each of which may contain a full kitchen and bathroom, and which includes common rooms and other facilities appropriate for the provision of supportive services to the residents of the facility.*
*Assisted living facilities may be referred to as residential care facilities, adult care facilities, congregate care facilities or group homes as long as they meet the requirements noted above. Assisting living facilities are designed for residents who have the physical ability to live independently but need assistance with some activities of daily living such as personal care, transportation, meals, laundry, medication monitoring, security and housekeeping. A person residing in an assisted living unit must not require continual medical or nursing care.*

### Additional Resources

HUD Project-Based Voucher FAQ: https://www.hud.gov/sites/documents/DOC_9157.PDF

HUD Housing Choice Voucher Fact Sheet: https://www.hud.gov/topics/housing_choice_voucher_program_section_8

List of Moving to Work PHAs: https://www.hud.gov/sites/dfiles/PIH/documents/mtwsite_hudcontactlist.pdf

For additional information, contact Linda Couch, lcouch@leadingage.org.

October 21, 2022

**To: Joint Commission on Health Care**

**From: Dana Parsons, Vice President & Legislative Counsel**

**Re: Comments - *Affordability of Assisted Living Facilities***

Thank you for the opportunity to provide comments on the policy options included in the Joint Commission on Health Care's recent study report, *Affordability of Assisted Living Facilities*. LeadingAge Virginia is an association of not-for-profit aging services organizations representing the entire continuum of aging services, including nursing homes, assisted living, adult day centers, life plan/continuing care communities, senior affordable housing, and home and community-based services.

According to the study findings, the Auxiliary Grant rate (AG) is insufficient to cover the cost of assisted living care in Virginia. This results in low provider participation and limited housing access to older low-income Virginians. In the absence of affordable housing options, low-income older adults will be forced to enter nursing home settings utilizing Medicaid, which will be a greater cost to the state. Therefore, we support options 1, 2, 5 and 7, outlined below, that address enhanced funding and access to housing for assisted livings and the AG residents they serve.

**Option 1:**
We support introducing a budget amendment to increase the AG rate. Although the proposed amount of $2,500 is higher than the current rate of $1,609, it is still not adequate funding to care for the complex medical needs of assisted living residents. According to a Genworth 2021 cost of care survey, $5,250 is the monthly median cost for assisted living care. We support any increase but will continue to advocate for a rate that can cover the monthly cost of assisted living care.

**Policy Option 2:**
We support introducing a budget amendment to provide a one-time, lump sum to pay assisted livings that serve new AG residents, above the number of AG residents they currently serve. Providing a lump sum may incentivize assisted livings to accept AG residents and offset the costs associated with serving additional residents.

**Policy Option 5:**

We support introducing a budget amendment providing funds to increase the personal needs allowance for AG recipients, including language that it will increase at the same rate as future cost of living AG rate increases.

**Policy Option 7:**

We support the introduction of a Chapter 1 bill directing the Virginia Department of Social Services to share access to assisted living licensing data with Auxiliary Grant program staff at the Department of Aging and Rehabilitative Services (DARS) to enable real time access to the licensing status of assisted livings. The study identified that DARS staff have challenges identifying which assisted livings remain eligible for the program and where AG residents can go when they need a placement. Therefore, enhancing state agency coordination can assist with expediting AG placements.

**Medicaid Coverage for Assisted Living Services**

Other states have been successful in leveraging Medicaid to cover services in assisted living, so we would support further study on this issue for Virginia.

**Project-Based Housing Vouchers**

Currently, the U.S. Department of Housing and Urban Development (HUD) allows public housing authorities to use project-base Housing Choice Vouchers in assisted living to cover the shelter portion of the assisted living cost. Public housing authorities (PHA) in Virginia administer more than 106,000 Housing Choice Vouchers. Any PHA may use up to 20% of their authorized number of vouchers for project-based vouchers, subject to the availability of annually appropriated funds. A PHA can also use an additional 10% of its vouchers to provide units for certain types of individuals (formerly homeless individuals and families, veterans, persons with disabilities, and older adults) or where tenant-based vouchers are difficult to use. The Commission may want to explore this HUD assisted living option to further address the affordability of assisted living housing in Virginia. Attached is additional background on using project-based vouchers in assisted living.

In closing, LeadingAge Virginia supports the Commission moving forward with legislative proposals during the 2023 General Assembly session that reflect the requests in policy options 1, 2, 5, and 7. We will continue to support an increase in funding for assisted livings and the AG residents that they serve until everyone in need of specialized housing as they age have a home that fits their unique needs.

# NORTHERN VIRGINIA AGING NETWORK
# (NVAN)

A coalition of the local commissions on aging, area agencies on aging, and non-profit agencies providing services to older adults

*Alexandria Commission on Aging*

*Arlington Commission on Aging*

*Fairfax Commission on Aging*

*Loudoun Commission on Aging*

*Prince William Commission on Aging*

Please send correspondence to:

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November 3, 2022

Honorable Senator George L. Barker
Honorable Delegate Robert D. Orrock, Sr.
Joint Commission on Health Care
411 E. Franklin St. Ste. 505
Richmond, VA 23219

Re: JCHC Draft Report on Affordable Assisted Living
Sent via email

Dear Senator Barker and Delegate Orrock:

This letter is written on behalf of the Northern Virginia Aging Network (NVAN). NVAN consists of staff representatives from the five Northern Virginia Agencies on Aging, members of the five local Commissions on Aging, and representatives of allied organizations such as the Alzheimer's Association, National Active and Retired Federal Employees Association, AARP, and individual advocates. Participants meet to discuss issues of mutual concern, to craft a legislative platform for presentation to the Virginia General Assembly, and to discuss regional responses to critical issues affecting Northern Virginia's older adults.

Every year NVAN adopts a legislative platform of items affecting older adults to present to the General Assembly. For the 2023 session one of NVAN's items is *to enhance assisted living affordability through such measures as increasing the auxiliary grant and using Medicaid funding.* NVAN has a long history of including affordable assisted living as a platform item. The Joint Commission on Health Care's October 2022 Draft Report highlights the critical need in the Commonwealth for the General Assembly to address this issue and offers options for General Assembly's actions. This letter provides the NVAN response to those options

**NVAN supports increasing the Auxiliary Grant (AG) level.** The report recommends increasing the auxiliary grant level to $2,500 a month. *While NVAN wholeheartedly supports an increase in the auxiliary grant level, $2,500 is not enough for assisted living (AL) facilities in Northern Virginia to accept these individuals, even with the existing 15% "bump".* Given the cost of AL, an increase in the range of $3,000 - $3,500 would have several positive effects. An increase would make it more likely that some assisted living providers would accept low-income residents. An increase also would better assist ongoing local efforts to convince developers of private market-rate assisted living to accept a few auxiliary grant recipients within their developments. This is especially true for assisted living residences that work with the General Assembly funded Northern Virginia RAFT [Regional Older Adults Facility Mental Health Support Team]. The RAFT program serves older adults who have been discharged from a state geriatric psychiatric hospital. RAFT could serve more older adults if the auxiliary grant were increased.

**Second, NVAN supports legislation to increase the AG differential for Northern Virginia to more than 15%.** The JCHC draft report listing a median AL base rate of $3931 in Northern Virginia is not accurate. The direct experience of NVAN members is that the base rate is even above $5948 a month reported by the Genworth Cost of Care Survey.

**Third, NVAN supports legislation removing local jurisdictions' 20% share of AG costs.** Currently, in cases where an individual is discharged from a state psychiatric hospital and placed in an ALF outside of the individual's home jurisdiction, it is the jurisdiction where the ALF is located that pays the 20% share – not the jurisdiction where the individual originally resided. This fact results in some jurisdictions carrying a heavier financial burden because ALFs in their area are willing to accept the AG.

**NVAN does not support a one-time payment to certain AL facilities.** We are not convinced that the one-time payment will be sufficient and that administrative issues can be overcome to make this option viable.

**NVAN supports increasing the AG personal needs allowance and subjecting it to an annual cost of living increase.** The personal needs allowance has been flat since 2009 while the cost of living has steadily increased. AG recipients find it increasingly difficult to pay for their current personal needs, such as clothing and hygiene items, out of the current $82 a month allowance.

**NVAN supports the opportunity for other types of supportive housing to accept an AG.** Some AG recipients may be able to live independently if they received adequate social services. Given the difficulty of placing AG recipients in an ALF, as shown by this report, this shift in the AG program has the potential to benefit a segment of the AG population.

**NVAN supports the requirement that an AL facility gives residents, the Long-Term Care Ombudsman Program, and the appropriate government agency a minimum of sixty days' notice before closing.** Since significant transfer trauma is likely with any move by older persons from one facility to another one, the assisted living facility should not only give adequate advance notice but also assist with the relocations, and work with the Long-Term Care Ombudsman Program.
See, https://www.socialworktoday.com/archive/011915p10.shtml.

**NVAN supports changes in the Medicaid level of care requirement for those in need of AL or nursing home care.** Virginia's Medicaid level of care requirement for nursing home care (and also for community-based Medicaid waivers) is extremely stringent (even though Virginia is in the top ten of all states in terms of wealth). This high bar means that many residents in assisted living in Virginia would actually qualify for nursing home care in other states – and thus Virginia's assisted living population is more impaired than elsewhere. If these residents do not meet the level of care criteria for nursing homes and cannot afford assisted living, they have nowhere to go, and may be forced to move to another area of the state or another state. The impact of Virginia's restrictive Medicaid nursing home level of care criteria and its impact on assisted living care (as well as community-based waivers) is worthy of further study.

Thank you for your attention to this matter. NVAN looks forward to working with you on legislation to make the Commonwealth a more caring and compassionate state for those lower income Virginians in need of assisted living.

Sincerely,

Linda Kelleher
Interim Chair

# Virginia Association of Counties

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VIA ELECTRONIC MAIL

October 20, 2022

The Honorable George L. Barker
Chair, Joint Commission on Health Care
411 E. Franklin Street, Suite 505
Richmond, Virginia 23219

Dear Senator Barker:

Thank you for the opportunity to submit comments on behalf of the Virginia Association of Counties on the Commission's study of the affordability of assisted living facilities. We commend the Commission for its ongoing focus on issues surrounding aging in Virginia, including its recent work on ways to support older Virginians to remain in their communities. Examining potential improvements to the state's safety net for older adults who require more assistance with certain daily activities is an important undertaking, given the expected increase in the need for assisted living care as older Virginians represent an increasing share of the Commonwealth's population.

As you know, the adequacy of the auxiliary grant relative to the cost of assisted living care has been a longstanding concern; a 1999 Commission report (*Study of Long-Term Care Issues Pursuant to HJR 156/SJR 97*) noted that the maximum auxiliary grant payment at the time ($737 outside of Northern Virginia) covered only 87 percent of the median monthly cost of basic residential care (then $846), and proposed an increase in the auxiliary grant rate to the median cost level for the industry. However, the report also recognized the challenges posed to localities by the required 20 percent local match, noting the disproportionate impact of auxiliary grant payments on certain localities. To mitigate this issue, a second option proposed that the state assume the cost of increases, either all at once, or over a phase-in period of two fiscal years. The uneven impact of auxiliary grant payments among localities remains; for example, Washington County was the locality with the fifth-highest contribution of local matching dollars in FY 2021, after the City of Richmond, Fairfax County, the City of Virginia Beach, and Henrico County; Lee County ranked eleventh. Should the Commission opt to recommend an increase to the monthly rate, as proposed in Policy Option 1, we would strongly encourage that the increase be funded by state dollars, as proposed in 1999. Policy Option 2, which contemplates a state-funded one-time payment, would achieve a similar end. We would similarly encourage that any expansions of the auxiliary grant to other settings be funded through state dollars.

Given the concerns over time about the limitations of the auxiliary grant as a sustainable funding mechanism for assisted living care, we would encourage continued exploration of alternative funding sources. We also continue to support state investments in supports and services that enable older Virginians to remain in their homes in a safe environment, such as companion services and home-delivered meals.

Thank you for your consideration of our perspective. We look forward to continuing to work with the Commission and its staff on these critical issues.

Sincerely,

Dean A. Lynch, CAE
Executive Director

cc: Members, Virginia Association of Counties Board of Directors


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# Virginia Assisted Living Association

*"Virginia's Unified Voice for Assisted Living"*

October 21, 2022

Joint Commission on Health Care
411 E. Franklin Street, Ste 505
Richmond, VA 23219

Sent via e-mail: jchcpubliccomments@jchc.virginia.gov

**Re: Affordability of Assisted Living Facilities**

The Virginia Assisted Living Association (VALA) represents assisted living communities from across Virginia with varying resident capacities, organizational structures, and funding resources. With the continued need to have assisted living as an option for long-term care housing, we sincerely thank the members and staff of the Joint Commission on Health Care (JCHC) for your time and consideration of helping assisted living to be a more accessible and affordable option for Virginia's seniors and disabled citizens. The first statement of the 'Findings in Brief' in the report is very accurate and clearly identifies the ultimate problem in stating, "The Auxiliary Grant rate is insufficient to cover the cost of assisted living in Virginia, resulting in limited access." We have echoed this statement for many years as have previous reports, studies, and analyses and citizens of the Commonwealth. In reviewing the JCHC report, we would like to provide additional comments on some of the recommendations that were made.

**OPTION 1: The Joint Commission on Health Care could introduce a budget amendment to increase the base Auxiliary Grant rate to $2,500 per month.**

VALA has seen a significant decrease in the number of assisted living communities (ALFs) that accept residents eligible to receive the Auxiliary Grant (AG), this results in the significant reduction of housing options for low-income seniors and disabled individuals across the Commonwealth. The ALFs that do accept the AG rate are not located in every locality forcing some individuals to relocate multiple localities away from family and friends to secure affordable housing. When we have inquired with ALFs that discontinued acceptance of the AG rate, we were repeatedly told that the low reimbursement rate was the primary reason as it did not cover the community's cost to care for the individual.

In addition to the initial rate being insufficiently low, the calculation of the supplementation is also deceiving to individuals in that it only supplements to a specific rate instead of providing that full rate on top of the individual's SSI. The AG rate is currently approved at $1,609 for most districts, but when a further analysis of the actual AG rate is made, the average distribution payment actually made for an individual was $669. This discrepancy in actual payment versus the approved amount is calculated by the formula that the AG rate is a supplement to the individual's other funding sources, such as SSI or pension, to equate to the approved amount. (Reference Affordability of Assisted Living Facilities Report page 4) *We would recommend that each individual approved for the Auxiliary Grant receive the **full approved amount** to truly supplement their other financial sources in order to increase the affordability of housing options instead of decreasing the disbursed AG rate to be the difference of a total.*

Each year, we are often disappointed to see the General Assembly transfer funds from the AG fund line due to non-usage. This non-usage is not due to people not wanting to participate in the program, but it is due to the rate not being affordable to use. According to the 2021 Genworth Care Cost of Survey, the average cost of care in an assisted living facility in Virginia is $5,250. The AG rate of $1,609 equates to only about 30% of that cost of care.

Many individuals that are unable to find an ALF that accepts the AG rate must decide whether to remain in their private residence, relocate to a loved one's residence, or move into a nursing facility if there are medically eligible to do so. Residing in a private residence could result in a drastic deterioration of physical, mental, and social abilities due to not being equipped nor staffed 24/7 to care for the individual's specific needs. Some individuals are dually eligible to reside in an assisted living facility as well as a nursing home, but their needs may be adequately tended to in an assisted living facility, which is a significantly less restrictive environment and costs significantly less. According to the 2021 Genworth Care Cost of Survey, the average cost of care in a nursing home in Virginia is $8,213 for a semi-private room. An individual that relocates to a nursing facility prematurely creates an increase in the financial responsibility of the State that could have been provided at a more affordable, lower rate to the Commonwealth in an assisted living community.

*We support the JCHC recommendation to increase the Auxiliary Grant to at least $2,500.*

**OPTION 2: The Joint Commission on Health Care could introduce a budget amendment to provide a one-time, lump sum payment to ALFs that serve a new AG resident, above the number of AG residents that they currently serve.**

Over the years, many ALFs that accepted the AG rate would only accept it for residents that were already residing within the ALF that had depleted their assets. The resident would be allowed to transition to the AG rate to continue to reside at the ALF. We have seen the number of ALFs that accept new admissions of AG residents to also decline over the years. Having a one-time lump sum payment for ALFs to serve new AG residents would be welcomed but it may also be discouraging to those ALFs that are already actively accepting the AG rate. We recommend the one-time lump sum payment be extended to include each ALF's current care levels of residents receiving the AG rate.

**OPTION 3: The Joint Commission on Health Care could introduce legislation amending the Code of Virginia to expand the list of eligible living arrangements for the Auxiliary Grant program to allow AG recipients to remain in the community and coordinate their own care as needed. The legislation should include an enactment clause directing DARS to submit changes to the AG Program's eligible living settings to the Social Security Administration for approval.**

We caution against increasing the number of eligible entities to receive the AG rate until the current program is amended to be successful with the entities already eligible. Expanding an insufficiently supported program does not resolve the problem, as it only expands the problem.

**OPTION 4: The Joint Commission on Health Care could introduce a budget amendment directing DBHDS and DARS to develop a plan to create a separate, increased rate for AGSH. The budget amendment should include language directing DARS to submit a rate change for AGSH to the Social Security Administration for approval**

As with the above provided caution on expanding a system that needs improvement, we would be discouraged by increasing the rate for the supportive housing industry when it has been the assisted living industry that has needed the attention and financial support of Virginia for many years. The AG rate should be increased for residents residing in ALFs.

**OPTION 5: The Joint Commission on Health Care could introduce a budget amendment providing funds to increase the personal needs allowance for AG recipients, and include language that the AG personal needs allowance will increase at the same rate as future cost of living AG rate increases.**

We support increasing the personal needs allowance for AG recipients as well as increasing the personal needs allowance in correlation to the future cost of living.

In addition to looking at the AG rate as an affordable solution for assisted living care, we would like to also recognize that Virginia no longer as a Medicaid waiver for assisted living. As referenced in the JCHC report, many states do successfully utilize Medicaid funds to cover assisted living services. Also, as mentioned in the report, Virginia used to have a limited Medicaid waiver to support individuals with Alzheimer's residing in an assisted living facility. When CMS

changed the home and community-based settings definitions and requirements, Virginia concluded that ALFs were no longer an eligible HCBS setting. Virginia was the only state to come to this conclusion, as many states do have a Medicaid waiver for assisted living. The assisted living providers we have spoken with are not opposed to having a Medicaid waiver for assisted living services. VALA would welcome the opportunity to be a part of any discussion on the consideration of expanding Virginia's Medicaid programs to include assisted living.

We thank you for considering these comments and welcome participation in any further discussions regarding these topics or other topics related to senior living in Virginia especially in support of improving the accessibility and affordability of assisted living care in Virginia.

Cordially,

Judy Hackler

Judy Hackler
Executive Director

Virginia Association Of Community Services Boards, Inc.
Making a Difference Together

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**Commenter**: Jennifer Faison
**Affiliation**: Executive Director, Virginia Association of Community Services Boards (VACSB)
**Subject:** JCHC Policy Options for Study on Affordability of Assisted Living Facilities
**Date of Submission**: October 21, 2022

The VACSB appreciates the opportunity to comment on the Joint Commission on Health Care's proposed policy options developed based on findings from its study on Affordability of Assisted Living Facilities. Below please find comments on options 1, 3, 4, 5 and 6.

**POLICY OPTION 1: The JCHC could introduce a budget amendment to increase the base Auxiliary Grant rate to $2,500 per month.**

The VACSB supports this policy option because increasing the Auxilliary Grant (AG) rate may increase the number of providers who are willing to accept individuals and/or increase the number of beds any one provider is willing to set aside for AG recipients.

**POLICY OPTION 3: The Joint Commission on Health Care could introduce legislation amending the Code of Virginia to expand the list of eligible living arrangements for the Auxiliary Grant program to allow AG recipients to remain in the community and coordinate their own care as needed.**

The VACSB supports further exploring this policy option to provide clarity and guidence on which populations would qualify, as well as the additional settings that would qualify.

**POLICY OPTION 4: The Joint Commission on Health Care to direct DBHDS and DARS to develop a plan to create a separate increased rate for Auxilliary Grant Supportive Housing (AGSH).**

The VACSB supports this policy option because, in conjunction with option 3, it would expand opportunities for people to live with greater independence in the community.

**POLICY OPTION 5: The Joint Commission on Health Care could introduce a budget amendment providing funds to increase the personal needs allowance for AG recipients, and include language that the AG personal needs allowance will increase at the same rate as future, federal SSI cost of living increases.**

The VACSB supports this policy option because it would provide the state with the ability to appropriately plan for expenitures as well as provide stability in reserves for individuals who receive an AG.

**POLICY OPTION 6: The Joint Commission on Health Care could introduce a Chapter 1 bill directing DSS to update ALF regulations to require an ALF administrator to notify appropriate DARS and local CSB staff at least 60 days prior to are either AG or closure, if they have residents who are either AG or DAP funded.**

The VACSB supports this policy option because CSBs need as much time as possible to address the immediate health and safety needs of individuals who are loosing their housing placements.

VHCAVCAL
Virginia Health Care Association | Virginia Center for Assisted Living

October 21, 2022

The Honorable George L. Barker
Chair, Joint Commission on Health Care
411 E Franklin Street, Suite 505
Richmond, Virginia 23219

The Honorable Robert D. Orrock, Sr.
Vice Chair, Joint Commission on Health Care
411 E Franklin Street, Suite 505
Richmond, Virginia 23219

Dear Sen. Barker and Del. Orrock,

Thank you for the opportunity to provide comments on the Joint Commission on Health Care's (JCHC) draft report on the Affordability of Assisted Living Facilities (ALFs). VHCA-VCAL is Virginia's largest association representing long term care providers, including nearly 100 member ALFs across the Commonwealth.

In addition to general comments on the draft report, we understand commission members specifically requested input on whether our members would be interested in a waiver program that offered Medicaid funding for ALF services. Our comments below address both.

## VHCA-VCAL Supports an Increase in the AG Rate

VHCA-VCAL is strongly supportive of any effort to increase the Auxiliary Grant (AG) rate. The details on how that would be accomplished are open questions at this time.

It is hard to know if an increase of $891 per month (to a base AG of $2,500) would be sufficient to increase ALF participation in the program given the remaining gap between the AG amount and cost, especially for the facilities providing assisted living level of care. However, VHCA-VCAL is supportive of any increase in the AG amount.

VHCA-VCAL would also be supportive of one-time enrollment incentives to ALFs to accept AG recipients. It is not clear, however, whether the suggested $21,000 is sufficient incentive. Because the reported median monthly cost for assisted living level of care is $5,109, it does not follow that the $21,000 per resident "would provide a similar amount of funds to the facility as a private pay individual for two years."

- If a private pay resident pays $5,109, the facility would break even at the six month point with an AG resident under the current base rate and the $21,000 lump sum; every month after that, the ALF would lose the difference between the AG and the private rate.
- If the lump sum of $21,000 and the AG base rate was increased to $2,500, the facility would start losing revenue relative to a private pay resident after the eighth month of the AG resident's stay.

## More Information Is Need on Medicaid Funding for ALF Services

VHCA-VCAL would need a more explicit understanding of the details of how Medicaid coverage of health care services within ALFs would be designed before establishing a position on the concept. As the report points out, there are multiple approaches and details that would need to be determined. Key among them would be the payment rates that would offset the current cost of care (excluding room and board).

Medicaid coverage of the full cost of care is not the typical experience of Medicaid providers, so payment would be integral in understanding the attractiveness of Medicaid coverage for facilities that are almost entirely private pay. VHCA-VCAL stands ready to work through such details with other stakeholders, DMAS, and other policy makers to get to a more detailed model for Medicaid coverage of assisted living if that was the desire of the JCHC and/or General Assembly.

## Comments Specific to the Draft Report Findings

VHCA-VCAL offers the following comments specific to the draft report language:

**Income Calculation for AG Rate** (p. 4) – The report indicates that the actual AG payment amount is reduced by any countable income of the resident (the report lists SSI, Social Security, and pension as examples). This has the implied effect of capping the resident's payment for room and board at the AG maximum. The report does not explain whether the state has any flexibility in terms of disregarding certain income from the AG calculation other than a personal needs allowance, which the report implies is already disregarded. Perhaps this is prohibited federally, but if the AG was not reduced by these income sources, the resident would have a higher AG amount plus the other sources of income to contribute to the room and board payment (meaning that total payment to the ALF would exceed the AG maximum). If this is allowable, it may be another option to increase payment to the ALF thus making AG residents more financially viable to the facility.

**Average AG Rate by Region** (p.4) – Given the netting of the AG rate indicated in the report, we wonder whether JCHC staff calculated the average AG payment by region (Planning District 8 (PD 8) and rest of state)? The report lists the gross AG rates themselves, but it may be useful to know to what extent other income reduces the actual AG payment amount (the net AG payment average) and may inform discussion of income disregards to the extent the state has any flexibility.

**Net AG Rate by Region** (p. 5) –The report indicates that the "Northern region" had the "lowest monthly rate of ALF costs". We are unsure how the "Northern region" is defined and whether the rate is a median or average, as the two terms are interchanged in this paragraph. If that region correlates to PD 8, it seems counterintuitive to the policy of the PD 8 differential. Even if PD 8 is a different region, it would be interesting to know where it falls on the cost continuum as it does not apparently have the highest costs—Piedmont does—and gets the differential that the other regions do not. It may be informative to know the net AG payment by region as opposed to the base AG rates, which are reduced by countable income.

Thank you again for the opportunity to comment on this JCHC draft report. We appreciate your ongoing leadership on issues affecting seniors and their access to high quality senior care and

facilities in Virginia. We stand ready to work with you on initiatives supporting residents and their caregivers.

Sincerely,

Keith Hare
President and CEO

cc: Jeff Lunardi, Executive Director, JCHC
Estella Obi-Tabot, MSPH, Associate Health Policy Analyst, JCHC
W. Scott Johnson, Esq., Partner, Hancock, Daniel, Johnson, P.C.
Ben Traynham, Esq., Associate, Hancock, Daniel, Johnson, P.C.
Tyler Cox, Government Affairs Director, Hancock Daniel, Johnson, P.C.

BETTER COMMUNITIES THROUGH SOUND GOVERNMENT



October 21, 2022

The Honorable George Barker
Chairman, Joint Commission on Health Care
411 East Franklin Street, Suite 505
Richmond, Virginia 23219

Dear Senator Barker:

Thank you for the opportunity to comment on the proposed policy options for the Commission's study of the affordability of assisted living facilities and auxiliary grants.

The Virginia Municipal League has a long-standing position supporting state responsibility for the cost of the auxiliary grant program. This program has historically imposed a disproportionate fiscal impact on particular localities, some with higher levels of fiscal stress. VML would support policy option 1 to increase rates if the state assumes the full cost of that rate increase.

Similarly, VML would support option 2 regarding an incentive payment to facilities for accepting auxiliary grant recipients if the state assumes responsibility for those payments, as well as the tracking of payments, to facilities.

The auxiliary grant program has been in existence since the early 1970s, and so much has changed regarding services, housing, and funding options that could address the needs of vulnerable adults. The Commission's report offers good insights into what other states' programs provide for vulnerable adults. VML believes it would be useful to expand on these findings by advocating for a larger examination and creation of a state roadmap (including the use of Medicaid waivers) to address needs of Virginians almost 50 years since the creation of the auxiliary grant program.

Once again, thank you for the opportunity to comment on the Commission's study.

Sincerely,

Janet Areson
Director of Policy Development

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