



**COMMONWEALTH of VIRGINIA**

*Office of the Attorney General*

*Richmond 23219*

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**TO: JAMES A. ROTHROCK, Commissioner**  
Virginia Department for Aging and Rehabilitative Services

**FROM: ERIC J. REYNOLDS**  
Assistant Attorney General

**DATE: August 20, 2013**

**SUBJECT: Exempt Regulations for relocation of Adult Protective Services regulations  
from DSS to DARS (4043/6690)**

I am in receipt of the attached regulations reflecting the changes in Virginia statutory law made by Chapters 803 and 835 of the *2012 Acts of the Assembly* regarding the relocation of Adult Protective Services regulations from the Department of Social Services to the Department for Aging and Rehabilitative Services. You have asked the Office of the Attorney General to review and determine if the Commissioner of the Department for Aging and Rehabilitative Services has the statutory authority to promulgate the proposed regulations and if the proposed regulations comport with applicable state law.

On July 1, 2013, pursuant to *2012 Acts of the Assembly*, Chapters 803 and 835, Adult Services and Adult Protective Services Programs were relocated from the Department of Social Services (DSS) to the Department of Aging and Rehabilitative Services (DARS). Virginia Code §51.5-116 *et seq.* created DARS and establishes the powers and duties thereof. Virginia Code §51.5-131 authorizes the Commissioner of DARS to promulgate regulations necessary to carry out the provisions of the laws of the Commonwealth administered by the Department.

It is my opinion that the Commissioner of DARS has the authority to promulgate these regulations, subject to compliance with the provisions of Article 2 of the Administrative Process Act ("APA") and has not exceeded that authority. To date, the Commissioner of DARS has not

James A. Rothrock

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yet acted on these regulations; and the Agency Background Document available on Town Hall reflects the as yet unknown date of the Commissioner's action.

Based on the foregoing, it is my view that these regulations are exempt from the procedures of Article 2 of the APA pursuant to Virginia Code § 2.2-4006(A)(4)(a) provided the regulations are filed with the Registrar within 90 days of the law's effective date and the requirements of Virginia Code § 2.2-4006(B) and (C) are met. If you have any questions or need additional information about these regulations, please contact me at 786-3450.

cc: Kim F. Piner, Esquire

Attachment



Logged in: ejr

## Final Text

**Action:** Relocate APS Regulation from DSS to DARS

**Stage:** Final

8/9/13 4:59 PM [latest] ▼

22VAC30-100

CHAPTER 100

ADULT PROTECTIVE SERVICES

22VAC30-100-10

~~22VAC40-740-10~~ 22VAC30-100-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Abuse" means the willful infliction of physical pain, injury or mental anguish or unreasonable confinement.

"Adult" means any person in the Commonwealth who is abused, neglected, or exploited, or is at risk of being abused, neglected, or exploited; and is 18 years of age or older and incapacitated, or is 60 years of age and older.

"Adult protective services" means the receipt, investigation and disposition of complaints and reports of adult abuse, neglect, and exploitation of adults 18 years of age and over who are incapacitated and adults 60 years of age and over by the local department of social services. Adult protective services also include the provision of casework and care management by the local department in order to stabilize the situation or to prevent further abuse, neglect, and exploitation of an adult at risk of abuse, neglect and exploitation. If appropriate and available, adult protective services may include the direct provision of services by the local department or arranging for home-based care, transportation, adult day services, meal service, legal proceedings, alternative placements and other activities to protect the adult and restore self-sufficiency to the extent possible.

"Collateral" means a person whose personal or professional knowledge may help confirm or rebut the allegations of adult abuse, neglect or exploitation or whose involvement may help ensure the safety of the adult.

Commissioner means the commissioner of the department.

"Conservator" means a person appointed by the court who is responsible for managing the estate and financial affairs of an incapacitated person, and where the context plainly indicates, includes a "limited conservator" or a "temporary conservator."

"Department" means the ~~Virginia Department of Social Services~~ Virginia Department for Aging and Rehabilitative Services.

"Director" means the director or his delegated representative of the department of social services of the city or county in which the adult resides or is found.

"Disposition" means the determination of whether or not adult abuse, neglect or exploitation has occurred.

"Documentation" means information and materials, written or otherwise, concerning allegations, facts and evidence.

"Exploitation" means the illegal use of an incapacitated adult or his resources for another's profit or advantage. This includes acquiring an adult's resources through the use of the adult's mental or physical incapacity, the disposition of the incapacitated adult's property by a second party to the advantage of the second party and to the detriment of the incapacitated adult, misuse of funds, acquiring an advantage through threats to withhold needed support or care unless certain conditions are met, or persuading an incapacitated adult to perform services including sexual acts to which the adult lacks the capacity to consent.

"Guardian" means a person who has been legally invested with the authority and charged with the duty of taking care of the person and managing his property and protecting the rights of the person who has been declared by the circuit court to be incapacitated and incapable of administering his own affairs. The powers and duties of the guardian are defined by the court and are limited to matters within the areas where the person in need of a guardian has been determined to be incapacitated.

"Guardian ad litem" means an attorney appointed by the court to represent the interest of the adult for whom a guardian or conservator is requested. On the hearing of the petition for appointment of a guardian or conservator, the guardian ad litem advocates for the adult who is the subject of the hearing, and his duties are usually concluded when the case is decided.

"Incapacitated person" means any adult who is impaired by reason of mental illness, intellectual disability, physical illness or disability, advanced age or other causes to the extent that the adult lacks sufficient understanding or capacity to make, communicate or carry out reasonable decisions concerning his or her well-being. This definition is for the purpose of establishing an adult's eligibility for adult protective services and such adult may or may not have been found incapacitated through court procedures.

"Involuntary protective services" means those services authorized by the court for an adult who has been determined to need protective services and who has been adjudicated incapacitated and lacking the capacity to consent to receive the needed protective services.

"Lacks capacity to consent" means a preliminary judgment of a local department of social services social worker that an adult is unable to consent to receive needed services for reasons that relate to emotional or psychiatric problems, intellectual disability, developmental delay, or other reasons which impair the adult's ability to recognize a substantial risk of death or immediate and serious harm to himself. The lack of capacity to consent may be either permanent or temporary. The worker must make a preliminary judgment that the adult lacks capacity to consent before petitioning the court for authorization to provide protective services on an emergency basis pursuant to § 63.2-1609 of the Code of Virginia.

"Legally incapacitated" means that the person has been adjudicated incapacitated by a circuit court because of a mental or physical condition which renders him, either wholly or partially, incapable of taking care of himself or his estate.

"Legally incompetent" means a person who has been adjudicated incompetent by a circuit court because of a mental condition which renders him incapable of taking care of his person or managing his estate.

"Legitimate interest" means a lawful, demonstrated privilege to access the information as defined in § 63.2-104 of the Code of Virginia.

"Local department" means any local department of social services in the Commonwealth of Virginia.

"Mandated reporters" means those persons who are required to report pursuant to

§ 63.2-1606 of the Code of Virginia when such persons have reason to suspect that an adult is abused, neglected, or exploited or is at risk of adult abuse, neglect, or exploitation.

"Mental anguish" means a state of emotional pain or distress resulting from activity (verbal or behavioral) of a perpetrator. The intent of the activity is to threaten or intimidate, cause sorrow or fear, humiliate, change behavior or ridicule. There must be evidence that it is the perpetrator's activity that has caused the adult's feelings of pain or distress.

"Neglect" means that an adult is living under such circumstances that he is not able to provide for himself or is not being provided such services as are necessary to maintain his physical and mental health and that the failure to receive such necessary services impairs or threatens to impair his well-being. However, no adult shall be considered neglected solely on the basis that such adult is receiving religious nonmedical treatment or religious nonmedical nursing care in lieu of medical care, provided that such treatment or care is performed in good faith and in accordance with the religious practices of the adult and there is written or oral expression of consent by that adult. Neglect includes the failure of a caregiver or another responsible person to provide for basic needs to maintain the adult's physical and mental health and well-being, and it includes the adult's neglect of self. Neglect includes, but is not limited to:

1. The lack of clothing considered necessary to protect a person's health;
2. The lack of food necessary to prevent physical injury or to maintain life, including failure to receive appropriate food for adults with conditions requiring special diets;
3. Shelter that is not structurally safe; has rodents or other infestations which may result in serious health problems; or does not have a safe and accessible water supply, safe heat source or sewage disposal. Adequate shelter for an adult will depend on the impairments of an adult; however, the adult must be protected from the elements that would seriously endanger his health (e.g., rain, cold or heat) and could result in serious illness or debilitating conditions;
4. Inadequate supervision by a caregiver (paid or unpaid) who has been designated to provide the supervision necessary to protect the safety and well-being of an adult in his care;
5. The failure of persons who are responsible for caregiving to seek needed medical care or to follow medically prescribed treatment for an adult, or the adult has failed to obtain such care for himself. The needed medical care is believed to be of such a nature as to result in physical and/or mental injury or illness if it is not provided;
6. Medical neglect includes, but is not limited to, the withholding of medication or aids needed by the adult such as dentures, eye glasses, hearing aids, walker, etc. It also includes the unauthorized administration of prescription drugs, over- or under-medicating, and the administration of drugs for other than bona fide medical reasons, as determined by a licensed health care professional; and
7. Self-neglect by an adult who is not meeting his own basic needs due to mental and/or physical impairments. Basic needs refer to such things as food, clothing, shelter, health or medical care.

"Notification" means informing designated and appropriate individuals of the local department's action and the individual's rights.

"Preponderance of evidence" means the evidence as a whole shows that the facts are more probable and credible than not. It is evidence that is of greater weight or more convincing than the evidence offered in opposition.

"Report" means an allegation by any person that an adult is in need of protective services. The term "report" shall refer to both reports and complaints of abuse, neglect, and exploitation of adults. The report may be made orally or in writing to the local department or by calling the Adult Protective Services Hotline.

"Service plan" means a plan of action to address the service needs of an adult in order to protect the adult, to prevent future abuse, neglect or exploitation, and to preserve the autonomy of the adult whenever possible.

"Unreasonable confinement" means the use of restraints (physical or chemical), isolation, or any other means of confinement without medical orders, when there is no emergency and for reasons other than the adult's safety or well-being or the safety of others.

"Valid report" means the local department of social services has evaluated the information and allegations of the report and determined that the local department shall conduct an investigation because all of the following elements are present:

1. The alleged victim adult is 60 years of age or older or is 18 years of age or older and is incapacitated;
2. There is a specific adult with enough identifying information to locate the adult;
3. Circumstances allege abuse, neglect or exploitation or risk of abuse, neglect or exploitation; and
4. The local department receiving the report is a local department of jurisdiction as described in ~~22VAC40-740-21~~ 22VAC30-100-20.

"Voluntary protective services" means those services provided to an adult who, after investigation by a local department, is determined to be in need of protective services and consents to receiving the services so as to prevent further abuse, neglect, and exploitation of an adult at risk of abuse, neglect and exploitation.

22VAC30-100-15

~~22VAC40-740-15~~ 22VAC30-100-15. Mandated reporters.

Reports shall be made forthwith by the following persons acting in their professional capacity upon their suspicion that adult abuse, neglect or exploitation has occurred:

1. Any person licensed, certified, or registered by health regulatory boards listed in § 54.1-2503 of the Code of Virginia, with the exception of persons licensed by the Board of Veterinary Medicine;
2. Any mental health services provider as defined in § 54.1-2400.1 of the Code of Virginia;
3. Any emergency medical services personnel certified by the Board of Health pursuant to § 32.1-111.5 of the Code of Virginia, unless such personnel immediately reports the suspected abuse, neglect, or exploitation directly to the attending physician at the hospital to which the adult is transported, who shall make such report forthwith;
4. Any guardian or conservator of an adult;
5. Any person employed by or contracted with a public or private agency or facility and working with adults in an administrative, supportive or direct care capacity;
6. Any person providing full, intermittent or occasional care to an adult for compensation including, but not limited to, companion, chore, homemaker, and personal care workers;
7. Any law-enforcement officer; and

8. Medical facilities inspectors of the Department of Health. However, medical facilities inspectors are exempt from reporting suspected abuse immediately while conducting federal inspection surveys in accordance with Title XVIII (§ 1846) and Title XIX of the Social Security Act, as amended, of certified nursing facilities as defined in § 32.1-123 of the Code of Virginia. Findings of adult abuse, neglect or exploitation by a medical facilities inspector shall be made known to adult protective services after the exit conference at the facility so that the local department can provide follow up to facility residents who may be at risk of further abuse, neglect or exploitation.

22VAC30-100-20

~~22VAC40-740-21~~ 22VAC30-100-20. The adult protective services investigation.

A. This section establishes the process for the adult protective services investigation and provides priority to situations that are most critical.

B. The validity of the report shall be determined. Investigations shall be initiated by the local department not later than 24 hours from the time a valid report was received in the local department.

1. To initiate the investigation, the social worker must gather enough information concerning the report to determine (i) if the report is valid and (ii) if an immediate response is needed to ensure the safety of the alleged victim. Pertinent information may be obtained from the report, case record reviews, contact with the alleged victim, the reporter, friends and neighbors and service providers.

2. When determining the need for an immediate response, the social worker shall consider the following factors:

- a. The imminent danger to the adult or to others;
- b. The severity of the alleged abuse, neglect or exploitation;
- c. The circumstances surrounding the alleged abuse, neglect or exploitation; and
- d. The physical and mental condition of the adult.

3. A face-to-face contact with the alleged victim shall be made as soon as possible but not later than five calendar days after the initiation of the investigation unless there are valid reasons that the contact could not be made. Those reasons shall be documented in the Adult Protective Services Assessment Narrative as described in ~~22VAC40-740-40~~ 22VAC30-100-40. The timing of the interview with the alleged victim should occur in a reasonable amount of time pursuant to circumstances in subdivision 2 of this subsection.

C. The report shall be reduced to writing within 72 hours of receiving the report on a form prescribed by the department.

D. The purpose of the investigation is to determine whether the adult alleged to be abused, neglected or exploited or at risk of abuse, neglect or exploitation is in need of protective services and, if so, to identify services needed to provide the protection.

E. The local department shall conduct a thorough investigation of the report.

F. The investigation shall include a visit and private interview with the adult alleged to be abused, neglected or exploited.

G. The investigation shall include consultation with others having knowledge of the facts of the particular case.

H. Primary responsibility for the investigation when more than one local department may have jurisdiction under § 63.2-1605 of the Code of Virginia shall be assumed by the local department:

1. Where the subject of the investigation resides when the place of residence is known and when the alleged abuse, neglect or exploitation occurred in the city or county of residence;
  2. Where the abuse, neglect or exploitation is believed to have occurred when the report alleges that the incident occurred outside the city or county of residence;
  3. Where the abuse, neglect or exploitation was discovered if the incident did not occur in the city or county of residence or if the city or county of residence is unknown and the place where the abuse, neglect or exploitation occurred is unknown; or
  4. Where the abuse, neglect or exploitation was discovered if the subject of the report is a nonresident who is temporarily in the Commonwealth.
- I. When an investigation extends across city or county lines, local departments in those cities or counties shall assist with the investigation at the request of the local department with primary responsibility.
- J. When the local department receives information on suspicious deaths of adults, local department staff shall immediately notify the appropriate medical examiner and law enforcement.

22VAC30-100-30

~~22VAC40-740-31~~ 22VAC30-100-30. Application for the provision of services.

- A. Local departments are authorized to receive and investigate reports of suspected adult abuse, neglect and exploitation pursuant to Article 2 (§ 63.2-1603 et seq.) of Chapter 16 of Title 63.2 of the Code of Virginia.
- B. Upon completion of the investigation and the determination that the adult is in need of protective services, the adult protective services worker must obtain an application signed by the adult in need of services or his representative prior to service provision.
- C. The application process is designed to assure the prompt provision of needed adult protective services including services to adults who are not able to complete and sign a service application.
- D. Persons who may complete and sign an application for adult protective services on behalf of an adult who needs the service include:
1. The adult who will receive the services or the adult's legally appointed guardian or conservator;
  2. Someone authorized by the adult; or
  3. The local department.

22VAC30-100-40

~~22VAC40-740-40~~ 22VAC30-100-40. Assessment and narrative disposition.

- A. An assessment narrative shall be required for all adult protective services investigations and shall be titled "Adult Protective Services Assessment Narrative." The narrative must address, but is not limited to, the following:
1. Allegations in the report or circumstances discovered during the investigation that meet the definitions of abuse, neglect or exploitation.
  2. The extent to which the adult is physically, emotionally and mentally capable of making and carrying out decisions concerning his health and well-being.
  3. The risk of serious harm to the adult.
  4. The need for an immediate response by the adult protective services worker



upon receipt of a valid report.

5. The ability to conduct a private interview with the alleged victim, the alleged perpetrator (if known) and any collateral contacts having knowledge of the case.

B. After investigating the report, the adult protective services worker must review and evaluate the facts collected and make a disposition as to whether the adult is in need of protective services and, if so, what services are needed.

C. The disposition that the adult needs protective services shall be based on the preponderance of evidence that abuse, neglect or exploitation has occurred or that the adult is at risk of abuse, neglect or exploitation.

D. Possible dispositions.

1. Needs protective services. This disposition shall be used when:

a. A review of the facts shows a preponderance of evidence that adult abuse, neglect or exploitation has occurred or is occurring;

b. A review of the facts shows a preponderance of evidence that the adult is at risk of abuse, neglect or exploitation and needs protective services in order to reduce that risk;

c. The adult consents to receive services pursuant to § 63.2-1610 of the Code of Virginia; or

d. Involuntary services are ordered by the court pursuant to § 63.2-1609 or Article 1 (§ 64.2-2000 et seq.) of Chapter 20 of Title 64.2 of the Code of Virginia.

2. Needs protective services and refuses. This disposition shall be used when:

a. A review of the facts shows a preponderance of evidence that adult abuse, neglect or exploitation has occurred or is occurring or the adult is at risk of abuse, neglect and exploitation; and

b. The adult refuses or withdraws consent to accept protective services pursuant to § 63.2-1610 of the Code of Virginia.

3. Need for protective services no longer exists. This disposition shall be used when the subject of the report no longer needs protective services. A review of the facts shows a preponderance of evidence that adult abuse, neglect or exploitation has occurred. However, at the time the investigation is initiated or during the course of the investigation, the adult who is the subject of the report ceases to be at risk of further abuse, neglect or exploitation.

4. Unfounded. This disposition shall be used when review of the facts does not show a preponderance of evidence that abuse, neglect or exploitation occurred or that the adult is at risk of abuse, neglect or exploitation.

E. 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, the record shall document reasons.

F. A notice of the completion of the investigation must be made in writing and shall be mailed to the reporter within 10 working days of the completion of the investigation.

G. The Adult Protective Services Program shall respect the rights of adults with capacity to consider options offered by the program and refuse services, even if those decisions do not appear to reasonably be in the best interests of the adult.

22VAC30-100-50

~~22VAC40-740-50~~ 22VAC30-100-50. Disclosure of adult protective services

information.

A. This chapter describes the protection of confidential information including a description of when such information must be disclosed, when such disclosure of the information is at the discretion of the local department, what information may be disclosed, and the procedure for disclosing the information.

B. Department staff having legitimate interest shall have regular access to adult protective services records maintained by the local department.

C. The following agencies have licensing, regulatory and legal authority for administrative action or criminal investigations, and they have a legitimate interest in confidential information when such information is relevant and reasonably necessary for the fulfillment of their licensing, regulatory and legal responsibilities:

1. Department of Behavioral Health and Developmental Services;
2. Virginia Office for Protection and Advocacy;
3. Office of the Attorney General, including the Medicaid Fraud Control Program;
4. Department for Aging and Rehabilitative Services;
5. Department of Health, including the Center for Quality Health Care Services and Consumer Protection and the Office of the Chief Medical Examiner;
6. Department of Medical Assistance Services;
7. Department of Health Professions;
8. Department for the Blind and Vision Impaired;
9. Department of Social Services, including the Division of Licensing Programs;
10. The Office of the State Long-Term Care Ombudsman and local ombudsman;
11. Law-enforcement agencies;
12. Medical examiners;
13. Adult fatality review teams;
14. Prosecutors; and
15. Any other entity deemed appropriate by the commissioner or local department director that demonstrates a legitimate interest.

D. The local department shall disclose all relevant information to representatives of the agencies identified in subsection C of this section except the identity of the person who reported the abuse, neglect or exploitation unless the reporter authorizes the disclosure of his identity or the disclosure is ordered by the court.

E. The local department shall refer any appropriate matter and all relevant documentation to the appropriate licensing, regulatory or legal authority for administrative action or criminal investigation.

F. Local departments may release information to the following persons when the local department has determined the person making the request has legitimate interest in accordance with § 63.2-104 of the Code of Virginia and the release of information is in the best interest of the adult:

1. Representatives of public and private agencies including community services boards, area agencies on aging and local health departments requesting disclosure when the agency has legitimate interest;
2. A physician who is treating an adult whom he reasonably suspects is abused,

neglected or exploited;

3. The adult's legally appointed guardian or conservator;
4. A guardian ad litem who has been appointed for an adult who is the subject of an adult protective services report;
5. A family member who is responsible for the welfare of an adult who is the subject of an adult protective services report;
6. An attorney representing a local department in an adult protective services case;
7. The Social Security Administration; or
8. Any other entity that demonstrates to the commissioner or local department director that legitimate interest is evident.

G. Local departments are required to disclose information under the following circumstances:

1. When disclosure is ordered by a court;
2. When a person has made an adult protective services report and an investigation has been completed; or
3. When a request for access to information is made pursuant to the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq. of the Code of Virginia).

H. Any or all of the following specific information may be disclosed at the discretion of the local department to agencies or persons specified in subsection F of this section:

1. Name, address, age, race, and gender of the adult who is the subject of the request for information;
2. Name, address, age, race, and gender of the person who is alleged to have perpetrated the abuse, neglect, or exploitation;
3. Description of the incident or incidents of abuse, neglect, or exploitation;
4. Description of medical problems to the extent known;
5. Disposition of the adult protective services report; and
6. The protective service needs of the adult.

I. The identity of the person who reported the suspected abuse, neglect or exploitation shall be held confidential unless the reporter authorizes the disclosure of his identity or disclosure is ordered by the court.

J. Agencies or persons who receive confidential information pursuant to subsection G of this section shall provide the following assurances to the local department:

1. The purpose for which information is requested is related to the protective services goal in the service plan for the adult;
2. The information will be used only for the purpose for which it is made available; and
3. The information will be held confidential by the department or individual receiving the information except to the extent that disclosure is required by law.

K. Methods of obtaining assurances. Any one of the following methods may be

used to obtain assurances required in subsection J of this section:

1. Agreements between local departments and other community service agencies that provide blanket assurances required in subsection J of this section for all adult protective services cases; or

2. State-level agreements that provide blanket assurances required in subsection C of this section for all adult protective services cases.

L. Notification that information has been disclosed. When information has been disclosed pursuant to this chapter, notice of the disclosure shall be given to the adult who is the subject of the information or to his legally appointed guardian. If the adult has given permission to release the information, further notification shall not be required.

22VAC30-100-60

~~22VAC40-740-60~~ 22VAC30-100-60. Opening a case for service provision.

A. A range of services must be made available to any abused, neglected and exploited adult or to adults at risk of abuse, neglect or exploitation to protect the adult and to prevent any future abuse, neglect or exploitation.

1. Opening a case to adult protective services. Once a disposition of the report and an assessment of the adult's needs and strengths have been made, the department shall assess the adult's service needs. A case shall be opened for adult protective services when:

a. The service needs are identified;

b. The disposition is that the adult needs protective services; and

c. The adult agrees to accept protective services or protective services are ordered by the court.

2. Service planning. A service plan which is based on the investigative findings and the assessment of the adult's need for protective services shall be developed. The service plan is the basis for the activities that the worker, the adult, and other persons will undertake to provide the services necessary to protect the adult.

3. Implementation of the service plan. Implementation of the service plan is the delivery of the services necessary to provide adequate protection to the adult. The services may be delivered directly, through purchase of service, through informal support, or through referral. The continuous monitoring of the adult's progress and the system's response is a part of the implementation.

4. Local departments are required to provide services beyond the investigation to the extent that federal or state matching funds are made available.

22VAC30-100-70

~~22VAC40-740-70~~ 22VAC30-100-70. Civil penalty for nonreporting.

A. The department may impose civil penalties when it is determined that a mandated reporter failed to report suspected adult abuse, neglect or exploitation pursuant to § 63.2-1606 of the Code of Virginia.

B. Civil penalties for all mandated reporters except law-enforcement officers shall be imposed as described in ~~22VAC40-740-80~~ 22VAC30-100-80.

22VAC30-100-80

~~22VAC40-740-80~~ 22VAC30-100-80. Imposition of civil penalty.

A. Local department review and recommendation.

1. Based on a decision by the local department director or his designee that a

mandated reporter failed to report as required by § 63.2-1606 of the Code of Virginia, the local director shall prepare a written statement of fact concerning the mandated reporter's failure to report and submit the statement of fact to the commissioner.

2. The local director or his designee shall notify the mandated reporter in writing within 15 calendar days from the date of the determination of the intent to recommend that a civil penalty be imposed. The notification will include a copy of the local director's statement of fact concerning the mandated reporter's failure to report. The notification shall state the mandated reporter's right to submit a written statement to the commissioner concerning the mandated reporter's failure to report. The date of the notification is the postage date.

3. The mandated reporter's statement concerning his failure to report must be received by the commissioner within 45 days from the date of the local director's notification of intent to recommend the imposition of a civil penalty. A mandated reporter's statement received after the 45 days shall not be considered by the commissioner

B. Review by the commissioner or his designee.

1. The commissioner or his designee shall review the local director's written statement of fact concerning the mandated reporter's failure to report and the mandated reporter's written statement in determining whether to impose a civil penalty.

2. In the case of law-enforcement officers who are alleged to have not reported as required, the commissioner or his designee shall forward the recommendation to a court of competent jurisdiction.

3. The commissioner or his designee shall impose a civil penalty upon a mandated reporter who is determined to have not reported as required pursuant to § 63.2-1606 of the Code of Virginia. Penalties shall be imposed as follows:

a. For first offenses of nonreporting pursuant to § 63.2-1606 H of the Code of Virginia, the penalty shall be not more than \$500.

b. For second and subsequent offenses pursuant to § 63.2-1606 H of the Code of Virginia, the penalty shall be not less than \$100 and not more than \$1,000.

4. The commissioner or his designee shall notify the mandated reporter whether a civil penalty will be imposed and, if so, the amount of the penalty. This written notice shall describe the reasons for the imposition of the civil penalty. The date of notification shall be deemed to be the date the mandated reporter received written notice of the alleged violation. This notice shall include specifics of the violation charged and shall be sent by overnight express mail or by registered or certified mail, return receipt requested.

5. If a civil penalty is imposed, a copy of the notice to the mandated reporter shall be sent to the appropriate licensing, regulatory, or administrative agency and to the local director who recommended the imposition of the penalty.

6. Any mandated reporter has the right to appeal the decision to impose a civil penalty in accordance with § 2.2-4026 of the Code of Virginia and pursuant to Rules of the Supreme Court of Virginia.

