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Final Regulation Agency Background Document

Agency name	Department of Aging and Rehabilitative Services
Virginia Administrative Code (VAC) Chapter citation(s)	22VAC30-100
VAC Chapter title(s)	Adult Protective Services
Action title	Revise Adult Protective Services Regulations
Date this document prepared	May 19, 2020

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

With this action, the Virginia Department for Aging and Rehabilitative Services (DARS) makes changes and amendments to 22VAC30-100, Adult Protective Services. Specifically, this action: (1) establishes standards for local departments of social services (LDSS) for the provision of Adult Protective Services (APS) investigations and post-investigation services; (2) provides guidance on the imposition of civil penalties on mandated reporters who fail to report suspected adult abuse, neglect, or exploitation; (3) outlines important definitions used during the course of reporting adult abuse, neglect, and exploitation, APS investigations, and the provision of services to adults who may be victims; (4) addresses the specific actions LDSSs must take; (5) clarifies content that may be unclear, inconsistent, or obsolete; and (6) adds new language that establishes a process to afford certain alleged perpetrators of adult abuse, neglect, or exploitation the opportunity to review the actions taken by the LDSS. The Office of the Attorney General (OAG) required DARS to incorporate this language into the regulation.

One change has been made to the regulation content since the proposed stage: amending the length of time for the LDSS to conduct the initial face-to-face contact with the alleged victim. The timeframe for this

activity was increased from five calendar days to seven calendar days. This change is a result of public comment.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

- APA-Administrative Process Act
- APS-Adult Protective Services
- DARS-Department for Aging and Rehabilitative Services
- LDSS-Local department of social services
- OAG-Office of the Attorney General
- POA-Power of attorney
- SFY-State fiscal year

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

The Commissioner of the Department for Aging and Rehabilitative Services (DARS) approved 22VAC30-130, Adult Services Standards, on May 19, 2020.

Mandate and Impetus

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.

This chapter necessitates updates to clarify policies and conform to current practices since the regulations were brought under DARS in 2013. The OAG required DARS to incorporate right to review language into the regulation. The chapter needs to be amended to incorporate Chapter 694 of the 2016 Acts of Assembly regarding procedure for a party to file a petition for reconsideration of an agency's decision from a formal hearing under the Administrative Process Act (APA).

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

Section 51.5-148 of the Code of Virginia gives DARS the responsibility for the planning, administration, and implementation of APS in the Commonwealth. In addition, § 51.5-148 of the Code of Virginia establishes the provision of these services by LDSS and subject to the regulations promulgated by the

Commissioner of DARS. Finally, § 51.5-131 of the Code of Virginia authorizes the Commissioner of the DARS to promulgate regulations necessary to carry out the provisions of the laws of the Commonwealth administered by DARS.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

This regulatory action amends and clarifies language describing LDSS actions during the provision of APS to vulnerable adults in the Commonwealth. The standards ensure that an adult's health and safety remain a primary focus when services are provided to victims of adult abuse, neglect, or exploitation.

The right to review process establishes requirements ensuring alleged perpetrators are afforded the opportunity to dispute the investigative findings of the LDSS while also balancing the safety and welfare of adult victims.

This regulatory action will ensure that the regulation content is precisely written. Clarity in regulation content is essential to ensuring that the adult's health and safety needs are most appropriately met.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

Changes include clarifying definitions and other regulation text as well as amending content that is obsolete or inconsistent. Regulatory language was reviewed to ensure requirements adequately address the safety of the adult who is receiving services, while also balancing the adult's right to self-determination.

The regulatory language will explain the requirements regarding workers' case documentation, including entering the case record into the state database of record. DARS guidance has included this information for several years but it is necessary to include it in regulation. This action will also eliminate regulatory language that may be redundant or confusing to workers.

The section that addresses civil penalties will provide a more detailed process for each step in imposing a civil penalty. OAG determined that the current language is not as precise as it needs to be.

A new section will establish a right to review process for alleged perpetrators of adult abuse, neglect, or exploitation. Guidance provided by the OAG stated that this process needed to be established.

Additional revisions made were related to public comment specific to the length of time an APS worker has to conduct the initial face-to-face contact with the alleged victim.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth;

and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

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- (1) The amendments to the regulation content ensure that the needs of older adults and individuals with disabilities are met during APS investigations and service provision.
 - (2) With the exception of the addition of the right to review process, the amendments to the regulation clarify but do not increase LDSS staffs' responsibilities. The majority of the regulatory content comports with current manual guidance and current LDSS practice. The increase in responsibilities regarding right to review are balanced by the need to ensure that an individual who the LDSS identifies as the alleged perpetrator of adult abuse, neglect, or exploitation is afforded the opportunity to address this issue with the LDSS. The right to review process does not undermine or conflict with any due process protections afforded the alleged perpetrator by other licensing, regulatory or legal authorities.
 - (3) Amendments to the section addressing civil penalties clarify the process and more thoroughly explain that the responsibilities of individuals involved in the imposition of a civil penalty when a mandated reporter fails to report. Most mandated reporters are regulated by other state agencies.

The regulatory action poses no disadvantages to the public or Commonwealth

Requirements More Restrictive than Federal

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.

There are no changes to previously reported information. There are no federal requirements that address APS.

Agencies, Localities, and Other Entities Particularly Affected

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.

Other State Agencies Particularly Affected

The regulatory changes do not affect other state agencies.

Localities Particularly Affected

No locality is disproportionately impacted by the proposed regulation, unless a significant number of perpetrators in a particularly locality choose to request a right to review. Overall, the proposed regulatory language provides statewide uniform standards to which LDSS must adhere without regard to locality.

Other Entities Particularly Affected

The regulatory changes do not affect other entities.

There are no changes to previously reported information.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

Committer	Comment	Agency response
<ul style="list-style-type: none"> • Robin Zimmerman, Bedford Co LDSS • Wendy Swallow, Program Manager City of VA Beach • Joanna Casey, Bedford Co LDSS • Bedford Co LDSS • Dawn Weeks, APS • Daphne McLaughlin, Petersburg LDSS • Ariann Lalla-Mohammed, Loudon Co LDSS • LaWanda Thrower, Richmond LDSS • Kevin Morris, Greene Co LDSS • Sonya Smith, Hanover LDSS • Portia Green, VA Beach LDSS 	<p>For one or more of the reasons summarized below, each commenter suggests initial face-to-face contact with the alleged victim be increased from five calendar days to five business days:</p> <ul style="list-style-type: none"> • 5 calendar days is limiting to workers, especially for any report made after Monday or on a holiday week • Challenge to meet 5 day face-to-face with holidays and weekends • 5 calendar days is a challenge at Thanksgiving • Increased complex caseloads, not enough staff to match the number of cases • 5 business days would allow sufficient time to respond to complaints, especially due to increased reports. Challenge to meet the 5 calendar day mandate, especially around holidays • Inability to meet 5 day face-to-face for reports received late in the work week 	<p>Current language states the contact shall occur face-to-face within five calendar days after the initiation of the investigation 22VAC30-100-20.</p> <p>DARS does not object to lengthening the time that a worker has to conduct a face-to-face contact with the alleged victim. DARS understands that for a variety of reasons, it may be difficult to conduct the interview within the currently allotted time of five days.</p> <p>The APS case management system, PeerPlace, tracks worker compliance with meeting various time standards. Since the system is unable to differentiate business days from calendar days, DARS will change the timeframe from five to seven calendar days. This change achieves nearly the same results identified in public comment.</p>
<ul style="list-style-type: none"> • Tricia Suszynski • Daphne McLaughlin, Petersburg LDSS • Kevin Morris, Greene Co LDSS 	<p>For one of more of the reasons summarized below each commenter suggests the investigation timeline be changed from 45 days:</p> <ul style="list-style-type: none"> • Does not feel 45 day timeframe to complete investigation is sufficient to conduct a thorough investigation, especially in 	<p>Current language states the investigation shall be completed and a disposition assigned by the local department within 45 days of the date the report was received. If the investigation is not completed within 45 days,</p>

	<p>financial exploitation cases. Timeframe is limiting and could impact the right to review process</p> <ul style="list-style-type: none"> • Requests investigation timeframe be extended to 60 days due to the need to track down persons of interest who need to be interviewed, gathering documents, and interviews • Requests investigation timeframe be changed to 90 days for financial exploitation investigations due to the inability to access financial information from banks quickly. Additionally, requests for records to POAs come with a 30 day timeframe for compliance 	<p>the record shall document the reason for extension.</p> <p>Federal fiscal year 2018 National Adult Maltreatment Reporting System (NAMRS) data indicates that the average length of time to conduct an APS investigation nationally is 50.4 days. Thirty-one percent of states, including Virginia, have an investigation timeframe of 31-60 days. Only 12% of states have an investigation timeframe of 60-90 days.</p> <p>DARS understands that APS investigations are complex but feels that current investigation timeframes are in line with other states and should remain in place.</p>
<ul style="list-style-type: none"> • Colleen Miller, disAbility Law Center of VA 	<p>Acknowledges that many of the changes have strong potential to have a positive impact on the lives of adults with disabilities. Supports inclusion of “qualifying non-residents who are temporarily in Commonwealth.” Supports changes in language in the definition of guardian. Supports change in language in the definition of “incapacitated person.” Support removal of phrase ‘without medical orders’ from the definition of unreasonable confinement. Primary concern lies with right to review as it does not go far enough if there is going to be meaningful sanction, including loss of future employment.</p> <p>It is not a true due process if only the director of the local office [LDSS], who made the disposition, is the one reviewing the case. Concerns that there are no sanctions currently unless it meets the criminal standard and is prosecuted. ‘Right to review’ needs to evolve into a true due process.</p>	<p>Right to review as currently described in the regulatory text is only one part of due process protections afforded to alleged perpetrators. Alleged perpetrators are also afforded due process through other licensing, regulatory, and law enforcement entities, which have more authority over a person’s employment and license to practice a certain profession. Neither the LDSS nor DARS has the authority to remove a person’s professional license. Additionally, DARS has no authority to hear a right to review, as DARS is not the entity that conducted the investigation and did not take any action as the result of the investigation.</p>

Detail of Changes Made Since the Previous Stage

List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.

Current chapter-section number	New chapter-section number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements
20			Increase timeframe for initial face-to-face contact with alleged victim from five calendar days to seven calendar days.	Enables APS workers an additional two days to complete a face-to-face contact with the alleged victim. In some instances, the victim may be unable to be located within the original timeframe or more time may be needed to safely interview the victim.

Detail of All Changes Proposed in this Regulatory Action

List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of updated requirements
10		Defines terms used throughout the regulation	<p>Comports the definition of adult to the definition used in the Code of Virginia.</p> <p>Adds definition of APS case management information system.</p> <p>Adds acronyms DARS and APS.</p> <p>Changes “delegated” which was incorrect to “designated” and strikes unnecessary language in definition of director.</p> <p>Adds language clarifying that the local department makes the disposition.</p>

			<p>Comports the definition of guardian to that in § 64.2-2000 of the Code of Virginia.</p> <p>Struck unnecessary language from the definition of guardian ad litem.</p> <p>Comports the definition of incapacitated person to definition used in the Code of Virginia by changing “reasonable” to “responsible.” Makes other technical adjustments to the definition.</p> <p>Changes the terms “problems” to “condition” and “delay” to “disability” in the definition of lacks capacity to consent. These amended terms are more accurate and more person-centered.</p> <p>Struck the definition of legally incompetent because the definition is not used elsewhere in the regulation.</p> <p>Replaced Code of Virginia citation in definition of legitimate interest.</p> <p>Clarified the definition of mandated reporter.</p> <p>Clarified the definition of mental anguish.</p> <p>Made technical and grammatical changes to the definition of neglect.</p> <p>Clarified definition of notification.</p> <p>Removed redundant and unclear content from the definition of report.</p> <p>Added a definition for responsible person.</p> <p>Clarified that a service plan must be written.</p> <p>Clarified definition of unreasonable confinement.</p> <p>Made structural and grammatical change to definition of valid report. Some language was relocated to Section 20.</p>
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			<p>Struck the definition of voluntary protective services.</p>
<p>20</p>		<p>Describes APS intake and investigation.</p>	<p>Uses acronym APS throughout section.</p> <p>Replaces local worker with local department throughout section.</p> <p>Requires that report be entered into case management system within 48 hours of receipt by the local department. Struck language that report be reduced to writing within 72 hours as this guidance was antiquated.</p> <p>Clarified that the local department shall determine validity of the report and how such determination is made using old text from the valid report definition.</p> <p>Added examples of different sources of information that a local department may contact to satisfy the requirement of initiating an investigation.</p> <p>Clarified when the LDSS shall make the face-to-face contact with alleged victim.</p> <p>Removed obsolete language and added requirement to enter data into the case management system.</p> <p>Clarified language regarding consultation with others.</p> <p>Added language from old section 40 A regarding APS assessments. Added an additional area of assessment. This additional area of assessment has been in guidance manual for several years but was not included in the regulation.</p> <p>Clarified guidance regarding the interview with the victim, alleged perpetrator and collaterals.</p> <p>Added clarifying language regarding which LDSS has primary jurisdiction for the investigation. In the event that primary jurisdictional authority is unclear, the new language provides</p>

			<p>additional guidance about specific scenarios, which will aid the LDSS in establishing primary jurisdictional authority.</p> <p>Added that an LDSS that may have previously served an adult but does not have primary jurisdictional authority shall provide assistance with the investigation if asked by the LDSS with primary investigative authority.</p> <p>Reordered content.</p>
40		Addresses APS assessment process and the disposition	<p>Struck APS assessment requirements as they were moved to section 20.</p> <p>Used acronym APS throughout section.</p> <p>Replaced worker with local department throughout section.</p> <p>Struck obsolete language and added reference to case management system.</p> <p>Clarified that that the LDSS’s inability to determine the identity of the alleged perpetrator shall not prohibit the LDSS from issuing a disposition.</p> <p>Added “and accepts” to the first disposition description. This language was missing.</p> <p>Clarified the parameters in which needs protective services and accepts may occur.</p> <p>Clarified the description of the disposition of need for protective services no longer exist. The additional language will help LDSS determine when this particular disposition is appropriate.</p> <p>Added invalid as a disposition option. The current computer system allows for this selection but the regulations did not include the description.</p> <p>Clarified that the disposition shall be assigned within 45 calendar days of initiation of an investigation and</p>

			<p>entered into the case management system no later than five working days of the conclusion of the investigation.</p> <p>Made grammatical change and changed must to shall.</p> <p>Added content establishing notifications and the right to review process for certain alleged perpetrators.</p> <p>Struck incorrect and obsolete language and added correct terminology.</p>
50		Describe requirements regarding disclosure of APS information	<p>Used acronym APS throughout section.</p> <p>Changed must to shall.</p> <p>Changed prosecutor to Commonwealth’s attorneys.</p> <p>Struck phrase local department to comport with definition of director in Section 10.</p> <p>Corrected Code of Virginia citation.</p> <p>Added or “other licensed health care professional” as the adult may be treated by other health care professionals such as a nurse practitioner or physician’s assistant.</p> <p>Clarified that only certain requested information can be released.</p> <p>Added clarifying term adult and changed “problems” to “conditions”.</p> <p>Changed “chapter” to “section”.</p>
60		Describes service provision	<p>Clarified that services are to be offered when the disposition is needs and accepts.</p> <p>Moves language formerly in Section 30 to this section to address an application for services.</p> <p>Describes when the local department should open a case in the case management system for service provision.</p>

			<p>Clarifies language about a service plan.</p> <p>Reorders current language.</p>
70		Provides overview of civil penalties for nonreporting	<p>Changed department to Commissioner as Commissioner has authority to impose civil penalty.</p> <p>Removes redundant language.</p>
80		Describes procedures for an imposition of a civil penalty.	<p>Includes new language that establishes an initial level of review and recommendation for imposition of civil penalty, identifies steps and processes, and provides the mandated reporter the opportunity to submit a statement and request reconsideration of initial decision.</p> <p>Strikes language regarding fines. The Code of Virginia specifies the fines.</p>