

## VIII. Community Housing

### A. Introduction to Accessible Housing

Access to suitable, safe, affordable, and accessible housing with opportunities for education, employment, relationships, and active participation is the foundation of inclusive communities. In Virginia and nationally, individuals with disabilities receiving Supplemental Security Income (SSI) benefits or whose income is otherwise limited continue to be priced out of the housing market. Many people with disabilities can and would choose to live independently, with or without support services, if they had access to affordable, accessible housing options. This chapter emphasizes the availability and sources of affordable, accessible housing for people with disabilities, particularly those with low to moderate incomes.

To create real and meaningful opportunities for individuals with disabilities to live inclusively in communities, it is necessary to acknowledge the community housing challenges associated with the deep poverty that affects the majority of people with disabilities. Most government housing programs have eligibility requirements related to median income. Under current federal guidelines, housing is considered to be affordable for low-income households when the cost of monthly rent, including tenant-paid utilities, does not exceed 30 percent of monthly household income.

Data reported in the **Technical Assistance Collaborative's** report, *Priced Out in 2012: The Housing Crisis for People with Disabilities*, and by the **National Low Income Housing Coalition's** *Out of Reach 2012* rank Virginia as the ninth most unaffordable state in the nation to rent a two-bedroom housing unit. In Virginia, the 2012 Fair Market Rent for a two-bedroom apartment was \$1,054. In order to afford this level of rent and utilities without paying more than 30 percent of income on housing, earned household income must be \$3,512 monthly or \$42,143 annually. The annual income of a single individual in Virginia receiving an SSI payment of \$698 equaled only 15.6 percent of median income. This is almost 30 percent below the 2012 federal poverty guidelines of \$11,170 for an individual, and as a result, the **housing affordability gap** for people with disabilities in the Commonwealth is significant.

Together, these two national reports confirm that individuals with disabilities who rely on SSI payments as their source of income continue to be some of the poorest people in the nation. These reports provide a vivid picture of the housing challenges faced by Virginians, with and without disabilities, who have low to moderate incomes. National findings, according to *Priced Out in 2012*, report the following:

*The **average annual income** of a single individual receiving SSI payments was **\$8,714**, equal to only 19.2 percent of the national median income for a one-person household and almost 22 percent below the 2012 federal poverty level.*

*The **national average rent** for a modest, one-bedroom apartment was **\$758**, equal to 104 percent of the national average monthly income of a one-person SSI household.*

These findings confirm that in 2012, it was virtually impossible for a single adult receiving SSI to afford rental housing in the community unless they had some type of permanent rental subsidy.

Based on federal guidelines, a SSI recipient receiving \$698 per month, the unreduced benefit amount in Virginia for 2012, could afford monthly rent of no more than \$191 at 30 percent of that monthly SSI benefit—well below the Average Fair Market Rent of \$818 for a one-bedroom unit. That year, in Virginia, 82,629 non-elderly adults (ages 18 to 64) with disabilities received SSI benefits. For individuals, regardless of age, who rely on SSI benefits as their major or only source of income, the cost of housing makes it virtually impossible to afford decent, safe housing in their local community. Virginians receiving SSI benefits are at extreme levels of poverty and facing a housing crisis.

Nationwide, since the release of the reports mentioned above, SSI benefit increases have not kept up with rising housing costs. The unreduced SSI benefit as of January 1, 2013, is \$710 for an individual and \$1,066 for a couple. As noted above, people with disabilities receiving SSI can only afford to pay 30 percent of their income in housing costs, which as of January 1, 2013 is \$213 per month or \$2,556 per year. Additionally, the annual cost of operating one unit of affordable housing ranges from \$3,000 to \$5,000 per unit, before factoring in mortgage debt service payments. Consequently, even housing that is funded debt-free with a capital grant must still charge rents that exceed what a person dependent on SSI can afford. This leaves most people with disabilities dependent on federal rent subsidy assistance to obtain quality, accessible housing that they can afford.

Virginia continues to rank among the 10 lowest states in average income for a person with a disability receiving SSI, and the situation is more severe in rapidly growing urban areas than in the State as a whole. Affordability is at the core of providing meaningful opportunity for accessible community housing for individuals with disabilities and a wide range of options, including such things as ongoing rent subsidies, must be considered. Since the 1999 US Supreme Court decision in *Olmstead v. L.C.* (<http://www.law.cornell.edu/supct/html/98-536.ZS.html>) requiring that individuals with disabilities be served in the most integrated setting appropriate to their needs, the development of affordable, accessible community housing for people with disabilities has been identified as a needed priority nationwide. In Virginia and across the country, the federal **Money Follows the Person (MFP)** demonstration and other initiatives aimed at moving individuals from institutions to the community have been hampered by the lack of affordable, accessible housing.

Published in the Federal Register on January 16, 2014 was the CMS 2249-F and 2296-F Final Rule. The intent of the **final rule** is to

*ensure that individuals receiving long-term services and supports through home and community based services (HCBS) programs under the 1915(c), 1915(i) and 1915(k) Medicaid authorities have full access to benefits of community living and the opportunity to receive services in the most integrated setting appropriate.*

The final rule requirements for **home and community-based settings** establish an outcome-oriented definition that focuses on the nature and quality of individuals' experiences. The requirements maximize opportunities for individuals to have access to the benefits of community living and the opportunity to receive services in **the most integrated setting**.

The final regulation provides for a transition process that will allow states to implement this rule in a manner that supports continuity of services for Medicaid Home and Community Based Services participants and minimizes disruptions in service systems during implementation. Per the final rule, the home and community-based setting:

1. is integrated in and supports access to the greater community.
2. provides opportunities to seek employment and work in competitive, integrated settings, engage in community life, and control personal resources.
3. ensures the individual receives services in the community with the same degree of access as individuals not receiving Medicaid Home and Community Based Services.
4. is selected by the individual from among setting options, including non-disability specific settings and an option for a private unit in a residential setting.
5. ensures an individual's rights of privacy, dignity, respect, and freedom from coercion and restraint.
6. optimizes individual initiative, autonomy, and independence in making life choices.
7. facilitates individual choice regarding services and supports, and who provides them.

Additional requirements:

8. The Specific unit/dwelling is owned, rented, or occupied under a legally enforceable agreement.
9. The individual has the same responsibilities/protections from eviction as all tenants under landlord/tenant laws of the state, county, city or other designated entity.
10. If tenant laws do not apply, the State ensures the lease, residency agreement, or other written agreement is in place providing protections to address eviction processes and appeals comparable to those provided under the jurisdiction's landlord/tenant laws.
11. Each individual has privacy in his or her sleeping or living unit.
12. Units have lockable entrance doors with the individual and appropriate staff having keys to doors as needed.

13. Individuals sharing units have a choice of roommates.
14. Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.
15. Individuals have freedom and support to control their schedules and activities and have access to food any time.
16. Individuals may have visitors at any time.
17. The setting is physically accessible to the individual.

The final rule further describes settings that are **not** home and community based:

- nursing facilities;
- institutions for mental disease (IMD);
- intermediate care facilities for individuals with intellectual disabilities (ICFs/IID);
- hospitals.

Settings presumed **not** to be home and community-based:

- setting in a publicly or privately owned facility providing inpatient treatment;
- setting on grounds of, or adjacent to, a public institution; or a
- setting with the effect of isolating individuals from the broader community of individuals not receiving Medicaid HCBS.

The rule went into effect on March 17, 2014. Additional Information about the final rule can be found at <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Home-and-Community-Based-Services.html>.

Conversations taking place today, in Virginia and nationally, emphasize the decoupling of housing and services in favor of a “**supportive housing**” model. The goal of this movement is to help people with disabilities control their own lives, become socially and economically productive, and have the opportunity to live in permanent, independent, affordable, and accessible housing. There are various iterations of the supportive housing model. All emphasize consumer choice and control over both housing and services in contrast to the “placement” approach in which professional assessments constitute the main basis for housing selection. The supportive housing approach leads to separation of housing from services, and emphasizes conventional, integrated, scattered-site housing to reduce stigma, and rights of tenancy under landlord/tenant laws.

The Virginia Housing Trust Fund Structure and Use Plan was released in November of 2012. It is available at [http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/RD2882012/\\$file/RD288.pdf](http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/RD2882012/$file/RD288.pdf) and states:

*An important subset of the lower-income population—persons with disabilities—faces even greater difficulty in obtaining appropriate, affordable housing options.*

With respect to the mismatch between housing cost and SSI income, the Plan further states that this mismatch

*represents a problem for the current recipients of SSI support, [and] it is also a potentially serious impediment to the State's efforts to lower its reliance on institutional settings for persons with a variety of mental, intellectual, sensory or physically limiting conditions. The provisions of the State's recent settlement with the Department of Justice with respect to persons with intellectual disabilities underscored the importance of having appropriate housing resources available for this population.*

The income barriers identified above and a lack of comprehensive coordination of resources on the federal, state, and local level have perpetuated a long-standing disconnect between housing and disability services agencies. In Virginia, coordinated and aligned efforts and activities have been taken to bridge this disconnect. With this in mind, a discussion of steps being taken, and other related issues and barriers in Virginia follows.

## **B. Coordinated State and Local Housing Activities**

On April 10, 2010, Governor Bob McDonnell issued Executive Order No. 10 calling for a ***Housing Policy Framework for the Commonwealth of Virginia*** to

*establish broad goals and policy direction related to housing policy and to coordinate a comprehensive and effective housing policy with other public policy areas and initiatives across multiple secretariats within the executive branch.*

Executive Order No. 10 was the first executive branch effort to craft a comprehensive, state-level housing policy framework for Virginia.

An interim report (<http://www.virginiahousingpolicy.com>) published on November 18, 2010 included policy recommendations that solidify a continued commitment to cross-secretariat coordination. Specific recommendations of note are the need for (1) better linkage of housing, transportation, and land-use planning and use of the **Transportation and Housing Alliance Toolkit** (<http://www.tjpd.org/housing/thatookit.asp>) by localities as a best practice; (2) the need to maintain and enhance administrative structures that support inter-agency and inter-secretariat collaboration in addressing special housing needs; (3) a continuum of quality housing options for special needs populations consistent with the US Supreme Court's 1999 *Olmstead* decision; and (4) establishment and promotion of state policy priorities for the incorporation of “**visitability**” and “**universal design**” elements in private housing development. Universal design refers to items or home features that are usable by most people regardless of their level of ability or disability. On the latter, the report further recommends that

*once voluntary standards are adopted, charge state agencies with identifying specific means for promoting their use through development of voluntary program incentives, provision of technical assistance, and public-private partnerships.*

In late February 2011, the **US Department of Justice (DOJ)** issued findings from its investigation of the Central Virginia Training Center, which was expanded to all five of the State's Training Centers. In that report, discussed in greater detail in the **Institutional Supports** chapter of this *Assessment*, the DOJ found that the Commonwealth was not in compliance with the *Olmstead* decision or the mandate under the Americans with Disabilities Act to provide services for individuals with disabilities in the most integrated setting. The following requirements, excerpted from the Community Living section (section D) of the **Settlement Agreement** between Virginia and the DOJ, are intended to increase opportunity and access to affordable, accessible housing for the Agreement's target population.

1. *The Commonwealth shall serve individuals in the target population in the most integrated setting consistent with their informed choice and needs.*
2. *The Commonwealth shall facilitate individuals receiving Medicaid Home and Community Based Services (HCBS) Waivers under this Agreement to live in their own home, leased apartment, or family's home, when such a placement is their informed choice and the most integrated setting appropriate to their needs. To facilitate individuals living independently in their own home or apartment, the Commonwealth shall provide information about and make appropriate referrals for individuals to apply for rental or housing assistance and bridge funding through all existing sources, including local, state, or federal affordable housing or rental assistance programs (tenant-based or project-based) and the fund described in Section III.D.4 below.*
3. *Within 365 days of this Agreement, the Commonwealth shall develop a plan to increase access to independent living options such as individuals' own homes or apartments. The Commonwealth undertakes this initiative recognizing that comparatively modest housing supports often can enable individuals to live successfully in the most integrated settings appropriate to their needs.*
  - a. *The plan will be developed under the direct supervision of a dedicated housing service coordinator for the Department of Behavioral Health and Developmental Services (DBHDS) and in coordination with representatives from the Department of Medical Assistance Services (DMAS), Virginia Board for People with Disabilities, Virginia Housing Development Authority, Virginia Department of Housing and Community Development, and other organizations as determined appropriate by DBHDS.*
  - b. *The plan will establish, for individuals receiving or eligible to receive services through the Medicaid HCBS Waivers under this Agreement: (1) baseline information regarding the number of individuals who would choose the independent living*

*options described above, if available; and (2) recommendations to provide access to these settings during each year of this Agreement.*

4. *Within 365 days of this Agreement, the Commonwealth shall establish and begin distributing, from a one-time fund of \$800,000 to provide and administer rental assistance in accordance with the recommendations described above in Section III.D.3.b.ii, to as many individuals as possible who receive HCBS Waivers under this Agreement, express a desire for living in their own home or apartment, and for whom such a placement is the most integrated setting appropriate to their needs.*
5. *Individuals in the target population shall not be served in a sponsored home or any congregate setting unless such placement is consistent with the individual's choice after receiving options for community placements, services, and supports consistent with the terms of Section IV.B.9 of the Settlement Agreement.*
6. *No individual in the target population shall be placed in a nursing facility or congregate setting with five or more individuals unless such placement is consistent with the individual's needs and informed choice and has been reviewed by the Region's Community Resource Consultant and, under circumstances described in Section III.E below, by the Regional Support Team.*
7. *The Commonwealth shall include a term in the annual performance contract with the CSBs to require case managers to continue to offer education about less restrictive community options on at least an annual basis to any individuals living outside their own home or family's home (and, if relevant, to their authorized representative or guardian).*

In May of 2012, an interagency housing committee comprised of stakeholder organizations and agency representatives (required per the Settlement Agreement) was formed to create a plan that addresses the above requirements and to increase independent living options. The workgroup developed Virginia's Plan to Increase Independent Living Options, which provides action items and policy considerations required under the Settlement Agreement between the Commonwealth of Virginia and the US Department of Justice. The plan acknowledges that:

*Public perception is shifting toward greater understanding and acknowledgement that people with disabilities want to remain in their homes and communities. Inclusion of individuals with disabilities into all aspects of our society—work, school, recreation, and government—offers the Commonwealth the opportunity to benefit from our diversity, share our experiences, and be collectively strengthened.*

The Plan further identifies the following Guiding Principles and the Commonwealth's intentions:

*The Commonwealth of Virginia supports efforts to make housing options available to individuals with intellectual and developmental disabilities. For the*

*purposes of this plan, the housing options being developed have the following characteristics.*

*De-coupled housing and services so that (1) service provision and housing decisions are separate and distinct, (2) the housing is not subject to licensing, (3) individual leases are executed, and (4) there is consumer-driven choice in relationship to where an individual lives and who provides services.*

*Through this plan, the Commonwealth is leading an effort to develop clear and proactive housing and service strategies to better meet the housing needs and preferences of individuals in the Settlement Agreement's target population.*

*The Commonwealth acknowledges that the need for affordable, integrated housing options by individuals with a disability who do not meet the target population criteria is significant. The Commonwealth further acknowledges that housing options created through federal, state and local resources should not create disability-specific housing silos. Therefore, housing initiatives and strategies developed and implemented may include and benefit a larger population of individuals with disabilities than the Settlement Agreement's target population.*

The Plan addresses the Settlement Agreement with specific program, policy, and outreach activities. The complete *Housing Plan to Increase Independent Living Options* can be found at [http://www.dbhds.virginia.gov/settlement/FINAL\\_DOJ\\_Housing\\_Plan\\_3\\_6\\_13.pdf](http://www.dbhds.virginia.gov/settlement/FINAL_DOJ_Housing_Plan_3_6_13.pdf). More information is included in **Community Living Supports** chapter of this *Assessment*.

On August 20, 2013 the Department of Behavioral Health and Developmental Services, Department of Housing and Community Development, Department of Medical Assistance Services, and the Virginia Housing Development Authority entered into a **Memorandum of Understanding (MOU)**. The MOU, developed in response to Virginia's Housing Plan to Increase Independent Living Options, delineates respective duties and responsibilities of the parties implementing activities related to the Plan. Per the MOU, each party agrees to commit staff, time and resources, as set forth in the Plan. Virginia's **Community Integration Advisory Commission** and the associated **Community Integration Implementation Team** have been involved in a wide variety of interagency activities in support of the coordination of housing resources on the federal, state, and local level. Virginia's **Olmstead Strategic Plan**, approved by the Community Integration Advisory Commission on July 2013, complimentary to the DOJ Housing Plan activities above, states the following:

*For many individuals, access to and choice of housing is the missing link for a successful transition from an institution or for those already living in the community, life in a more independent and integrated setting. For years, room and board were covered with services in institutions. As the Commonwealth moves away from a predominately institutional model to one that embraces*



*community inclusion, the availability of affordable, safe, and accessible housing is crucial. Even with the most robust package of support services, shelter is a basic human need that must still be met for an individual to live and thrive in their community.*

Listed below are **housing barriers** identified by the Community Integration Advisory Commission and its recommendations:

1. Need to decouple funding for housing and support services to support choice and options.
  - a. Reallocate room and board costs used to support congregate care to fund community-based housing programs such as rental assistance and gap funding.
  - b. Coordinate housing and community integration efforts around housing, Medicaid, and disability service agencies to achieve desired outcomes.
  - c. Prioritize housing waiting lists.
  - d. Educate state and local governments, individuals, families, and communities about available options.
2. Lack of coordinated housing planning, including transportation access.
  - e. Educate localities on the need for coordinated planning and potential opportunities for funding, collaboration, best practices, and transportation alignment.
  - f. Allocate housing resources efficiently and effectively to support individual choice.
3. Shortage of housing options fed by a growing demand and a lack of affordability and accessibility.
  - g. Encourage the use of nontraditional housing and other options such as microboards. A microboard, as defined by the Tennessee Microboard Association and as trademarked by the Vela Microboard Association in Canada, is formed when a small group of committed family and friends join together with a person with a disability to create a nonprofit organization (usually 5 to 7 members). Together, this small group of people addresses the person's planning and support needs in an empowering fashion that supports the person-centered planning philosophy. Members develop a deep knowledge of the individual's needs, desires, and wishes. The Microboard:
    - i. manages services such as home supervision, transportation, medical care, job search, etc.;
    - ii. builds bridges between the individual, family, and community;
    - iii. affords individuals flexibility, self-determination, and carries out the dreams of the individual; and

- iv. members develop a deep knowledge of the individual's needs, desires and wishes.
- h. Reinvest profits from state institution land sales into community housing options and other community supports.
- 4. Inadequate compliance with fair housing practices.
  - i. Provide training to property managers and individuals while developing strategies for reaching the broader public.
  - j. Create and support partnerships between state agencies such as the Department of Professional and Occupational Regulation and local entities such as Centers for Independent Living, Community Services Boards, and Area Agencies on Aging.
- 5. Continued local community resistance.
  - k. Educate localities, homeowners associations, and others regarding federal and state law.
  - l. Address common misperceptions.

The federal Quality Housing and Work Responsibilities Act of 1998 (QHWRA) established a requirement that public housing agencies maintain a comprehensive planning document known as a **Public Housing Agency (PHA) Plan**. The *Priced Out in 2012* report cited earlier notes that, in addition to new requirements for the PHAs such as the creation of these plans, this statute

*gave PHAs more flexibility and control over how federal public housing and Section 8 Housing Choice Voucher programs are used in their communities.*

**Centers for Independent Living (CILs)** have been successful in developing relationships locally and statewide with staff of **public housing agencies (PHAs)** and other housing officials, educating them on the housing needs and preferences of people with disabilities.

A PHA plan, produced in consultation with a Resident Advisory Board, describes the overall mission for serving low and very-low income families and includes the strategies that the public housing agency will implement in order to meet local housing needs. It should also be consistent with the local jurisdiction's **Consolidated Plan (ConPlan)**, described in greater detail below. Both plans include a statement of the housing needs of families with low and very low incomes and describe how the PHA's resources, specifically federal public housing funds and the Housing Choice Voucher program, will be used to meet those needs. For example, through its PHA Plan, local housing officials could decide to direct more Housing Choice Vouchers to people with disabilities receiving Supplemental Security Income (SSI) benefits. Centers for Independent Living (CILs) have been successful in facilitating such dialogues to identify opportunities at the local and state levels to better integrate housing planning for people with disabilities into other planning processes. CILs recognize that local government involvement in statewide planning efforts is critical if housing capacity for Virginians with disabilities is to be increased.

## C. US Department of Housing and Urban Development

Every year, the **US Department of Housing and Urban Development (HUD)** offers community and faith-based organizations, local governments, and housing authorities across the nation the opportunity to compete for direct grants for housing-related projects. HUD awards grants to entitlement community grantees to carry out a wide range of community development activities directed toward revitalizing neighborhoods, economic development, and providing improved community facilities and services.

**Entitlement communities** develop their own programs and funding priorities. However, grantees must give maximum feasible priority to activities that benefit low- and moderate-income persons. A grantee may also carry out activities that aid in the prevention or elimination of slums or blight. Additionally, grantees may fund activities that meet other community development needs when existing conditions pose a serious and immediate threat to the health or welfare of the community. Virginia's eligible entitlement communities are as follows:

**Cities:** City of Alexandria; City of Bristol; City of Charlottesville; City of Chesapeake; City of Colonial Heights; City of Danville; City of Fredericksburg; City of Hampton; City of Harrisonburg; City of Hopewell; City of Lynchburg; City of Newport News; City of Norfolk; City of Petersburg; City of Portsmouth; City of Radford; City of Richmond; City of Roanoke; City of Suffolk; City of Virginia Beach; City of Winchester.

**Counties:** County of Arlington; County of Chesterfield; County of Fairfax; County of Henrico; County of Loudoun; County of Prince William.

**Towns:** Town of Blacksburg; Town of Christiansburg.

For the 51 localities that make up Virginia's Balance of State (i.e., the localities that are non-entitlement communities) the **Virginia Department of Housing and Community Development (DHCD)** receives and administers HUD funds. HUD describes non-entitlement communities as

*all units of general local government that do not meet the definition and qualifications for an entitlement community. This includes all cities, counties, towns, townships, etc., that do not qualify to receive CDBG entitlement funds; and any incorporated units of general local government located in urban counties who have opted not to participate in the urban county's entitlement CDBG program.*

HUD determines the amount of each entitlement grant by a statutory dual formula that uses several objective measures of community needs, including the extent of poverty, population, housing overcrowding, age of housing and population growth lag in relationship to other metropolitan areas.

To receive HUD entitlement grants, a grantee must develop and submit to HUD its Consolidated Plan (ConPlan). The ConPlan is a jurisdiction's comprehensive planning document and application for funding under the following HUD formula grant programs:

- Community Development Block Grant (CDBG),
- HOME Investment Partnerships,
- Housing Opportunities for Persons with AIDS (HOPWA), and
- Emergency Shelter Grants (ESG).

In its ConPlan, the jurisdiction must identify its goals for these programs as well as for housing programs. The goals serve as the criteria against which HUD will evaluate a jurisdiction's plan and its performance under the plan. HUD provides the following guidance to grantees:

*A grantee must develop and follow a detailed plan which provides for, and encourages, citizen participation and which emphasizes participation by persons of low- or moderate-income, particularly residents of predominantly low- and moderate-income neighborhoods, slum or blighted areas, and areas in which the grantee proposes to use CDBG funds. The plan must:*

- 1. provide citizens with reasonable and timely access to local meetings, information, and records related to the grantee's proposed and actual use of funds;*
- 2. provide for public hearings to obtain citizen views and to respond to proposals and questions at all stages of the community development program, including at least the development of needs, the review of proposed activities, and review of program performance;*
- 3. provide for timely written answers to written complaints and grievances; and*
- 4. identify how the needs of non-English speaking residents will be met in the case of public hearings where a significant number of non-English speaking residents can be reasonably expected to participate.*

HUD is prioritizing initiatives that develop more livable and sustainable communities and build economic competitiveness by connecting housing with employment, quality schools, and transportation. This direction demonstrates a commitment to interagency collaboration in policy development, programs, and funding to ensure better results for communities and better use of tax dollars. However, continued and strengthened engagement of the disability community is needed to ensure that people with disabilities are fully included and immersed in integrated community life.

In Virginia, multiple governmental and private nonprofit and for-profit entities, including but not limited to the **Virginia Housing Development Authority (VHDA)** and the **Virginia Department of Housing and Community Development (DHCD)**, are involved in funding, developing, and providing community housing and related services. Together, DHCD and VHDA, along with entitlement communities mentioned above, provide the “bricks and mortar” of access to affordable housing. They administer a range of federal grant funding and tax incentives for housing and community development projects and programs. Brief introductions to several key agencies and initiatives appear below.

## **D. Virginia Department of Housing and Community Development**

The Virginia Department of Housing and Community Development (DHCD) works in partnership with local governments, state and federal agencies, nonprofit groups, and others to make Virginia’s communities safe, affordable, and prosperous places in which to live, work, and do business. Each year, DHCD invests more than \$100 million in housing and community development projects throughout Virginia. The majority of these projects are designed to help persons with low to moderate incomes through an array of housing and community development projects and programs. In addition, DHCD works to ensure safe buildings and homes by administering Virginia’s building and fire codes as well as by training and certifying the State’s building officials. It also administers the Livable Home Tax Credit discussed in more detail later in this chapter.

Individual programs address **preservation of housing stock** as well as **housing for targeted groups** such as people who are homeless, people diagnosed with HIV/AIDS, first-time homebuyers, and others. Eligibility requirements are complex and vary among projects and programs, making it impossible to cover them adequately within the limited framework of this *Assessment*. Detailed information can be obtained at the DHCD website at <http://www.dhcd.virginia.gov> or by contacting the Department directly.

Funding and services provided by DHCD are channeled through state and local governmental agencies, nonprofits, and other intermediaries who provide direct services for consumers. DHCD is not a direct service provider to individuals with disabilities. For access to DHCD funding, organizations respond to Requests for Proposals or submit grant applications in accordance with program requirements and established deadlines. Depending on the funding opportunity, awards are made either competitively or on a first-come, first-served basis. Eligibility and application details for funding opportunities may be obtained from the DHCD website or by contacting the agency directly.

DHCD does not provide funds for services. For state fiscal year (SFY) 2014, DHCD had \$5.4 million available in federal funding for affordable and special needs housing and general affordable housing development and preservation activities. DHCD also allocated approximately \$5.4 million in Virginia Housing Trust Funds for low-interest loans to develop

affordable housing. The majority of these funds went to projects targeting persons with disabilities.

The following programs target Virginians with low to moderate incomes in general and, in some cases, individuals with disabilities. Regardless of their emphasis, collectively these programs play a significant role in making safe, affordable, accessible housing available to persons with disabilities.

Federal **Community Development Block Grants (CDBGs)** provide funding to eligible local governments for crucial community needs such as housing, infrastructure, and economic development. Each project that utilizes CDBG funding must meet one or more national objectives. Funding through the **HOME Investment Partnership** is used to develop and rehabilitate transitional and permanent housing that serves low-income and special needs households and is available to government, nonprofit, and for-profit organizations.

The **Down Payment Assistance (DPA)** program makes purchasing a home more affordable for individuals and families with low to moderate incomes. The program provides flexible gap financing for first-time homebuyers at, or below, 80 percent of the Area Median Income (AMI) to purchase homes that are safe, decent and accessible. The long-term goal is sustainable housing and growth in personal wealth and equity for low- and moderate-income Virginians. Homebuyers access funds through local DPA provider agencies selected by the State through a competitive application process. Eligible costs associated with purchasing a home may include a down payment of up to 10 percent of the purchase price. (This percentage is based on need and may be up to 20 percent in certain high-cost or economically depressed communities.) Up to \$2,500 for closing costs may be included in certain circumstances. The buyer must agree to complete a homebuyer education counseling course. Eligible homebuyers can access DPA assistance through local DPA provider agencies.

The **Emergency Home and Accessibility Repair Program (EHARP)** provides funds to remove urgent, emergency health and safety hazards. It also addresses physical accessibility barriers for low-income Virginians. The program provides funding to local administrators to undertake physical repairs that improve housing conditions. Eligible repairs can include plumbing, structural, electrical, and roofing as well as installation of wheelchair ramps and other accessibility modifications. Applications for local agencies to participate as EHARP local administrators are announced and accepted periodically. Assistance from local administrators is available to occupants based on income on a first-come, first-served basis. Homeowners and tenants (with homeowner written approval) are eligible to apply. The maximum assistance is \$4,000.

The **Homeless Prevention Program (HPP)** is a state-funded program for the prevention of homelessness in Virginia. The program goal is to provide effective and efficient assistance to prevent new cases of homelessness. The program is intended to be administered as a community-based resource that maximizes mainstream resources.

The **Homeless Solutions Grant (HSG)** is a state-funded program to assist households experiencing homelessness to obtain and maintain housing stability. This program replaces the State Shelter Grant (SSG). HSG is designed to assist households experiencing homelessness to quickly regain stability in permanent housing. It is intended to be administered as a community-based resource that maximizes mainstream resources. Eligible applicants include units of local governments, nonprofits, planning district commissions (PDCs), and public housing authorities (PHAs). Eligible activities for the HSG program include shelter operations, rapid re-housing, housing relocation and stabilization services, and Homeless Management Information System (HMIS) cost and administration.

The **Housing Opportunities for Persons with AIDS (HOPWA)** program supports housing and other services for low-income persons with AIDS or HIV and their families within non-eligible metropolitan statistical areas within Virginia. The program provides funding for rental and mortgage assistance, utility payments, resource identification, technical assistance, and other supportive services. Applicants must be nonprofits, including faith-based organizations, or governmental housing agency currently receiving HOPWA funding through DHCD and/or Ryan White funding. Applicants must be targeting services to individuals living within Virginia's non-eligible metropolitan statistical areas.

The **Livable Home Tax Credit** is administered by DHCD. To be eligible for the tax credit, new homes must meet three key requirements:

1. have at least one zero-step entrance approached by an accessible route on a firm surface no steeper than a 1:12 slope proceeding from a driveway or public walkway;
2. have an accessible bathroom (can be a half-bath/powder room) on the same floor as the zero-step entrance; and
3. have doors with at least 32 inches of clear width and hallways/passageways of at least 36 inches of clear width to the accessible bathroom and eating area.

The tax credit also applies to retrofitting existing residential units to make them more accessible. Owners or residents do not have to have a disability requiring these visitability features; income is not a consideration. For new construction, the tax credit can be used by either the homebuilder or the home purchaser. For more information, go to <http://www.dhcd.virginia.gov/index.php/housing-programs-and-assistance/tax-credit-programs/livable-homes-tax-credit.html>.

Individuals lacking both the financial literacy skills and assets to achieve their goals of homeownership can obtain assistance through the **Virginia Individual Development Account (VIDA) Program**. This special savings program, typically offered through local governmental and nonprofit agencies, provides financial skills training, which includes assistance with the application process by local administrators. In addition, the VIDA program matches each dollar saved by the participant with two dollars. The combined savings can be used to purchase a home, start a business, or pursue postsecondary education. VIDA receives funding from the

Virginia Department of Social Services, Virginia Housing Development Authority, and the US Department of Health and Human Services, Office of Community Services Assets for Independence Grant.

The DHCD **Weatherization Assistance** program provides funds to install measures that reduce residential heating and cooling costs for low-income families and enhance the health and safety of residents. The program provides repairs and improvements to home heating and cooling systems and provides for the installation of energy-saving measures in the house such as insulation and air sealing. This program does not offer assistance with paying utility bills. Services are delivered through a statewide network of community-based organizations that screen for eligibility, conduct energy audits, and install energy efficient measures in the home.

DHCD publishes a handbook containing the current **Virginia Residential and Landlord Tenant Act** that specifies the rights and responsibilities of tenants under a rental agreement. It also provides information on sources of legal assistance specializing in landlord and tenant issues. The handbook is online at [http://www.dhcd.virginia.gov/HomelessnessToHomeownership/PDFs/Landlord\\_Tenant\\_Handbook.pdf](http://www.dhcd.virginia.gov/HomelessnessToHomeownership/PDFs/Landlord_Tenant_Handbook.pdf). The **Virginia Office of Consumer Affairs** can also provide assistance on matters covered by this statute.

## E. Virginia Housing Development Authority

The **Virginia Housing Development Authority (VHDA)** is the State's mortgage finance agency. Created in 1972 by the Virginia General Assembly, the VHDA's mission is to "help low- and moderate-income Virginians attain quality, affordable housing." As an independent public authority, VHDA receives no state appropriations for its operations and is fully self-supporting from revenues generated by its programs. For complete information on the programs introduced below, go to <http://www.vhda.com>.

As an independent state public authority, VHDA is subject to oversight by the Governor and the General Assembly. The Governor appoints its eleven-member governing **Board of Commissioners**, which is required to submit an annual report to the Governor on its operating and financial status. VHDA annual financial statements are subject to review by the state **Auditor of Public Accounts** and are available online at <http://www.vhda.com/about/InvestorRelations/Pages/FinancialStatements.aspx>.

Like those of the Department of Housing and Community Development (DHCD) described above, VHDA's activities target individuals and families with **low to moderate incomes**; however, VHDA may provide services for them both directly and through intermediaries. This includes outreach and training for developers and builders on Americans with Disabilities Act (ADA) **accessibility requirements** and the concepts of universal design.

**Funding** for VHDA lending programs comes from agency sales of bonds and mortgage securities, mortgage loan securitization, and net revenues from its operations. VHDA also



administers federal rental assistance programs under contract with HUD, and federal Low-Income Housing Tax Credits on behalf of the State. The administrative costs of federal programs are funded through federally authorized, administrative-fee income. VHDA receives no state budget support.

VHDA provides **mortgage financing** to developers of affordable, accessible, and safe housing options and flexible mortgage financing for the purchase of homes by first-time buyers with low and moderate incomes. These programs increase the inventory of accessible, affordable housing and expand opportunities and choices for persons with disabilities to live independently.

VHDA's investor-funded, multifamily mortgage programs are frequently used in conjunction with federal Low-Income Housing Tax Credits and VHDA REACH program subsidies funded from agency net revenues in order to achieve a financing structure that enables rents to be affordable to lower income renters.

VHDA administers the federal **Low-Income Housing Tax Credit (LIHTC)** program on behalf of Virginia. Currently, the LIHTC program is the federal government's primary program for writing down the cost of developing affordable rental housing units for low-income households. The program is administered through the states, which receive annual, per-capita, formula-based amounts of credits for allocation to eligible rental housing developments. VHDA annually allocates Virginia's credits on a competitive basis to proposed affordable rental housing developments. The tax credits provide developer equity, which substantially reduces development debt service costs and enables rents that are affordable to low income people. VHDA has set aside a portion of Virginia's annual allocation of tax credits in a non-competitive pool exclusively for providing housing services to people with disabilities. In addition, VHDA's competitive allocation of federal tax credits includes incentives for building accessible apartments and incorporating universal design features.

Despite the depth of capital subsidies provided through VHDA mortgage programs and federal Low-Income Housing Tax Credits, renters with extremely low incomes still require additional rent subsidy assistance in order to afford rental housing. To assist with this need, VHDA administers federal Section 8 "project-based rent subsidies" in housing developments it finances and federal "tenant-based" Housing Choice Vouchers in localities without an ability or willingness to directly administer those federal funds.

Previously known as "Certificates," "Section 8," or "Section 8 Existing," the **Housing Choice Voucher** is the latest name for the federal program that assists low income families, the elderly, and individuals with disabilities with rental expenses. Recipients of Housing Choice Vouchers typically pay no more than 30 percent of their monthly income for rent and utilities. Federal funds distributed through VHDA and local Public Housing Agencies (PHAs) are paid to landlords directly to cover the balance of the contracted monthly rent.

The voucher program provides **“tenant-based” assistance** that is tied directly to the tenant and not to the property or structure. Forty-one local PHAs and 32 other local agencies overseen by VHDA receive funds from the US Department of Housing and Urban Development (HUD) to administer the voucher program. Together, these agencies serve 112 Virginia counties and cities. As of December 2013, there were 49,931 vouchers authorized for use statewide. VHDA administers approximately 19 percent (9,655) of the vouchers, and the remaining 81 percent are administered by local PHAs. A complete listing of agencies that administer vouchers and eligibility for voucher assistance based on family size and annual gross income is available on the VHDA website.

When a voucher becomes available and is issued to an individual or family, the voucher holder must find a rental unit and a willing landlord. The unit must be inspected by the agency administering the voucher, and the rent requested must be reasonable for the market area. The housing assistance payment authorized by the voucher is paid by VHDA directly to the landlord, and the voucher holder pays the difference between the actual rent charged by the landlord and the amount subsidized by the voucher. Sometimes people with disabilities—who are able to find housing through a Housing Choice Voucher but need and are eligible for other services and supports to live in the community—can work with their service provider to develop the “wrap-around services” they need to stay in the community.

VHDA also administers **“project-based” Section 8 subsidies** in rental developments it has financed. Federal project-based rental assistance contracts were provided to a significant share of the private, affordable rental housing developments financed from the mid-1970s through the mid-1980s. While new subsidy contracts have been limited since that time, the inventory of older HUD and Rural Housing units continues to comprise approximately 36 percent of rental assistance units in Virginia. Public Housing units comprise 19 percent of rent subsidy units, while the Housing Choice Voucher program makes up the remaining 45 percent of rental assistance units. Preserving the existing stock of affordable rental units with federal project-based rent subsidies is a high federal and state priority, and a significant share of federal and state capital subsidies is devoted to this purpose.

Rent subsidy assistance is not a federal entitlement, and funding is insufficient to provide rental assistance for all who request it. Currently, only about one quarter of eligible households receive federal rental subsidies. As a result, housing agencies maintain waiting lists of eligible applicants. As of December 2013, VHDA reported 9,749 applicants on waiting lists for agencies that it oversees through the Housing Choice Voucher program. VHDA has not opened any agency waiting list since February of 2013 due to the March of 2013 sequestration. Local PHAs have similarly long wait lists for their rent subsidy programs.

**Educational programs** and **financial services** offered by VHDA target individual homebuyers or renters as well as developers and builders of a wide range of housing options. As with DHCD above, programs addressing the needs of individuals with low to moderate incomes, such as the Housing Choice Voucher and home loans, have income and affordability restrictions. Programs for developers and builders may require the building of a certain number of

affordable housing units for funded projects. Complete information on current eligibility requirements for each of these programs can best be obtained on the VHDA website at <http://www.vhda.com> or by contacting the Authority directly.

The Virginia Housing Development Authority (VHDA) created **Housing Search Virginia** (<http://www.virginiahousingsearch.org>), a website with a comprehensive collection of information for locating accessible apartments and learning more about accessibility requirements and universal design principles. This website, originally developed as **Access Virginia** (<http://www.accessva.org/index.html>) through a VBPD grant, is helping Virginians investigate and obtain affordable, accessible housing. To keep content current, VHDA partnered with Socialserv.com, a nonprofit organization dedicated to helping people access affordable housing and supportive services by developing solutions that utilize leading edge technology. Socialserv.com's staff ensures that listings at this site are up-to-date and accurate, conducts housing searches for tenants, and helps owners and landlords input listings and update property information. Socialserv.com staff also fields toll-free and TTD/TTY calls from people without access to the Internet who are seeking rental housing information.

VHDA's **Homeownership Loan Programs** meet the changing needs of persons with low to moderate incomes by removing barriers to purchasing a home. VHDA home mortgage loans, usually originated by private lenders, are available for both first time and repeat homeowners. Two traveling vans serve as **Mobile Mortgage Offices** to process and approve loans in the Southwest, Southside, and Eastern Shore regions of Virginia, areas not adequately served by traditional lenders. Since 1993, VHDA has also offered **Homeownership Education Classes** throughout the State to help Virginians learn the process of buying a home and maintaining it over the long-term. Classes are conducted in English, Spanish, and American Sign Language (ASL) and can also be accessed online.

VHDA's net revenues enable the **REACH Virginia** program to subsidize an array of targeted homeownership and rental funding programs serving priority housing needs, including those of people with disabilities.

Funds from VHDA's **Rental Unit Accessibility Modification** program are available to persons earning 80 percent or less of an area's median income. Grant funds are available on a first-come, first-served basis, up to \$2,000 per dwelling unit, and can be used for any work needed to make the unit accessible for an individual with a disability. The application form for these funds is available on the VHDA website.

The following sections of this chapter cover additional options for persons with disabilities to live in the community provided through **assisted living facilities (ALFs)** licensed by the **Department of Social Services (DSS)**, **adult foster care (AFC)**, an optional service provided in coordination with local departments of social services, and group homes and sponsored residential placements licensed by the **Department of Behavioral Health and Developmental Services (DBHDS)**.

## F. Auxiliary Grant for Housing and Support Services

Virginia's **SSI Supplement**, called the **Auxiliary Grant (AG)**, is currently provided to every

*needy aged, blind, and disabled person who lives in an assisted living facility or in an approved adult foster care home and who is eligible for SSI benefits or would be eligible except for excess income.*

The **Virginia Department for Aging and Rehabilitative Services (DARS)** administers the AG to ensure that recipients of Supplemental Security Income (SSI) benefits, residing in a Virginia **assisted living facility (ALF)** that is licensed by the Department of Social Services (DSS) or an approved **adult foster care (AFC) home**, are able to maintain a standard of living that meets a basic level of care. Nursing facilities and other institutional settings are covered in the **Institutional Supports** chapter of this *Assessment*.

### 1. Eligibility for the AG Program

Eligibility for Auxiliary Grant (AG) benefits is determined by the department of social services in the Virginia city or county where the individual last lived outside of an institution or an adult foster care home. The AG regulations, (22 VAC 30-80) were revised to include a **residency requirement** for all individuals applying for the AG. Individuals must be a resident of Virginia for at least 90 days or have relocated to Virginia to be closer to a relative who has been a resident for at least 90 days. To be eligible, an individual also must:

1. be blind, have a disability, or be age 65 or older;
2. reside in a licensed assisted living facility (ALF) or approved adult foster care (AFC) home;
3. be a citizen of the United States or an alien who meets specified criteria;
4. have a countable income less than the total of the Auxiliary Grant rate approved for the ALF plus the personal needs allowance;
5. have non-exempted resources of less than \$2,000 for one person or \$3,000 for a couple; and
6. have been assessed and determined to need ALF or AFC placement.

Following determination of eligibility and the level of care needed, an individual typically works with the qualified assessor or his or her case manager to select a licensed ALF. Then, at admission, the individual receives a service agreement and a preliminary service plan based on results determined through an assessment using the **Uniform Assessment Instrument (UAI)** and other relevant information. The admissions director or another appropriate employee of the ALF reviews the UAI with the individual and explains how the facility can meet his or her needs through the service plan. Standards allow up to 45 days for completion of a final service plan so that the facility can obtain a more accurate picture of the needs and capabilities of the

resident. This is helpful for individuals who may be in some degree of crisis at entry or need time to adjust to the new residence.

## 2. Access to AG Funds and Services

The Department of Social Services (DSS) is state supervised and locally administered. DSS provides oversight and guidance to 120 local offices across the State that deliver a wide variety of services and benefits to over 1.6 million Virginians each year. Virginia regulations specify procedures for assisted living facility (ALF) licensure and standards of care (22 VAC 40-72-10), the Auxiliary Grant Program (22 VAC 30-80-10), and the assessment of individuals who seek admission to ALFs (22 VAC 30-110-10). There are two main services covered by Auxiliary Grants:

- **Room and board** includes a furnished room in a building that meets all required fire safety codes; housekeeping services appropriate for the resident's needs; complete meals, snacks, and special diets, if necessary; and clean linens and towels as needed and at least once a week.
- **Maintenance and care services** include minimal assistance with personal hygiene and grooming, including provision of personal supplies; administration of medications as required by licensing regulations; minimal assistance with the care of personal possessions and personal funds, if requested by the recipient and allowed by the facility; minimal assistance with telephones and correspondence; securing health care and transportation when needed; making appointments and arranging transportation; provision of social and recreational activities as required by licensing regulations; and general supervision for safety.

In addition to these basic services provided by an ALF or AFC home, Auxiliary Grants provide a **personal needs allowance**, mentioned above, to the recipient. This allowance is used to cover medical expenditures such as copayments, prescriptions not covered by Medicaid, dental care, eyeglasses, and nonprescription over-the-counter medications; local and long-distance telephone service; personal transportation, clothing, toiletries, and other personal expenditures; and other needs outside of what are offered by the ALF or adult foster care provider. Regulations prohibit use of the allowance funds for recreational activities, administration of accounts, debts owed to the ALF for basic services, or laundry charges of more than \$10 per month.

Although persons with intellectual disabilities or other developmental disabilities may reside in ALFs, persons with mental illness are typically their primary residents. Pursuant to DARS regulations, individuals seeking admission to an ALF must be assessed at least annually to determine their level of care. Local departments of social services or other qualified assessors use the Uniform Assessment Instrument (UAI) to conduct the assessment. The UAI gathers information to assess an individual's care needs and eligibility for various services to accommodate care planning and monitoring across multiple agencies. In addition to its use by local departments of social services, it has been used by local departments of health, Area Agencies on Aging (AAAs), Medicaid-funded, long-term care service providers, and Medicaid

nursing facility preadmission screening teams since July 1994. The form is available online at <http://www.cdaaa.org/images/UAI.pdf>.

**Adult foster care (AFC)** is a community-based contractual arrangement, authorized by the Code of Virginia (63.2-1601, 51.5-146 and 51.5-160), and involving DARS, the local department of social services, an approved service provider, and an individual intending to utilize AFC services. No more than three individuals may receive AFC services at one time in the home of an approved provider, regardless of whether those services are funded privately or through an Auxiliary Grant. To provide care for more than three individuals requires licensure by DSS as an assisted living facility. Room, board, supervision, personal care, and other special services are provided to individuals in approved adult foster care homes. Policies relating to service delivery can be found in the 2010 Department of Social Services' *Manual for the Provision of Adult Foster Care Services*. Currently, the information in this manual is being incorporated into another document. Once this process is complete, the manual will be obsolete. At the time of this assessment, it remains available online at [http://www.dss.virginia.gov/files/division/dfs/as/as\\_intro\\_page/manuals/adult\\_fc/adultfostercareguide\\_1\\_2010.pdf](http://www.dss.virginia.gov/files/division/dfs/as/as_intro_page/manuals/adult_fc/adultfostercareguide_1_2010.pdf).

Currently, about 15 percent of assisted living facility (ALF) residents are receiving the AG each month. According to the Department of Social Services' *Fiscal Year 2013 Adult Protective Services Division Report*, which summarizes data from the Adult Services and Adult Protective Services (ASAPS) case management system, Auxiliary Grants were received by a total of 5,766 unduplicated individuals in state fiscal year (SFY) 2013. The average monthly ALF caseload in SFY 2013 was 4,669. Of these, 1,655 were classified as aged; 6 were blind; and 3,008 had a disability. The average monthly adult foster care (AFC) caseload was 35. Of these, 8 were classified as aged; 1 was blind; and 26 had a disability.

According to the Joint Legislative Audit and Review Commission's report summary *Funding Options for Low-Income Residents of Assisted Living Facilities*, there were 561 licensed ALFs with a licensed bed capacity of 32,000 in Virginia as of 2011. These counts, however, are fluid and can change monthly. The number of ALFs has declined by 118 from 679 in 2001 to 561 in 2011. Not all ALF's accept AG recipients, and the number of ALFs that do accept them declined from 375 in 1997 to 349 in 2005 to 312 in 2011. The number of localities with no ALFs accepting AG recipients increased from 41 in 2006 to 48 in 2011.

In 2009, 75 percent of the 78 local departments of social services (DSS) with declines in their caseloads during SFYs 2007 and 2008 responded to a survey that identified the top three reasons for this decline:

1. ALF providers are unable to accept Auxiliary Grant recipients because the grant rate is insufficient for them to provide for recipients' required needs.
2. The needs of Auxiliary Grant recipients exceed ALF levels of care.

3. Individuals choose to remain at home and utilize home-based services, Medicaid Home and Community Based Services (HCBS) Waivers, or case management by Community Services Boards (CSBs).

In addition, due to current DSS licensure requirements and Medicaid HCBS Waiver regulations, few people with intellectual or developmental disabilities (ID/DD) are being served in assisted living settings. Those facilities face the same challenges as group homes in providing small, quality residential settings and will likewise require higher provider rates or supplemental funding assistance to become a viable, community housing alternative for that population.

Virginia state agencies, auxiliary grant recipients, and advocates have expressed a desire to pursue **portability of the Auxiliary Grant** and additional funding structures that could efficiently and effectively support an array of quality, supportive housing alternatives. Progress has been stymied by concerns related to Maintenance of Effort (MOE) requirements, which ensure that federal cost-of-living adjustments are passed along to individuals receiving Supplemental Security Income (SSI) benefits. Efforts to test the feasibility of various alternatives to current SSI program design, including establishing and funding a separate but similar “state supplement” program that is independent of Social Security Administration (SSA) and AG regulations, are worthy of continued exploration.

In addition to Virginia, 44 other states provide recipients of federal Supplemental Security Income (SSI) benefits with a variety of monetary supplements tied to various types of residential settings that may serve persons with disabilities. Unlike some other states, Virginia’s Auxiliary Grants are only available to residents of ALFs or adult foster care and do not provide supplemental funds for individuals living independently. As a result, the use of Auxiliary Grants, the only state-guaranteed housing assistance available to most Virginians with disabilities, is restricted to residential settings that are congregate and more institutional in nature.

A complaint was filed against the Commonwealth of Virginia by the Quality Trust for Individuals with Disabilities and the National Alliance on Mental Illness of Virginia. The complaint alleges that Virginia is violating the Americans with Disabilities Act (ADA) by requiring people with disabilities to live in segregated group homes in order to receive benefits under the AG. In a notice dated July 30, 2013, the Office for Civil Rights at the US Department of Health and Human Services announced that it had “determined that it will pursue action” on the complaint. Specifically, the complaint states that the regulations issued by the Virginia Department of Social Service (DSS) require people to live in group homes or adult foster care in order to receive any benefits from the program. The complaint contends that such a requirement violates the letter and spirit of the ADA and Virginia law. The complainants ask that AG fund recipients be permitted to live in housing of their choice versus facilities that are segregated, isolated in relatively few areas of the Commonwealth, and those that DSS refers to as “institutions.” The full complaint and the decision from the Office for Civil Rights can be accessed online at <http://namivirginia.org/advocacy/legislative-issues/>.

### 3. Funding for the State AG Program

State General Funds constitute 80 percent of the funding for Auxiliary Grants (AGs). Localities must provide matching funds to make up the remaining 20 percent. Not all assisted living facilities accept AG payments. The General Assembly sets the maximum rate for Auxiliary Grants and adjusts it periodically.

Following is a general example that does not apply uniformly since an individual's AG or personal allowance amounts may be different, but using sample figures helps to explain how the AG program typically works. Let us say that an individual with a disability receives SSI in the amount of \$710 per month (the unreduced SSI benefit as of January 1, 2013) and lives in a DSS-licensed ALF or AFC placement. The AG would increase the monthly SSI payment to \$1,278 (\$1,457 in planning district 8 due to a 15-percent differential). In other words, a supplement of \$486, plus the \$82 personal needs allowance, provides a total of \$568 that is added to the SSI payment for a total payment of \$1,278. The individual residing in the ALF/AFC is entitled to a personal needs allowance of \$82 per month. Once that \$82 is given to the individual (or his or her representative), the remaining \$1,196 is paid to assisted living facility or adult foster care home provider for room, board and services mentioned below.

As of July 1, 2012, ALF and AFC providers can accept third-party payment on behalf of an AG individual. These payments are not counted as income when determining eligibility for AG. The payments must be made directly to the provider by the third party (on behalf of the individual receiving AG) after the goods or services have been provided. The payment needs to be voluntary by the third party and not a condition of admission, stay, or provision of proper care and services to the individual receiving the AG. The payments must be made for goods and services that are provided to the individual who receives the AG but cannot be for food, shelter, or specific goods and services that the ALF or AFC provider is required provide. Third-party payments cannot be used for a private-room upgrade.

### 4. Monitoring of AG Programs

The Department of Social Services' **Division of Licensing Programs** has responsibility for protecting children and vulnerable adults in some residential, daycare, and other settings. It licenses assisted living facilities (ALFs) and adult daycare centers and has regulatory responsibilities covering family day homes, independent foster homes, child-placement agencies, and children's residential facilities. It also voluntarily registers family day homes that are not required to be licensed.

Local department of social services **Adult Protective Services (APS) units** investigate reports of abuse, neglect, and exploitation of incapacitated adults ages 18 and over and all adults ages 60 and over. Protective measures are initiated when warranted by the results of their investigations and the individual who is the subject of the report agrees to accept services. DARS Adult Protective Services Division provides state oversight for local APS. DSS **Child Protective Services (CPS)** has equivalent responsibilities for children under age 18. Reports of abuse, neglect, and exploitation are directed to local departments of social services. Local DSS



staff conducts the investigations and initiates protective measures as warranted. The goal of CPS is to identify, assess, and provide services to children and families in an effort to protect children and preserve families.

The Code of Virginia (63.2-1728) specifically requires DSS to establish a toll-free telephone line (800-543-7545), for complaints. DSS investigates all complaints received regarding the operations of assisted living facilities, adult daycare centers, and child welfare agencies, regardless of whether the program is subject to licensure. The Code of Virginia (51.5-148) requires the establishment of a toll-free APS hotline (call 888-832-3858); and a Child Protective Services hotline, 800-552-7096.

Investigations of complaints about licensed facilities and homes may include onsite visits by the DSS licensing division to inspect activities, services, records, and facilities as well as interviews with a facility's employees, agents, and anyone within its custody or control. If a facility is found to be noncompliant, DSS must provide notice to the operator and may then take appropriate action as provided by law to ensure corrective action. The Code of Virginia (63.2-1808) details the rights of residents of assisted living facilities, the responsibilities of their operators, and requirements for an annual review of residents' rights.

The Code of Virginia (51.5-148) also details the responsibility and authority of Adult Protective Services (APS). APS investigations are confidential, and reports may be made anonymously. The investigation must include an in-person meeting with the alleged victim, unless the APS worker documents why the interview cannot occur and makes contact with others who have knowledge of the individual or the circumstances, such as relatives, personal representatives, caregivers, and facility staff. A disposition must be made within 45 days of the report unless the APS worker documents in the case file why a disposition has not been made. APS will only investigate if the individual is deemed to be "at-risk of or experiencing abuse, neglect or exploitation."

An investigation that has started may cease if the individual dies, if the individual is removed from the abusive situation, or if the alleged perpetrator no longer has access to the individual.

## **G. Department of Behavioral Health and Developmental Residential Services**

Additional options for persons with disabilities to live in the community are provided through **group homes** (sometimes called **waiver homes**) and **sponsored residential homes** licensed by the **Department of Behavioral Health and Developmental Services (DBHDS)**. The DOJ Settlement Agreement requires the Commonwealth to

*facilitate individuals receiving HCBS waivers under this Agreement to live in their own home, leased apartment, or family's home when such a placement is their informed choice and the most integrated setting appropriate to their needs.*

Virginia's current Medicaid Intellectual Disability Waiver structure favors (and ID Waiver service providers predominately provide) services in **congregate residential facilities** as opposed to **individualized supports** that can be used in any type of housing, regardless of the level of care or its intensity. This programmatic approach toward the ID Waiver links housing and services in ways that inhibit individual choice and flexibility. For example, in DBHDS-licensed group homes and supervised living programs, individuals can select a provider that makes both the housing and the services available. However, if an individual decided to change service providers, he/she might have to move to another living situation. Likewise, if an individual wanted to live in another area or a different type of housing (e.g., an apartment or mobile home), he or she may have to find a different service provider who will work in that setting.

Medicaid law prohibits the use of Medicaid funds to pay for rent, utilities or food (room and board) outside of an institution (i.e., nursing facility, Training Center, long-stay hospital, ICF/IID). Consequently, this means that Medicaid Waiver funds cannot be used to support the monthly operating costs (room and board) of community-based congregate housing (group homes) or for an individual's own home or apartment. Other financial sources, including client fees, must be used to cover these costs (See the **Funding for Residential Services** section of this chapter.) This can make it more difficult for providers of community-based housing to cover their monthly operating costs and it incentivizes the use of institutional settings (For more information, see the **Medicaid** and **Institutional Supports** chapters of this *Assessment*.)

The demand for **integrated housing** is expected to rise as people become more knowledgeable about the ability to select integrated living settings. The apparent preference of people served with the ID Waiver to use congregate housing may be the result of a lack of information or availability of services in integrated housing. Their options may be limited to congregate housing if they cannot otherwise afford market-rate housing or if they do not have a Housing Choice Voucher or other housing subsidies. However, the pace of that progress has been and will continue to be hampered by limitations in locating affordable, accessible housing.

## **1. Eligibility for Residential Services**

As described in earlier chapters of this assessment, local **Community Services Boards (CSBs)** are the single point of entry in Virginia for all publicly funded services for persons with intellectual disability (ID), including **residential services** such as those provided in a DBHDS-licensed group home. Within the Medicaid Home and Community Based Services Waivers, the Medicaid **Intellectual Disability Waiver (ID Waiver)** is the primary source of funding for residential placement of people with intellectual disability in DBHDS-licensed group homes.

Eligibility for residential supports requires that a person have a diagnosis of intellectual disability. The CSB then determines and documents that the person's functional needs can be met by, and are appropriate for, a **group home** and that the individual chooses to receive services through the ID Waiver rather than receive institutional services. The appropriate level of residential supports is based on each person's needs and his or her natural supports. Under the ID Waiver, there is also an option for in-home residential supports, and services are provided to an individual in his or her **private home**, rather than in a group home.

It is important to note that an option for congregate (group home) residential services is not available through the **Medicaid Individual and Family Developmental Disabilities Support Waiver (DD Waiver)**; however, the DD Waiver does provide in-home residential support services for individuals residing in their own home or apartment and does allow for shared residences that are not considered congregate, i.e., a DBHDS-licensed group home. Therefore, when an individual receiving DD Waiver services wants to change providers, he or she can do so without fear of losing their housing. More information on Home and Community Based Waivers can be found in the **Medicaid** chapter of this *Assessment*.

## 2. Access to and Use of Residential Services

After an individual has been determined to be eligible for the Medicaid Home and Community Based Services ID Waiver and has selected **community residential services** rather than an institutional residential services option, his or her Community Services Board (CSB) case manager submits the required enrollment information to the DBHDS Division of Developmental Services (DDS). If no ID Waiver "slot" is available to the CSB, the individual's name is placed on a waiting list until a slot becomes available. The CSB case manager is responsible for notifying the individual or family of placement on the **ID Waiver Waiting List** in writing within 10 days of placement on the statewide waiting list and must also provide notification of appeal rights and processes. Once an ID Waiver slot is available to the individual, he or she can choose a residential services provider if one is needed. Detailed information on ID Waiver Waiting List policies and procedures are found in the **Medicaid** chapter of this *Assessment*.

DBHDS regulations (12 VAC 35-105-20) describe **residential services** as a category of service providing 24-hour support in conjunction with care and treatment or a training program in a setting other than a hospital or a state-operated Training Center. Residential services are provided to people in a range of living arrangements from highly structured and intensively supervised to relatively independent, requiring a modest amount of staff support and monitoring. Current residential support services include the following:

- residential treatment, group or community homes,
- supervised living,
- residential crisis stabilization,
- community gero-psychiatric residential services,
- community intermediate care facilities for individuals with ID (ICF/IID),

- sponsored residential homes,
- medical and social detoxification,
- neurobehavioral services, and
- substance abuse residential treatment for women and children.

Among the housing options for individuals with intellectual disabilities or developmental disabilities are the following, as described in the report of a housing study mandated by the General Assembly through the 2009 Appropriations Act, Item 315.Z.

- **Group Homes:** In 2009, 62 percent of the recipients of Medicaid Home and Community Based Services (HCBS) Intellectual Disability Waiver services resided in DBHDS-licensed group homes. There are a few state and federal programs available to help finance the development of new group homes. In particular, the federal Section 811 program provides both capital grants and ongoing operating subsidies to support group home development. The challenge is that small homes with four or fewer residents that conform to Virginia’s and other states’ model of community integration lack sufficient economies of scale to support ongoing feasibility at established provider rates. Consequently, there continues to be a predominance of larger homes. Resolution of this problem requires higher provider rates or supplemental funding assistance.
- **Sponsored Residential Homes:** Called “host homes” in other states, this is a model of residential services in which a licensed provider contracts with a family that lives in its own private residence to share the family residence with up to two individuals with disabilities. In this setting, family members provide all of the supports that are prescribed in the individual’s service plan (ISP) and are subject to all of the regulations that apply to group homes. Because sponsored residential homes are licensed as a congregate service, they are not provided under the DD waiver as it is currently structured.
- **Supervised Apartments:** Also called supportive in-home services, supervised apartments are not licensed congregate settings. Supervised apartments enable people with ID or DD to reside independently in mainstream housing while receiving the in-home services and supports they need through the Medicaid HCBS Waivers. There is no mechanism to provide assistance with shelter costs (i.e., rent) for a supervised apartment. Therefore, housing providers are reliant on their ability to access scarce federal rent or operating subsidies in order to create new, affordable supervised apartments.

More specific information on services covered under the Medicaid ID and DD Waivers can be found in the **Medicaid** chapter of this *Assessment*. Detailed information on public and private ICFs/IID can be found in the **Institutional Supports** chapter.

### 3. Funding for Residential Services

Virginia began utilizing **Medicaid funding** for community-based services for persons with intellectual disability (ID), including residentially based supports, in 1991 via the then-termed the “Medicaid Mental Retardation Waiver.” This was followed in 2000 by the current Individual and Family Developmental Disabilities Services Waiver (DD Waiver) to provide supports to persons with other, non-ID developmental disabilities (DD). Both waivers include residentially based services and supports. The ID Waiver funds supports for those who live in group homes, host homes, family homes, and supported living apartment settings. The DD Waiver funds supports for those with developmental disabilities residing in family homes and supported living apartment settings. As noted above, the Medicaid Waivers do not cover the costs of room and board.

Providers of services covered by Medicaid's Home and Community Based Services (HCBS) Intellectual Disability (ID) Waiver are licensed by DBHDS and are reimbursed by Medicaid for **residential services** [provided that the services are consistent with an individual’s approved Individual Support Plan (ISP)]. Reimbursement rates are set by the Virginia Department of Medical Assistance Services (DMAS) with the approval of the Virginia General Assembly and are based on an hourly rate for an approved number of hours of service per month. As mentioned earlier in this chapter, Medicaid does not pay for room and board as part of its community-based residential services. It reimburses only for actual services provided by residential staff according to the individual’s ISP. Group home residents are typically assessed a fee for room, board, and general supervision (not funded by Medicaid) by their service provider. The fee is a large percentage of the individual’s income, which, in the majority of cases, is limited to Supplemental Security Income (SSI) benefits.

### 4. Monitoring of Residential Services

The regulatory and oversight of responsibilities of DBHDS for public and private residential facilities and services that it licenses or funds are covered in the monitoring and evaluation section of the **Community Living Supports** and **Institutional Supports** chapters of this *Assessment*. These chapters also include information on the **Office of the Inspector General (OIG) for Behavioral Health and Developmental Services** and the **Office of Human Rights**. The **Medicaid** chapter discusses the monitoring requirements of the State’s Medicaid agency.

## H. Virginia Fair Housing Office

Public awareness and enforcement of the State’s fair housing law is the responsibility of the **Department of Professional and Occupational Regulations’ (DPOR) Virginia Fair Housing Office (VFHO)**, which serves as the investigative arm of Virginia’s **Fair Housing Board (FHB)** and **Real Estate Board (REB)**. The FHB administers and enforces the fair housing law for most individuals and businesses, while the REB retains jurisdiction over real-estate licensees, their employees, and a property owner (or owner’s agent or principal) who has engaged a real-estate licensee to perform real-estate activities. The FHB is also charged with establishing a fair housing certification program applying to non-licensed property managers, leasing consultants,

and homeowners who are involved in selling or renting dwellings. Both boards meet at the DPOR offices in Richmond, and the public is welcome to attend their meetings.

The State's **first fair housing law**, enacted by the General Assembly in 1972, was initially similar to the fair housing provisions of the national Fair Housing Act of 1968; however, amendments over time have extended its coverage to protect an additional class of individuals, making it broader than the federal law. Virginia's fair housing law **prohibits discrimination** on the basis of race, color, religion, national origin, sex, familial status, "handicap," and "elderliness." Elderliness, which refers to anyone who is age 55 or older, is not a covered protected class under the federal law.

Individuals who feel they have been discriminated against or that fair housing laws have been violated report their **complaints** directly to the VFHO. Staff investigates the allegations by conducting interviews with the complainants, respondents, and relevant witnesses and by reviewing appropriate records and other documents.

Once the investigation is complete, a final report is completed that summarizes the evidence obtained. That report and the evidence are presented to the FHB or REB, whichever is appropriate, at its next regularly scheduled meeting. Following the FHB or REB's review of the evidence, it can issue a "no reasonable cause" finding or a "reasonable cause" finding. If it finds no reasonable cause, both parties are notified in writing, and no further action is taken. If there is a finding of reasonable cause, the parties have 30 days to engage in conciliation attempts.

**Conciliation** is a voluntary process in which the parties attempt to come to a mutually acceptable agreement. If conciliation is successful and approved by the FHB or REB, the investigation is suspended. If one or both parties reject conciliation or they are unable to resolve the complaint through the conciliation process, a charge is issued and immediately referred to the state Office of the Attorney General for further action. Both parties involved are notified accordingly, in writing. In fiscal year 2013, the VFHO investigated and closed 58 cases. Conciliation was successful in approximately 25 percent of these cases, resulting in awards to complainants of approximately \$37,000.

In addition to investigating and settling complaints, the VFHO conducts outreach and training on fair housing laws. These activities range from distribution of handouts to sophisticated interactive presentations by the VFHO staff to state and local officials, housing providers, and consumers. This training is offered free and is tailored to meet the specific needs of its recipients.

Virginia and other states across the nation are pursuing a variety of cost-effective investment models to expand choice in community housing for people with disabilities. A key element in successful efforts has been targeting state funds to fill critical funding gaps, stimulating investment of private capital to develop affordable housing. The size and nature of these funding gaps vary with the type of housing being developed; therefore, diverse funding strategies are needed to support different housing choices. These strategies were recognized in

the report of the housing study recently called for by the General Assembly (2009 Appropriations Act, Item 315.Z):

*First, a number of states have appropriated funding for rent or operating assistance tied to specific newly created rental housing units—often a set-aside of units in rental housing receiving development subsidies through the federal Low-Income Housing Tax Credit (LIHTC) program. This has enabled state LIHTC administrative agencies to mandate set-asides of units in their LIHTC programs. Absent such state funded assistance, many states, including Virginia, have provided incentives to developers in the competitive tax credit allocation process to encourage set-aside units for people with disabilities, but have not made such set-asides mandatory.*

*Second, some states have created state rental voucher assistance programs for people with disabilities. Often assistance is targeted to Medicaid Waiver recipients to enable them to access affordable community housing without the multi-year wait time frequently necessary to participate in over-subscribed local Section 8 Housing Choice Voucher programs. State voucher assistance has expedited the use of Medicaid Waivers and facilitated the success of state Money Follows the Person initiatives. Absent such state funded assistance, it has been nearly impossible for Virginia to coordinate locally managed federal Housing Choice Voucher waiting lists with state Medicaid Waiver waiting lists, thus making it extremely difficult to transition people from state institutions to community housing in a timely manner.*

As values shift toward community inclusion and full citizenship for people with disabilities, the focus on needed community housing grows. Individuals with disabilities desire control over decisions about where, how, and with whom they will live. They want decent, safe, affordable, and accessible housing as well as access to the services and supports that they need to live as independently as possible. Best practice models of housing choice and community integration for people with disabilities do not couple the two within a particular residential setting.

As noted above, **universal design** refers to items or home features that are usable by most people regardless of their level of ability or disability. For example, round doorknobs are not usable by people with limited use of their hands, but lever handles are usable by almost everyone, including people who have no hands. Universal design addresses the scope of accessibility and promotes making all elements and spaces accessible to and usable by all people to the greatest extent possible.

Two additional key initiatives have influenced the availability of accessible housing. During its 2011 session, the Virginia General Assembly voted to increase the **Livable Home Tax Credit** from \$2,000 to \$5,000 for new homes and for the retrofitting of current homes that meet specific visitability and universal design requirements. Additional information on this tax credit

program appears in the **Virginia Department of Housing and Community Development** section of this chapter.

Complementing the tax credit, the Virginia **EasyLiving Home** certification program, established through the work of a coalition of public and private organizations, encourages the inclusion of key features that make a home cost effective, accessible, and convenient for everyone. This voluntary certification specifies criteria in everyday construction that builders can incorporate into new homes to make them welcoming to residents and their friends, family, and visitors, regardless of age, size, or physical ability. More information on the certification program is available at <http://www.elhomes.org>.

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<http://www.accessva.org>

#### **National Low Income Housing Coalition**

<http://www.nlihc.org>

#### **Transportation and Housing Alliance Toolkit**

<http://www.tjpd.org/housing/thatookit.asp>

#### **US Department of Housing and Urban Development**

<http://portal.hud.gov/portal/page/portal/HUD>

#### **US Social Security Administration**

[http://www.ssa.gov/policy/docs/statcomps/di\\_asr/2012/sect01.html#chart2](http://www.ssa.gov/policy/docs/statcomps/di_asr/2012/sect01.html#chart2)

#### **Virginia Department for Aging and Rehabilitative Services, Division for the Aging**

<http://www.vda.virginia.gov>

#### **Virginia Department of Behavioral Health and Developmental Services**

<http://www.dbhds.virginia.gov>

#### **Virginia Department of Housing and Community Development**

<http://www.dhcd.virginia.gov>



**Virginia Department of Medical Assistance Services**

<http://www.dmas.virginia.gov>

**Virginia Department of Professional and Occupational Regulation, Fair Housing Office**

<http://www.dpor.virginia.gov/FairHousing/>

**Virginia Department of Social Services**

[http://www.dss.virginia.gov/family/adult\\_care.html](http://www.dss.virginia.gov/family/adult_care.html)

**Virginia Housing Development Authority**

<http://www.vhda.com>

**Virginia Olmstead Initiative**

<http://www.olmsteadva.com>

**Virginia Statewide Independent Living Council**

<http://www.vasilc.org>

**Virginia Uniform Assessment Instrument**

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