Recommendations and Policy Options: Virginia's Assisted Living Facilities and In-Home Care Services for Older Adults

RECOMMENDATION 1

The General Assembly may wish to consider including funding in the Appropriation Act expressly for area agencies on aging to expand in-home care services to older adults who are eligible but are not currently served. (Chapter 2)

RECOMMENDATION 2

The General Assembly may wish to consider including language in the Appropriation Act directing the Department of Medical Assistance Services (DMAS) to conduct a comprehensive cost study of Medicaid reimbursement rates for agency-directed personal care services that should include (i) an assessment of the actual costs incurred by providers to deliver these services, including the costs necessary to provide competitive wages to direct care staff; (ii) a comparison of Virginia's reimbursement rates to those of other states; (iii) a determination of whether certain regulatory requirements could be modified to reduce providers' operating costs without compromising the quality and safety of care; (iv) a determination of the feasibility of publishing a list of approved electronic visit verification providers to reduce the administrative costs HCOs incur when selecting one; and (v) recommendations regarding the need for modifying the existing personal care rates, if justified. DMAS should submit a report of its findings to the House Appropriations and Senate Finance and Appropriations committees by December 1, 2027. (Chapter 2)

RECOMMENDATION 3

The Virginia Department of Social Services (VDSS) should publish on its public-facing assisted living facility search tool, by January 1, 2028: (i) additional facility characteristic information, including offered room types, typical charges and fees, admissions criteria, auxiliary grant participation, and whether the facility is part of a continuing care retirement community; (ii) the severity rating assigned to each standards violation; (iii) the number of, if any, substantiated APS investigations against facility employees within the last three years; and (iv) any sanctions imposed on the facility by VDSS for standards violations. This information should be regularly updated, and the search tool should specify the date of the last update. (Chapter 3)

RECOMMENDATION 4

The General Assembly may wish to consider amending § 63.2-1803 of the Code of Virginia to (i) replace the current "sufficiency standard" for assisted living facility direct care staffing with requirements that the number and types of direct care staff on duty at each facility be determined by resident census and the amount and types of assistance and care residents require and (ii) require the Board of Social Services to establish the explicit, detailed staffing standards that facilities must follow to meet the statutory requirements. (Chapter 4)

RECOMMENDATION 5

The Virginia Department of Social Services (VDSS) should (i) identify the causes of regional variation in assisted living facility violation citations; (ii) develop clear guidance articulating the agency's regulatory philosophy and expectations for inspection consistency; and (iii) provide additional training to inspectors on core inspection functions. (Chapter 5)

RECOMMENDATION 6

The General Assembly may wish to consider including funding in the Appropriation Act for additional full-time classified licensing inspector positions within the Division of Licensing Programs at the Virginia Department of Social Services. (Chapter 5)

RECOMMENDATION 7

The Virginia Department of Social Services should establish a special investigations unit within its Division of Licensing Programs, staffed by experienced licensing inspectors, to exclusively investigate complaints and self-reported incidents involving the greatest risk of harm to assisted living facility residents. (Chapter 5)

RECOMMENDATION 8

The General Assembly may wish to consider amending § 63.2-1706 of the Code of Virginia to require the Virginia Department of Social Services to conduct an additional unannounced inspection each year of a randomly selected subset of assisted living facilities in each licensing region that demonstrate indicators of poor performance or high risk. (Chapter 5)

RECOMMENDATION 9

The General Assembly may wish to consider including funding in the Appropriation Act for the Virginia Department of Social Services to replace the information technology system used to license and monitor assisted living facilities and other licensed settings under the purview of the Division of Licensing Programs. (Chapter 5)

RECOMMENDATION 10

The Virginia Department of Social Services should ensure that any new licensing system includes (i) a mobile component for inspectors to enter inspection data in real time; (ii) the ability to aggregate historical compliance records for a facility; (iii) centralized intake, triaging, and tracking of complaints and self-reported incidents; (iv) dashboard and analytic capabilities for historical and real-time trend analyses; and (v) capacity to collect and maintain comprehensive facility quality and performance metrics. (Chapter 5)

RECOMMENDATION 11

The General Assembly may wish to consider amending § 63.2-1709.2 of the Code of Virginia to increase the maximum civil penalties that may be assessed against an assisted living facility. (Chapter 5)

RECOMMENDATION 12

The General Assembly may wish to consider amending § 63.2-1709 of the Code of Virginia to require assisted living facilities to provide written notice of the intent of the Virginia Department of Social Services commissioner to revoke or deny renewal of the facility's license to all facility residents and their guardians, including when the commissioner's decision has been appealed by the facility. (Chapter 5)

RECOMMENDATION 13

The Virginia Department of Social Services (VDSS) should (i) establish criteria and a review process to determine whether a bona fide change in ownership and facility management has occurred when an assisted living facility applies for licensure under new ownership, and (ii) remove compliance history associated with a previous owner from the VDSS website only if the applicant demonstrates that a bona fide change in ownership and facility management has occurred. (Chapter 5)

RECOMMENDATION 14

The Virginia Department of Social Services should streamline its internal enforcement process for assisted living facilities by eliminating any unnecessary administrative burdens identified by inspectors, including unnecessary or overly burdensome documentation requirements. (Chapter 5)

RECOMMENDATION 15

The General Assembly may wish to consider amending the Code of Virginia to grant the Virginia Department of Health's Office of Licensure and Certification (OLC) express authority to deny applications for licensure when (i) an applicant submits a letter of readiness but lacks required policies, procedures, or documentation necessary to complete the initial inspection, (ii) the applicant's plan of correction is inadequate to address deficiencies identified during the initial inspection, or (iii) an applicant cannot demonstrate to OLC that it has addressed deficiencies identified during the initial inspection. (Chapter 6)

RECOMMENDATION 16

The General Assembly may wish to consider including language and funding in the Appropriation Act to establish a dedicated provider educator position within the Virginia Department of Health's Office of Licensure and Certification to assist applicants with their applications for home care organization licensure. (Chapter 6)

RECOMMENDATION 17

The Virginia Department of Health's Office of Licensure and Certification should develop and publish on its website (i) an available-on-demand webinar that explains the home care organization licensure process, the applicable regulations, and the most common reasons applications are returned, and (ii) a self-assessment checklist, tied to each regulatory requirement, that applicants can use to verify that their application is complete and that they have all required materials before they submit a letter of readiness. (Chapter 6)

RECOMMENDATION 18

The Virginia Department of Health's Office of Licensure and Certification (OLC) should immediately incorporate in-home client visits and client interviews into biennial inspections for a sample of home care organizations, using procedures that protect client confidentiality. (Chapter 6)

RECOMMENDATION 19

The Virginia Department of Health's Office of Licensure and Certification (OLC) should, until its inspection backlog is cleared, prioritize biennial inspections of home care organizations that are not subject to external oversight as Medicaid providers or as contractors for area agencies on aging. (Chapter 6)

RECOMMENDATION 20

The General Assembly may wish to consider including language in the Appropriation Act directing the Virginia Department of Health (VDH) to evaluate the cost-effectiveness of incentivizing third-party accreditation for non-skilled home care organizations (HCOs) to reduce the Office of Licensure and Certification's (OLC) inspection workload. VDH should (i) estimate state costs to incentivize accreditation versus current OLC inspection costs, both in the near term and long term, and (ii) submit a proposal for such incentives to the Office of the Governor, the House Appropriations Committee, and the Senate Finance and Appropriations Committee if VDH determines that providing such an incentive would be cost-effective. (Chapter 6)

RECOMMENDATION 21

The Virginia Department of Health should issue a Request for Information to assess the feasibility of using third-party organizations to supplement its home care organization inspection staff and, if feasible, procure third-party inspection services. (Chapter 6)

RECOMMENDATION 22

The Virginia Department of Health's Office of Licensure and Certification should implement a statewide regional approach for conducting its inspections of home care organizations, which should include defined regions and a plan to hire inspectors who live in those regions. (Chapter 6)

RECOMMENDATION 23

The General Assembly may wish to consider amending the Code of Virginia to authorize the Virginia Department of Health's Office of Licensure and Certification (OLC) to levy an administrative fine on a home care organization (HCO) when an inspector cannot conduct an unannounced inspection because (i) the HCO's office is closed during operating hours and its administrator or designee cannot be reached, or (ii) the HCO has moved without notifying OLC of its new address. (Chapter 6)

RECOMMENDATION 24

The Virginia Department of Health's Office of Licensure and Certification should maximize its oversight effectiveness with its existing inspection resources by (i) each year, selecting a random sample of home care organizations (HCOs) with overdue biennial inspections for inspection, rather than inspecting HCOs solely in order of their last inspection date, to reduce predictability, (ii) developing a risk-based strategy for selecting HCOs for biennial inspections, and (iii) prioritizing HCOs serving the most clients for biennial inspections. (Chapter 6)

RECOMMENDATION 25

The General Assembly may wish to consider amending the Code of Virginia to (i) grant the Virginia Department of Health's Office of Licensure and Certification (OLC) expanded authority to impose sanctions, graduated financial penalties, and license restrictions, and (ii) require that inspection results be posted on a public-facing website, which should be updated regularly and specify the date of the last update. (Chapter 6)

RECOMMENDATION 26

The General Assembly may wish to consider amending § 32.1-162.13 of the Code of Virginia to authorize the state health commissioner to summarily suspend the license of a home care organization, in conjunction with any proceeding for revocation, denial, or other action, when conditions or practices pose an immediate and substantial threat to the health, safety, and welfare of the organization's clients. (Chapter 6)

RECOMMENDATION 27

The General Assembly may wish to include language and funding in the Appropriation Act directing the Department for Aging and Rehabilitative Services to contract with a third-party expert to (i) collect and analyze data on the costs of operating assisted living facilities that serve auxiliary grant recipients, separating out costs associated with room and board from those associated with services and supports, (ii) estimate the auxiliary grant rate needed to adequately cover those costs, and (iii) report the results to the House Appropriations Committee and the Senate Finance and Appropriations Committee by November 30, 2027. (Chapter 8)

Policy Options to Consider

POLICY OPTION 1

The General Assembly could include language in the Appropriation Act directing the Virginia Department of Social Services to (i) submit to the House Appropriations and Senate Finance and Appropriations committees and the House Health and Human Services and Senate Rehabilitation and Social Services committees an implementation plan for a quality reporting system for licensed assisted living facilities that includes measures of resident health outcomes, resident and family satisfaction, and facility staffing; (ii) pilot test the system with a sample of facilities; and (iii) implement and make available on its website the comprehensive quality reporting system. The language could also direct the State Board of Social Services to promulgate regulations requiring all licensed assisted living facilities to report the measures included in the system as a condition of licensure. (Chapter 3)

POLICY OPTION 2

The General Assembly could (i) amend §§51.5-159 and 51.5-160 of the Code of Virginia to allow individuals who meet the functional criteria for auxiliary grant eligibility to receive the grant as direct cash assistance, even if they do not reside in an assisted living facility, adult foster care home, or supportive housing setting, while retaining the requirement that providers in those settings that accept the grant charge recipients no more than the established grant rate; (ii) include language in the Appropriation Act capping participation in the direct cash assistance option; (iii) include language in the Appropriation Act directing the Department for Aging and Rehabilitative Services (DARS) to amend 22VAC30-80 of the Virginia Administrative Code to establish financial eligibility requirements for the direct cash assistance option; and (iv) direct DARS to seek approval of the program changes from the Social Security Administration. (Chapter 8)

POLICY OPTION 3

The General Assembly could direct the Department of Medical Assistance Services to complete the background research and administrative steps required to apply for and implement a 1915(c)(11) assisted living waiver. This research would (i) determine the needs-based eligibility requirements, (ii) identify the services to be covered, (iii) estimate the number of potentially eligible individuals with and without a diagnosis of Alzheimer's or dementia, (iv) determine a rate adequate to meet cost-neutrality requirements and attract providers, (v) identify the number of potentially interested and eligible facility providers, (vi) produce a fiscal impact estimate, and (vii) present a timeline for applying for the waiver once the application window opens in 2028. The Department for Aging and Rehabilitative Services and Virginia Department of Social Services should be directed to support DMAS as needed in this effort. (Chapter 8)