

ADULT PROTECTIVE SERVICES

Part I.

Definitions.

22VAC40-740-10. 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 services provided or arranged by the local department of ~~public welfare or~~ social services which are necessary to prevent abuse, neglect, or exploitation of an adult. These services consist of the identification, receipt, and investigation of complaints and reports of adult abuse, neglect, and exploitation for incapacitated persons 18 years of age and over and persons 60 years of age and over. This service also includes the provision of social casework and group work in an attempt to stabilize the situation. If appropriate and available, adult protective services may include the provision of or arranging for home based care, transportation, sheltered employment, adult day care, meal service, legal proceedings, placement and other activities to protect the adult.

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~~"Committee" means a person who has been legally invested with the authority, and charged with the duty of managing the estate or making decisions to promote the well-being of a person who has been determined by the circuit court to be totally incapable of taking care of his person or handling and managing his estate because of mental illness or mental retardation. A committee shall be appointed only if the court finds that the person's inability to care for himself or handle and manage his affairs is total.~~

"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.

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

"Emergency" means that an adult is living in conditions which present a clear and substantial risk of death or immediate and serious physical harm to himself or others.

"Exploitation" means the illegal use of an incapacitated adult or his resources for another's profit or advantage. This includes acquiring a person's resources through the use of that person's mental or physical incapacity; the disposition of the incapacitated person's property by a second party to the advantage of the second party and to the detriment of the incapacitated person; misuse of funds; acquiring an advantage through threats to withhold needed support or care unless certain conditions are met;

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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 person for whom a guardian or committee is requested. On the hearing of the petition for appointment of a guardian or committee, the guardian ad litem advocates for the person 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, mental retardation, physical illness or disability, 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.

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"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, mental retardation, 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 ~~§63.4-55.6~~ § 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.

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"Legitimate interest" means that a public or private agency or the representative of such an agency has a need for ~~client~~-specific information which is maintained by a local department of social services as a result of an adult protective services report or investigation. The information is needed in order to fulfill a recognized agency function which can reasonably be expected to serve the best interest of the ~~client~~ adult who is the subject of the information. Agencies ~~who~~ that may have a legitimate interest in such information are specified in 22VAC40-730-50 B.

"Local ~~agency~~ department" means any local department of social services/~~welfare~~ in the Commonwealth of Virginia.

"Mandated reporters" means those persons who are required pursuant to ~~§63.1-55.3~~ § 63.2-1606 of the Code of Virginia, to report to the local department of social services when such persons have reason to suspect that an adult is abused, neglected, or exploited. Persons required to make such reports include any person licensed to practice medicine or any of the healing arts, any hospital resident or intern, any person employed in the nursing profession, any person employed by a public or private agency or facility and working with adults, any person providing full-time or part-time care to adults for pay on a regularly scheduled basis, any person employed as a social worker, any mental health professional, and any law-enforcement officer.

"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

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intimidate, to cause sorrow or fear, to humiliate or ridicule. There must be evidence that it is the perpetrator's activity which 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. Neglect includes the failure of a caregiver, or some other 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:

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 when persons have conditions requiring special diets;
3. Shelter which is not structurally safe; has rodents or other infestations which may result in serious health problems; does not have a safe and accessible water supply, heat source or sewage disposal. Adequate shelter for a person will depend on the impairments of an individual person; however, the person must be protected from the elements which would seriously endanger his health (rain, cold, heat) and result in serious illness or debilitating conditions;

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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 adults 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 or mental injury or illness if it is not provided; and

6. An adult who is self-neglecting by not meeting his own basic needs due to mental or physical impairments. Basic needs refer to such things as food, clothing, shelter, health or medical care.

"Report" means an allegation by any person, to a local department of social services, 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.

"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.

"Voluntary protective services" means those services given to an adult who, after investigation, is determined to be in need of protective services and consents to receiving the services so as to mitigate the risk of abuse, neglect, or exploitation.

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Part II.

Policy.

22VAC40-740-20. Application.

A. 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.

B. Persons who may complete and sign an application for adult protective services on behalf of an adult who needs the service:

1. The adult who will receive the services or the adult's legally appointed guardian or ~~committee conservator~~;
2. Someone authorized by the adult; or
3. The local ~~agency~~ department.

C. Primary responsibility for the investigation when more than one local ~~agency~~ department may have jurisdiction under ~~§63.1-55.3~~ § 63.2-1606 of the Code of Virginia, shall be assumed by the local ~~agency~~ 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;

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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;

4. Where the abuse, neglect, or exploitation was discovered if the subject of the report is a nonresident who is temporarily in the Commonwealth.

D. When an investigation extends across city or county lines, local ~~agencies~~ departments in those cities or counties shall assist with the investigation at the request of the local ~~agency~~ department with primary responsibility.

22VAC40-740-30. Investigation.

A. This chapter establishes a time frame for beginning the adult protective services investigation and gives priority to situations believed to be the most critical.

B. Investigations shall be initiated by the local ~~agency~~ department:

1. Not later than 24 hours from the time the report was received if the situation is an emergency, as defined by ~~§ 63.1-55.2~~ § 63.2-1603 of the Code of Virginia.

2. Not later than five calendar days from the time the report was received for all other reports.

22VAC40-740-40. Dispositions.

A. The disposition provides a concise statement of how the report of adult abuse, neglect, or exploitation has been resolved.

B. Possible dispositions.

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1. The subject of the report needs protective services. This disposition shall be used when:

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

b. There is reason to suspect that the adult is at risk of abuse, neglect, or exploitation and needs protective services in order to reduce that risk.

2. The need for protective services no longer exists. The subject of the report no longer needs protective services. A review of the facts shows ~~convincing evidence or provides reason to suspect~~ 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 person who is the subject of the report ceases to be at risk of further abuse, neglect, or exploitation.

3. The report is unfounded. A review of the facts ~~shows no reason to suspect~~ 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.

C. The investigation shall be completed and a disposition assigned by the local ~~agency~~ 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.

22VAC40-740-50. Disclosure of Adult Protective Services Information.

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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 ~~agency~~ department, what information may be disclosed, and the procedure for disclosing the information.

B. ~~Agencies~~ Departments that have a legitimate interest in confidential information:

1. Department service staff (~~central and regional offices~~) have legitimate interest and shall have regular access to Adult Protective Services records maintained by the local agency department.

2. The following agencies have statutory or investigatory authority, and they have a legitimate interest in confidential information when such information is reasonably necessary for the fulfillment of their statutory or regulatory responsibilities and is consistent with the best interest of the adult who is the subject of the information:

a. Department of Mental Health, Mental Retardation and Substance Abuse Services, ~~Office of Human Rights~~;

b. ~~Department for Rights of the Disabled~~; Virginia Office for Protection and Advocacy;

c. Attorney General's Office, Medicaid Fraud Control Program;

d. Department for the Aging, ~~Office of the State Long Term Care Ombudsman~~;

e. Department of Health, ~~Division of Licensure and Certification~~ including the Center for Quality Health Care Services and Consumer Protection;

f. Department of Medical Assistance Services;

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g. Department of Health Professions;

h. Department for the ~~Visually Handicapped~~ Blind and Visually Impaired; and

i. Department of Social Services, including the Division of Licensing Programs~~);~~; and

j. The Office of the State Long-Term Care Ombudsman.

~~2. Public/private service providing~~ 3. Other public and private agencies including community services boards, area agencies on aging, ~~family service agencies,~~ and local health departments ~~and others~~ may have legitimate interest in confidential information.

C. Local agencies departments may release information to the following persons when the local agency department has determined the person making the request has legitimate interest and the release of information is in the best interest of the adult:

1. Representatives of agencies requesting disclosure when the agency has legitimate interest as identified in 22VAC40-740-50 B 1, 2, and 3;

2. Police or other law-enforcement officials who are investigating adult abuse, neglect, or exploitation;

3. A physician who is treating an adult whom he reasonably suspects is abused, neglected, or exploited;

4. The adult's legally appointed guardian;

5. A guardian ad litem who has been appointed for an adult who is the subject of an adult protective services report;

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6. A family member who is responsible for the welfare of an adult who is the subject of an adult protective services report;

7. An attorney representing a local ~~agency~~ department in an adult protective services case; or

8. The Social Security Administration.

D. Local [~~agencies~~ 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 determined the report to be unfounded, the person who made the report shall be notified of the finding pursuant to ~~§63.1-55.4~~ § 63.2-104 of the Code of Virginia; or

3. When a request for access to information is made pursuant to the ~~Privacy Protection Act, §2.1-382~~ Government Data Collection and Dissemination Practices Act, §2.2-3800 of the Code of Virginia.

E. Any or all of the following specific information may be disclosed at the discretion of the local [~~agency~~ department] to agencies or persons specified in subsection C of this section:

1. Name, address, age, race, sex of the adult who is the subject of the request for information:

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2. Name, address, age, race, sex of the person who perpetrated the abuse, neglect, or exploitation;

3. Description of the incident or incidents of abuse, neglect, or exploitation;

4. Description of medical problems;

5. Disposition of the adult protective services report; or

6. The protective service needs of the adult.

F. Agencies or persons who receive confidential information pursuant to subdivisions 1 through 8 of subsection C of this section shall provide the following assurances to the local ~~agency~~ department:

1. The purposes for which information is requested is related to the adult protective services goal for the client;

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 ~~agency~~ department or individual receiving the information except to the extent that disclosure is required by law.

G. Methods of obtaining assurances. Any one of the following methods may be used to obtain assurances required in subsection F of this section:

~~1. The use of form 032-01-040/2;~~

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

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~~3.~~ 2. State level agreements which provide blanket assurances required in subsection F of this section for all adult protective services cases; ~~or.~~

~~4. The use of form 032-02-702.~~

H. Notification that information has been disclosed. When information has been disclosed pursuant to this chapter, notice of the disclosure shall be given to the person who is the subject of the information or to his legally appointed guardian. If the client has given permission to release the information ~~via form 032-01-040/2~~, further notification is unnecessary.

22VAC40-740-60. Services provided.

A range of services must be made available to any abused, neglected, or 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. Service planning. A service plan which is based on the investigative findings and the assessment of the ~~client's~~ adult's need for protective services shall be developed. The service plan is the basis for the activities that the worker, the ~~client~~ adult, and other support persons will undertake to provide the services necessary to protect the adult ~~client~~.

2. 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 ~~agency~~

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department will assess the ~~client's~~ adult's service needs. A case should 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.

The disposition that the adult needs protective services may be based on convincing evidence that abuse, neglect, or exploitation has occurred or ~~it may be based on reason to suspect~~ that the adult is at risk of abuse, neglect, or exploitation without the provision of protective services.

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

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

4. Provision of protective services without the consent of the adult. Protective services without the consent of the adult are provided when so ordered by the court.

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FORMS

~~Confidentiality Form, 032-01-040/1~~

~~Assurances of Confidentiality, 032-02-702 (eff. 2/89)~~

I certify that this regulation is full, true, and correctly dated.

Debra Price Andres, Chair
State Board of Social Services
April 14, 2004