December 7, 2022
Study packet contents

Affordability of Assisted Living Facilities

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Affordability of Assisted Living Facilities

POLICY OPTIONS IN BRIEF

There are 7 policy options in the report for Member consideration. Below are highlighted options.

Option: Increase the base AG rate to $2,500 per month
(Option 1, page 12)

Option: 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
(Option 2, page 14)

Option: Expand the list of eligible living arrangements for the AG program to allow AG recipients to remain in the community and coordinate their own care as needed and direct DBHDS and DARS to develop a plan to create a separate increased rate for AG supportive housing
(Options 3-4, page 22-23)

Option: Increase the personal needs allowance and include language tying the personal needs allowance to federal cost of living adjustments for the SSI program
(Option 5, page 26)

FINDINGS IN BRIEF

The Auxiliary Grant rate is insufficient to cover the cost of assisted living in Virginia, resulting in limited access

The AG rate has remained relatively flat for the last 13 years with the exception of small cost of living adjustments to comply with federal requirements. During that time period, the AG rate increased just 28% while the typical cost of assisted living increased by 64%, after adjusting for inflation. As a result, there has been a 41% decrease in facilities that participate in the AG program and the number of AG recipients since 2010. ALFs that do accept AG often have to rely on outside services or financial support, and they are more likely to have licensing violations.

Leveraging Medicaid payments to cover services in assisted living would require significant changes

Medicaid can pay for services to eligible individuals who live in an assisted living facility, but it cannot pay for the cost of room and board. ALFs would have to meet federal criteria as a home and community-based setting for residents to be eligible for Medicaid-funded LTSS. A limited number of ALF residents would be eligible for Medicaid-funded services, unless eligibility criteria are expanded.

Other community settings could be more cost-effective for individuals seeking AG payment in ALFs

Funding community-based services could meet the needs of the AG population with lower functional needs such as adult foster care. Adult foster care and AG supportive housing are already allowable community settings for AG recipients, but their availability is extremely limited. Other states allow residents to reside in more community settings, and modify their rates based on the setting.

Increased personal funds can improve quality of services for current AG recipients

The personal needs allowance for AG residents has not increased since 2014, reducing individual's ability to pay for necessary personal items and services not provided by ALFs. These are the only personal funds AG residents have after paying the ALF.

October 2022

JCHC Analyst: Estella Obi-Tabot

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 23)

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)

OPTION 8 - The Joint Commission on Health Care could introduce a budget amendment directing and providing funds to DMAS to develop a rate to provide reimbursement for assisted living services under the current Commonwealth Coordinated Care plus program. (New policy option - Member requested)

JOINT COMMISSION ON HEALTH CARE

Senator George L. Barker, Chair *Delegate Robert D. Orrock, Sr., Vice Chair*

TO: JCHC Members
FROM: Estella Obi-Tabot, JCHC Associate Health Policy Analyst
DATE: December 7, 2022
RE: Affordability of Assisted Living Study – Response to October 5th Meeting Questions

During the October 5, 2022, Joint Commission on Health Care meeting, JCHC staff reviewed findings and policy options from the JCHC study on the *Affordability of assisted living facilities (ALFs) in Virginia*. Members asked questions about the study which are addressed in this memo.

Virginia staffing regulations and quality indicators in Assisted Living compared to Nursing Homes (*Senator Hashmi and Delegate Hope)*

The state staffing requirements for ALFs and nursing homes are fairly similar, however there is no federal entity that oversees the care provided in assisted living facilities. The federal Centers for Medicare and Medicaid Services (CMS) has not established federal guidelines for assisted living, therefore the states establish and enforce all licensing and certification requirements within assisted living facilities. The Virginia Department of Social Services (DSS) requires that ALF staffing be "adequate in knowledge, skills, and abilities and sufficient in numbers to provide services to attain and maintain the physical, mental, and psychosocial well-being of each resident," (22VAC40-73-280). State licensing inspectors are trained to identify whether there are a sufficient number of staff to care for the needs of residents.

CMS does not impose a formal staffing mandate in nursing homes, but they established an acuity-based formula to determine the expected staffing level in nursing homes. A 2021 JCHC study cited that Virginia is one of 16 states without a state-specific nursing home staffing requirement.

Publicly available information on the quality of ALFs in Virginia and nationally is much different than what is available for nursing homes. There is no publicly available information that compares ALFs in Virginia on quality metrics. Virginia is however one of several states that provide a consumer website to search for an assisted living facility (https://www.dss.virginia.gov/facility/search/alf.cgi). On this website, a consumer can search for an ALF by name, location, zip code, or special services the facility may provide. Additionally, a consumer could see a history of the violations the facility may have received during previous inspections. There are limited examples of states that report broad quality metrics within assisted living, including Ohio and North Carolina.

For nursing homes, CMS hosts a website known as Nursing Home Compare, which enables consumers to compare nursing homes on a variety of metrics related quality of care, staffing, and health inspections. These metrics are rolled up into an overall rating of between one and five stars for each nursing home. In addition to the CMS website, DMAS recently developed a value-based purchasing program to incentivize stronger staffing and quality in nursing homes. This includes a public dashboard with the results of how each nursing home is performing on the metrics being used in the program.

Leveraging Medicaid to pay for services in assisted living *(Senator Dunnavant and Delegate Hope)*

There are multiple different pathways that states use to pay for Medicaid services in assisted living facilities. It is very difficult to estimate the cost of pursuing these pathways in Virginia without detailed assumptions for the eligibility criteria, covered services, and the rates paid for those services. As a next step, Members could direct and provide funding to DMAS to develop a rate for assistive living services (see new policy option). To illustrate

the potential cost of assisted living services, JCHC staff conducted some limited cost estimates for one scenario on the assumption that assisted living services would be a new service offered under the current home and community-based waiver program. JCHC staff developed the cost estimate by assuming that assistive living services would include some personal care services, administrative and support, and transportation. This is based on the current rate model for congregate residential support in group homes for persons with a developmental disability, which is the closest home and community-based setting to assisted living in the current Medicaid program. There are many ways that assisted living services could be defined and that the associated rates can be developed, and the details need to be developed by DMAS before a more precise cost estimate can be developed. JCHC staff also identified the cost of several other state models that use different Medicaid pathways to fund assisted living services.

JCHC received public comments from the Virginia Assisted Living Association (VALA), Leading Age Virginia, and the Virginia Center for Assisted Living (VHCA-VCAL). These organizations represent assisted living facilities throughout Virginia, and they shared their perspective about using Medicaid funding to pay for services in assisted living. In general, industry leaders are open to the conversation about potential Medicaid waivers in the future, but would need to understand additional details about any proposal before determining whether or not to support it.

Paying for services in assisted living for individuals eligible for Virginia's current home and community-based waiver

JCHC staff analyzed potential costs associated with adding ALFs as a permissible setting for Auxiliary Grant (AG) residents within the existing Commonwealth Coordinated Care plus (CCC+) home and community-based (HCBS) waiver. Medicaid cannot be used for room and board, but could be used to pay for the cost of supportive services in assisted living, such as personal care. For this scenario to be allowable through Virginia's Medicaid program, any ALF wishing to receive Medicaid reimbursement would have to meet the federal criteria as a home and community-based setting (42 CFR 441.301). This would require a review by the Department of Medicaid Assistance Services (DMAS) and ongoing quality oversight. Additionally, residents would have to meet the level of care criteria for Medicaid long-term care, which are currently significantly higher than that for assisted living. As a result, only a subset of current AG recipients would be potentially eligible.

JCHC staff estimated that about 19% of current AG residents may be eligible for Medicaid long-term care services (567 individuals). JCHC staff estimated the eligible population by applying the percentage of AG recipients who were eligible for Virginia's Intensive Assisted Living (IAL) waiver in 1998 to the 2021 AG population. In 1998, DMAS operated the Intensive Assisted Living Waiver that served 19% (1,259) of the total AG resident population (6,706). Because there were significantly more AG residents in 1998 than there were in 2021 (3,019), it is difficult to determine if the needs of the AG population remained consistent over time, or whether a larger or smaller percentage of the current AG population is likely to meet the level of care requirements for Medicaid long-term care.

JCHC staff estimates that adding assisted living services as a benefit within the existing HCBS waiver could result in spending of between $31.1 million and $47.4 million. This total would be split between state and federal dollars, with about half of the cost coming from the general fund. The vast majority of this cost is for direct services, with a small portion for necessary administrative support at DMAS.

To generate a cost projection of enrolling Auxiliary Grant (AG) recipients onto a Medicaid waiver, JCHC staff adjusted the rate model used for group homes through Virginia's Community Living (CL) waiver. While the target populations are different (the CL waiver is targeted for adults and children who have a diagnosis of a developmental disability) the services provided are very similar. As with assisted living, group homes can provide 24-hour supervision, routine supports with ADLs and IADLs, and appropriate integration in the community. Since group homes are eligible setting for Medicaid reimbursement, they are also required to comply with the federal HCBS requirement (42 CFR 441.301). The rate model was updated to reflect the most recent median hourly wage for home health care and personal care aides in Virginia available from the Bureau of Labor statistics. JCHC staff excluded lower and higher tier group homes as those individuals on the lower tier may not meet the nursing

facility level of care criteria and individuals on the higher tier may not be appropriately served in assisted living. JCHC staff included group homes with 5-12 beds since smaller settings are more likely to resemble a community setting that could meet federal HCBS requirements (42 CFR 441.301). However, any ALF that could meet federal requirements could be eligible to provide this service. Depending on the size of the facility, the annual cost per resident could be between $53,800 and $81,900. These costs are similar to the lower end of the range of costs for nursing facilities through the Medicaid program, due to the fact that residents would have to meet the nursing facility level of care requirements to be eligible for assisted living services.

DMAS anticipates at least 4-6 new full-time staff would be needed to provide program administration and quality oversight. The cost for 4-6 new FTE could range from $596,476 to $914,649 annually for salary and benefits. The low-end estimate assumes one program manager and three program analysts. The high-end estimate assumes two program managers and four program analysts.

It is possible Members can allocate funds for DMAS to conduct a rate study to develop a specific assisted living benefit and a precise cost estimate for using Medicaid to cover assisted living services. The amount this benefit could actually cost will vary by several factors, including the number of providers willing to participate in the program and the rate the state reimburses for assisted living services.

Paying for services in assisted living through a new state plan option

Similar to other states, Virginia could also provide Medicaid coverage for services in assisted living through a new state plan option or waiver program. Either of these scenarios would bring a new group of eligible individuals into the Medicaid program, rather than simply opening up assisted living as an allowable setting under the current program. Offering services through the state plan option would allow anyone who meets the new eligibility criteria to receive services, regardless of where the individual lives (JCHC staff are not aware of any approved state plan options that use the type of living arrangement – such as assisted living – as part of the eligibility criteria). If the financial and level of need eligibility criteria were crafted to be similar to the AG program, this option would cover AG recipients as well as anyone else meeting those criteria who live in a different setting, such as independent living or with a family member.

There are 34 states that offer a state plan for personal care services, most of which allow for services to be provided in assisted living. However, the eligibility criteria vary, which drives the number of individuals eligible for the services. Some of these states also control costs by putting limits on the number of hours of personal care services an individual can receive, through either prior authorization requirements, or a certain diagnosis required for eligibility.

Connecticut and North Carolina are examples of states that include personal care services as a state plan option, and these services can be provided in assisted living. Connecticut's program is much smaller serving about 350 individuals each year, with an annual cost of about $4.6 million. This is a little more than $13,000 per person, per year for personal care services through the state plan option. North Carolina's program provides a similar level of service, with a similar per person cost, but serves more than 40,000 individuals each year. North Carolina spent nearly $600 million on state plan personal care services in FY21. NC residents must have a qualifying medical condition, disability or cognitive impairment that requires varying levels of assistance with activities of daily living. Each state that has a personal care program defines their program eligibility differently, driving the number of eligible recipients and the costs.

Cost Estimate for Policy Option 1 (Delegate Orrock)

As noted in the JCHC Affordability of Assisted Living Report, the most direct way to increase Auxiliary Grant (AG) availability is to increase the AG rate (Option 1). ALF providers cited the low AG rate as the main reason they had difficulty offering the program, and when asked how much the monthly AG rate would need to be so that they could open up an additional AG bed, $2,500 was the median figure cited by ALFs responding to a JCHC survey.

A cost estimate for Policy Option 1 (increasing the AG rate to $2,500 per month) was included in the staff report, but additional information about an upcoming federal cost of living adjustment impacts the estimate. The AG rate will increase on January 1, 2023, to $1,682 (from $1,609) in most of Virginia and will increase to $1,934 (from $1,850) in Northern Virginia. The increases are in response to a cost-of-living adjustment authorized by the Social Security Administration. The AG rate increase applies to all AG settings including assisted living facilities, adult foster care homes, and supportive housing. The personal needs allowance will remain at $82. These increases will leave spending for AG payments largely unchanged, because recipients will have more social security income that will be used toward their monthly assisted living facility payments (or payments for other approved settings). As a result, the estimated cost of increasing the AG rate is lower, due to the increased social security income for recipients.

JCHC staff estimate that increasing the AG rate only for current recipients will cost $29.8 million annually above the current AG appropriation. The average AG payment in FY22 was $773 while the AG rate was $1,609. If Members decided to increase the rate to $2,500, this would require an increase of $818 per AG recipient per month, above the $73 increase that is scheduled to take effect on January 1, 2023. Applying this monthly increase to all current AG recipients (3,033) would increase the total AG expenditures by approximately $29.8 million, for a total AG appropriation of $57.9 million annually.

However, the primary goal of the policy option is to increase available AG beds in assisted living facilities. This will occur by making the AG rate a more financially viable payment for ALF providers. Additionally, by increasing the AG rate more people would be financially eligible, but they would still have to meet the level of need requirement for ALF placement and find an ALF placement. This is because the AG rate is the maximum monthly income an individual can have to be eligible for the program.

It is very difficult to estimate how many new AG beds will be available for this larger number of financially eligible individuals. If increasing the AG rate to $2,500 per month increases AG beds by 10%, the resulting financial impact would be $32.4 million. If it increases available beds by 50%, the estimated cost is $42.8 million (TABLE 1).

Table 1. Estimated AG expenditures based on increased number of AG recipients

	Percent Increase	AG Rate	Estimated new AG recipients	Projected State Expenditures (Total)	Difference in Expenditures (from FY22)
Current AG recipients	N/A	$2,500	0	$57.9 million	$29.7 million
Scenario 1	10%	$2,500	531	$60.5 million	$32.4 million
Scenario 2	30%	$2,500	1592	$65.7 million	$37.6 million
Scenario 3	50%	$2,500	2653	$70.9 million	$42.8 million

SOURCE: JCHC staff analysis of Auxiliary Grant Expenditures from the Department for Aging and Rehabilitative Services.
NOTE: AG standard rate is set to increase to 1,682 starting January 1, 2023. JCHC analysis assumed that half of the new recipients would be newly financially eligible, with incomes between $1,682 and $2,500 per month.

Potential alternative, community living arrangements for Policy Option 3 (Senator Favola)

During the November 2, 2022 meeting, Senator Favola asked for more clarification on other eligible living arrangements the JCHC should consider allowing within the Auxiliary Grant program. The program currently allows an individual to receive AG payment in an assisted living facility, adult foster care, or other certified supportive housing settings.

The policy option is intended to make individuals living in other community settings such as independent living, or in a home shared with a family member or friend, eligible for the AG program. However, there are many other community living arrangements that other states allow as part of their programs similar to the AG. New York allows for different payment in multiple different payment categories: living alone, living with others, living in

the household of another, and three different tiers of congregate care settings. North Carolina allows individuals to live in a private living arrangement as an alternative to residential facility care. Montana allows individuals to receive their state supplement (similar to the AG program) while living in assisted living, community homes for persons with a developmental disability, group homes, foster care homes, and transitional living services for persons with a developmental disability. By expanding the number of alternative living arrangements, individuals who cannot find a bed in an assisted living facility may be able to receive relief.

Opening up additional community living arrangements as eligible for AG reimbursement will likely significantly increase the number of people potentially eligible, and the cost of the program. Staff from the Department for Aging and Rehabilitative Services (DARS) indicated that the best way to manage eligibility and costs would be to cap the number of slots available, similar to how the AG supportive housing program currently operates. This would allow for better oversight of any new setting the Members consider and a better understanding of the eligible population. It is important that any cap not be framed as a pilot, as this can have implications for Virginia's ability to meet its federal maintenance of effort requirements.

DARS staff also noted that by expanding the eligible living arrangements such as in the home, the local department of social services may need to provide some type of case management services for clients who would not be overseen in a new setting. Individuals who are in the current approved settings (assisted living, adult foster care, or other supportive housing setting) may receive case management services from their housing provider or local community services board.

Prioritization of staff policy options (Delegate Orrock)

At the November 2, 2022 JCHC meeting, Delegate Orrock requested more information on prioritizing the policy options included in the JCHC report. The policy options have different goals, costs, and potential impacts, so it is difficult to provide a value judgement or prioritization. However, to enable Members to evaluate these tradeoffs, JCHC staff grouped each policy option into one of three categories (TABLE 2):

- Options to increase AG bed availability
- Options to serve the AG population in the community
- Options to improve the current AG program

JCHC staff also identified the estimated impact associated with each policy option in terms of the number of new individuals served, the estimated costs, and any key considerations. The estimated impact and cost for each policy option is relative to the other policy options listed and do not indicate a specific cost estimate. Finally, these policy options are not mutually exclusive and Members can decide to vote on each policy option independently.

TABLE 2: Estimated impact, cost, and key considerations for policy options

Policy Option	**Goal**	**Estimated impact (*new individuals served*)**	**Estimated Cost**	**Key considerations**
The Joint Commission on Health Care could introduce a budget amendment to increase the base Auxiliary Grant rate to $2,500 per month.	Increase AG bed availability	High	High	
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.	Increase AG bed availability	Medium	Medium	DARS would need time to establish parameters for eligible facilities, hire staff to track residents, and set-up a way to distribute payment. For example, if an ALF serving all AG clients were to close, the AG residents could be moved to a new ALF. These are not new AG residents, but DARS would need to decide whether an ALF that did not previously accept AG and took a residents who would be eligible for increased payment.

Policy Option	**Goal**	**Estimated impact (*new individuals served*)**	**Estimated Cost**	**Key considerations**
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.	Serve AG population in the community	Subject to legislative decision	Approximately $958,000 per 100 recipients	This option could be capped to limit the number of slots available for this setting. The impact and cost could vary substantially based on the eligible settings and any caps on recipients.
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.	Serve AG population in the community	Low	Low	Without raising the entire AG rate for all eligible settings, it is possible an individual would lose eligibility for the program if they need to transition to other settings with a lower rate.
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.	Improve the current AG program	N/A	Low	N/A

Policy Option	**Goal**	**Estimated impact (*new individuals served*)**	**Estimated Cost**	**Key considerations**
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.	Improve the current AG program	N/A	None	N/A
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 DARS to enable real-time access to the licensing status of ALFs across the state.	Improve the current AG program	N/A	None	N/A