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INTRODUCTION

1.1 Definitions

When used in this chapter, the definitions below shall have the following meaning, unless the context clearly indicates otherwise:

Term	Definition
Adult	An individual 18 years of age or older, or under the age of 18 if legally emancipated (§ 51.5-144 of the Code of Virginia).
Adult	Any person 60 years of age or older, or any person 18 years of age or older who is incapacitated and who resides in the Commonwealth; provided, however, “adult” may include qualifying nonresidents who are temporarily in the Commonwealth and who are in need of temporary or emergency protective services (§ 63.2-1603 of the Code of Virginia). Note: This definition is used during the provision of Adult Protective Services.
Adult Abuse	The willful infliction of physical pain, injury, or mental anguish or unreasonable confinement of an adult as defined in § 63.2-1603 (§ 63.2-100 of the Code of Virginia).
Adult Exploitation	The illegal, unauthorized, improper, or fraudulent use of an adult as defined in § 63.2-1603 or his funds, property, benefits, resources or other assets for another's profit, benefit, or advantage, including a caregiver or person serving in a fiduciary capacity, or that deprives the adult of his rightful use of or access to such funds, property, benefits, resources, or

Term	Definition
	other assets. “Adult exploitation” includes (i) an intentional breach of a fiduciary obligation to an adult to his detriment or an intentional failure to use the financial resources of an adult in a manner that results in neglect of such adult; (ii) the acquisition, possession, or control of an adult’s financial resources or property through the use of undue influence, coercion, or duress; and (iii) forcing or coercing an adult to pay for goods or services or perform services against his will for another’s profit , benefit, or advantage if the adult did not agree or was tricked, misled, or defrauded into agreeing, to pay for such goods or services or perform such services. (§ 63.2-100 of the Code of Virginia).
Adult Foster Care	Room and board, supervision, and special services to an adult who has a physical or mental condition. Adult foster care may be provided by a single provider for up to three adults (§ 51.5-144 of the Code of Virginia).
Adult Neglect	An adult as defined in § 63.2-1603 is living under such circumstances that he is not able to provide for himself or is not being provided services 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 a written or oral expression of consent by that adult (§ 63.2-100 of the Code of Virginia).
Adult Services	Services that are provided by local departments of social services to an adult with an impairment (§ 51.5-144 of the Code of Virginia).
Adult with an impairment	An adult whose physical and mental capacity is diminished to the extent that he needs counseling or supervisory assistance or assistance with activities of daily living or instrumental activities of daily living (§ 51.5-144 of the Code of Virginia).
Department	The Department for Aging and Rehabilitative Services (§ 51.5-116 of the Code of Virginia).

Term	Definition
Incapacitated Person	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 responsible decisions concerning his well-being. This definition is for the purpose of establishing an adult's eligibility for <i>APS</i> and such adult may or may not have been found adjudicated incapacitated by a court (22 VAC 30-100-10).
Local Department	The local department of social services of any county or city in the Commonwealth (22 VAC 30-130-10).
Virginia Uniform Assessment Instrument or UAI	The department–designated assessment form. It is used to record information about the adult's level of service needs (22 VAC 30-130-10).

1.2 Organization of the department

The Commissioner of the Department for Aging and Rehabilitative Services (DARS), who is appointed by the Governor, directs the Adult Protective Services (APS) Division at the state level. *The APS Division includes APS and Adult Services (AS) Programs.*

The APS Division Home Office staff develops regulations, policies, and training, and allocates and manages funding used by local departments of social services (LDSS). The APS Division programs are state supervised and locally administered.

The Division's APS Regional Consultants and AS Specialists evaluate local programs, serve as resources in the areas of planning, organization, budgeting, and monitoring, and provide training, consultation, and technical assistance to local staff.

LDSS are the setting for direct contact with individuals requesting services. LDSS can assist individuals through benefits and services programs. LDSS determine eligibility for participation in service and benefits programs, authorize payments to individuals and vendors for services, and provide direct services to individuals. LDSS use federal, state, and local funds to deliver services.

1.3 Mission of APS Division programs

The mission of the APS Division programs is to:

- Protect older adults and incapacitated adults from abuse, neglect, or exploitation.
- Prevent the abuse, neglect, or exploitation of older adults and incapacitated adults.
- Prevent the inappropriate institutionalization of the elderly and impaired adults.
- Assist when necessary with appropriate placement.
- Maximize self-sufficiency.

1.4 Purpose of AS

AS allows the adult to remain in the least restrictive setting and function as independently as possible by establishing and/or strengthening appropriate family and social support systems or by supporting the adult in self-determination.

AS supports impaired adults age 18 or older, and their families when appropriate. AS may include the provision of case management, home-based care, transportation, adult day services, nutrition services, placement services, and other activities to *support* the adult.

1.5 Purpose of APS

APS establish and/or strengthen appropriate family and social support systems to protect adults at risk of abuse, neglect, or exploitation and to prevent the occurrence of abuse, neglect or exploitation.

APS consists of the identification, receipt, and investigation of reports of adult abuse, neglect or exploitation (or the risk thereof) of adults 60 years or older and incapacitated adults age 18 or older. If appropriate and available, APS may include the provision of or arrangement for home-based care, transportation, adult day services, meal services, legal proceedings, and other activities to protect the adult *and stop further maltreatment*.

1.6 Distinction between AS and APS

- Provision of AS to eligible adults
 - When there is no valid report of abuse, neglect, or exploitation or the risk thereof, and the adult requests services; or

- Following APS intervention when the adult continues to need ongoing services but is no longer at risk of abuse, neglect, or exploitation.
- Provision of APS to eligible adults
 - When the LDSS receives and investigates a valid report.
 - The investigation determines the adult needs and accepts protective services or the court orders protective services.

1.7 Philosophy of AS

The following principles are inherent to the provision of AS:

- The worker is an advocate for the adult.
- The adult is the focus of service delivery, and the worker shall preserve and protect the adult's right to self-determination even when there is a community or family request for the LDSS to intervene.
- The least restrictive and least intrusive intervention necessary to stabilize the situation is the most appropriate.
- The adult has the right to make decisions on his or her own behalf until he or she delegates that responsibility voluntarily or the court grants that responsibility to another individual.
- A family-based approach to service delivery enhances services, which support and strengthen the adult's informal support system.
- Coordination and combination of formal and informal support systems provide the most effective delivery system.

1.8 Philosophy of APS

The following principles are basic to the planning and delivery of APS:

- Proper protection of adults may require an APS worker to advocate for the right of the capable adult to make his or her own choices even when the community or family may oppose these choices.
- The least restrictive and least intrusive intervention necessary to protect the adult and stabilize the situation is the most appropriate.

- The adult has the right to make decisions on his or her own behalf until he or she delegates that responsibility voluntarily or the court grants that responsibility to another individual.
- Adult abuse, neglect, and exploitation are social problems and their resolution, for the most part, should be sought through the provision of social services and medical services.

However, the legal system often plays a role in remedying adult abuse, neglect, and exploitation and preventing further maltreatment. When appropriate, it is important for APS to partner with legal system representatives, such as law enforcement personnel, during investigations and service delivery.

- Services that support and strengthen the adult's informal support system are vital to the protection of adults who are at risk of abuse, neglect, or exploitation.
- Legal action is considered only after all other alternatives have been explored. When legal intervention is required, the least restrictive means of intervention shall be used.

1.9 Documentation and record retention

The system of record for AS and APS cases is a web-based case management system called PeerPlace. Service workers are required to use all appropriate PeerPlace screens to document AS, APS, and Guardianship Tracking case actions. PeerPlace permits service workers to scan, upload, and attach a variety of documents to a case record.

Worker case notes shall be documented in the PeerPlace record in the following locations:

- AS Case: Enter case notes in the AS registration notes screen.
- Invalid APS Report: Enter notes in APS registration notes screen.
- APS Investigation Case: Enter case notes in the APS investigation notes screen (not APS registration notes).
- Ongoing APS following an investigation with a needs and accepts disposition: Enter case notes in APS registration notes screen.
- Guardianship Report Tracking: Enter notes in the guardianship tracking registration notes screen.

Do not enter notes in "General Comments" screen as other non-LDSS PeerPlace users will be able to view these notes.

The LDSS shall maintain an adult's case records in a professional manner. All records shall be complete, accurate, and organized. All hard copy documents such as purchase of services orders and provider/vendor agreements shall be signed with name and professional title of the author and dated with the month, day, and year.

The Record Analysis Services (RAS) unit at the Library of Virginia is responsible for ensuring that public records are maintained and available throughout their life cycle. RAS publishes Records Retention and Disposition Schedules to assist localities and state agencies with the efficient and economical management of their public records. The record retention and disposition schedule for county and municipal governments social services records (GS-15) is available online on the Library of Virginia's website.

DARS is responsible for purging PeerPlace case records according to LVA requirements. The LDSS is responsible for purging hard copy records of older closed cases that were not entered into PeerPlace according to GS-15.

The Department of Medical Assistance Services (DMAS) requires that adult screening records be retained for *10 years after the date of case closure per GS-120*. All screening records are to be entered into eMLS. Any screening documentation not entered into eMLS (e.g. medical record supporting a diagnosis) may be attached to that individual's PeerPlace record.

Note: Child screening records shall be retained for at least seven (7) years after such minors have reached **21** years of age. Child screening records are not to be entered into PeerPlace. LDSS may maintain child screening documentation (e.g. medical record supporting a diagnosis) that are not stored in eMLS in a hard copy file or in another manner as designated by the LDSS.

1.10 Code of Virginia

The following serve as the legal basis for AS and APS Programs. Full text of each of the Code sections is available by accessing the Legislative Information System website.

1.10.1 Responsibility of the Department for AS

Section 51.5-145 of the Code of Virginia gives the Department the responsibility for the planning and oversight of adult services in the Commonwealth.

1.10.2 Homemaker, companion, or chore services

Section 51.5-146 the Code of Virginia authorizes the provision of companion, chore, or homemaker services that will allow individuals to attain or maintain self-care and

are likely to prevent or reduce dependency. Such services shall be provided to the extent that federal or state matching funds are made available to each locality.

1.10.3 Authority to provide adult foster care services

Sections 51.5-146 of the Code of Virginia authorizes each local board of social services to provide adult foster care services that may include recruitment, approval, and supervision of adult foster care homes.

1.10.4 Criminal history check for agency approved providers of services to adults

Section 63.2-1601.1 of the Code of Virginia requires each local board to conduct a criminal background check on agency-approved providers as a condition of approval.

1.10.5 Screenings, ALF assessment, and other relevant Code sections

Sections 51.5-146 and 63.2-1602 of the Code of Virginia requires each local board of social services to participate in:

- Screenings for Long Term Services and Supports (LTSS);
- Assessment for assisted living facilities;
- Long-term care service coordination with other local agencies; and
- Social services, as appropriate, to individuals discharged from state facilities or training centers and participate in other programs pursuant to state and federal law.

Pursuant to § 32.1-330 of the Code of Virginia, every individual who applies for or requests community or institutional long-term services and supports as defined in the state plan for medical assistance services shall be screened prior to admission to such community or institutional long-term services and supports to determine his need for long-term services and supports, including nursing facility services as defined in the state plan for medical assistance services. This includes screenings for:

- Nursing facility.
- Programs of All-Inclusive Care for the Elderly (PACE).
- CCC Plus waiver.

The *LTSS* screening team includes a nurse, social worker, or other assessor (i.e. family services specialist) designated by the Department, who is an employee of the

Department of Health or the local department of social services and a physician who is employed or engaged by the Department of health.

The Virginia Department of Health has oversight and responsibility for child screenings in Virginia. LDSS may opt in or opt out of child screening participation.

Pursuant to § 63.2-1804 of the Code of Virginia, in order to receive *an Auxiliary Grant* while residing in an ALF, an adult shall have been evaluated by a case manager or qualified assessor to determine his or her need for care. A UAI setting forth an individual's care needs shall be completed for all individuals upon admission and for all individuals residing in an ALF at subsequent intervals pursuant to regulations promulgated by the Commissioner of the Department for Aging and Rehabilitative Services.

Pursuant to § 37.2-837 of the Code of Virginia, "Discharge from State Hospitals or Training Centers, Conditional Release, and Trial or Home Visits for Consumers," the provision of social services to the individual discharged from a state hospital shall be the responsibility of the appropriate LDSS pursuant to regulations adopted by the State Board of Social Services.

Pursuant to § 37.2-505 of the Code of Virginia, "Coordination of Services for Preadmission Screening and Discharge Planning," local department of social services are required to serve on the preadmission and discharge planning team that is established by the local community services board. The team has responsibility for integrating the community services necessary to accomplish effective prescreening and pre-discharge planning for an individual referred to the community services board.

1.10.6 Establishment of APS Unit

Section 51.5-148 of the Code of Virginia authorizes the establishment of the Adult Protective Services Program in Virginia.

1.10.7 Adult Protective Services

Sections 63.2-1603, 63.2-1605 through 1606 and 63.2-1608 through 1610 of the Code of Virginia authorize provision of protective services to adults 60 years of age or older and to adults who are 18 years of age or older and who are incapacitated.

1.10.8 Community services boards; local government departments; and behavioral health authorities; powers and duties

Sections 37.2-504 and 37.2-605 of the Code of Virginia require local boards of social services to enter into a written agreement with community services boards or behavioral health authorities to specify what services will be provided to individuals. Annual review of the agreement is required.

1.10.9 Long-term care coordinating committees

The Code of Virginia requires the establishment of a local long-term care coordinating committee in each city or county or combination thereof. Pursuant to §§ 63.2-1602 of the Code of Virginia, the LDSS is a member of the committee. The purpose of the committee is to guide the coordination and administration of public long-term care services in the locality.

(§ 51.5-138 of the Code of Virginia). The governing body of each county or city, or a combination thereof, shall designate a lead agency and member agencies to accomplish the coordination of local long-term care services and supports. The agencies shall establish a long-term care coordination committee composed of, but not limited to, representatives of each agency. The coordination committee shall guide the coordination and administration of public long-term care services and supports in the locality. The membership of the coordination committee shall be comprised of, but not limited to, representatives of the local department of public health, the local department of social services, the community services board or community mental health clinic, the area agency on aging, the local nursing home pre-admission screening team, and representatives of housing, transportation, and other appropriate local organizations that provide long-term care services. A plan shall be implemented that ensures the cost-effective utilization of all funds available for long-term care services and supports in the locality. Localities are encouraged to provide services and supports within each category of service in the continuum and to allow one person to deliver multiple services, when possible.

1.11 Department regulations

The following serve as the regulatory legal basis for the Adult Services/Adult Protective Services Program. The full text of regulations is accessible via the Legislative Information System website.

22 VAC 30-100	Adult Protective Services
22 VAC 30-110	Assessment in Assisted Living Facilities
22 VAC 30-120	Adult Services Approved Providers
22 VAC 30-130	Adult Services Standards

1.12 Service Appeals

Pursuant to § 51.5-147 of the Code of Virginia an applicant for or recipient of home-based and adult foster care services may appeal the local board's decision in granting, denying,

changing, or discontinuing services within 30 days after receiving written notice of the decision. An applicant or recipient aggrieved by the failure of the local board to make a decision within a reasonable time may also appeal to the Commissioner.

The adult may use the “Appeal to Department for Aging and Rehabilitative Services” form available on the DSS intranet and on the DARS public site to request an appeal. Additional information on appeals is located in Chapter 9, Appeals.

1.13 APS Division Program report

Each year the APS Division compiles an annual report of statistical data on each of its programs. The report is located the “Publications” page under the “About Us” heading on the DARS public site.

1.14 APS Minimum Training Standards

Section 51.5-148 of the Code of Virginia requires the establishment of minimum training standards for APS workers in the Commonwealth. APS workers shall complete the required training within one year from the date of implementation of the minimum training standards, within the first year of their employment or within the first year of their being assigned to work in APS.

Continuing education after the first year of training is also required as a part of the minimum training standards plan.

The minimum training standards are available to workers on the DSS intranet.

1.14.1 APS on-call workers

CPS workers and others who are responsible for APS on-call or APS intake activities but do not conduct APS investigations, must take **ADS 5052: APS for On-Call Workers**, an online course offered through the Virginia Learning Center. This online course is in lieu of the full curriculum of required APS core courses.

Appendix A: Division Information on the web

APS Division materials including manuals, educational materials and reports are located on the DSS intranet and DARS public site. The DSS intranet, which is accessible only to LDSS staff and DARS APS Division staff, also provides information on other DSS divisions and programs.

1.14.2 Manuals, documents, and forms

AS and APS manuals and other documents are available on the DSS intranet at the Portfolios tab, under the “Partnerships and Initiatives” heading, “Adult Protective Services/Auxiliary Grants” link.

APS Division forms are posted on the DSS intranet and the DARS public site. Forms are usually available in PDF and Word format. The worker can download these forms, as the APS Division cannot provide copies of forms.

1.14.3 Other DSS forms

Other DSS forms are also located on the DSS intranet.

1.14.4 PeerPlace information

PeerPlace information is available on the DSS intranet at the Portfolios tab, under “Partnerships and Initiatives” heading, “Adult Protective Services/Auxiliary Grants” link, then select the PeerPlace page.

- User Guides
- Resources & Job Aids
- Tip Sheets
- Webinar Schedule
- LDSS Program Admin Job Aids
- AS, APS, & Guardianship Registration Closing Codes and Definitions

1.14.5 Medicaid provider manuals and forms

The DMAS Medicaid Enterprise System (MES) web portal has downloadable copies of all its program manuals and forms. Once on this site, manuals may be viewed by selecting “Providers” and then selecting “Manual Library” from the “Provider Menu.” Forms may be found by selecting “MES Forms Library” from the “Provider Menu.”

The DMAS website also has information concerning the various Medicaid LTSS programs and other services offered by DMAS.

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ADULT PROTECTIVE SERVICES

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2

ADULT PROTECTIVE SERVICES

2.1 Introduction

Protective services to adults include the receipt and investigation of reports of abuse, neglect, or exploitation of adults, as well as reports that adults are at risk of abuse, neglect, or exploitation. Adult at risk refers to an adult who is in an endangering situation that may result in imminent injury, death, and/or loss without the provision of adult protective services.

Protective services also include the following:

- Assessing service needs.
- Determining whether the subject of the report is in need of protective services.
- Documenting the need for protective services.
- Specifying what services are needed.
- Providing or arranging for service delivery.

Services to adults whose situations do not allege abuse, neglect, or exploitation, or the risk of abuse, neglect, or exploitation may be provided under Adult Services (AS).

2.2 Legal basis

Sections 63.2-1603, § 63.2-1605 through 1606 and 63.2-1608 through 63.2-1610 of the Code of Virginia address the provision of protective services by local departments of social services (LDSS). Throughout this chapter, indented text marked with a blue, vertical line denotes verbatim content from the Code of Virginia and/or Adult Protective Services (APS) Regulations (22 VAC 30-100).

2.3 Charge to LDSS

(§ 63.2-1605 of the Code of Virginia). Each local board, to the extent that federal or state matching funds are made available to each locality, shall provide, pursuant to regulations and subject to supervision of the Commissioner for Aging and Rehabilitative Services, adult protective services for adults who are found to be abused, neglected or exploited and who meet one of the following criteria: (i) the adult is 60 years of age or older or (ii) the adult is 18 years of age or older and is incapacitated. The requirement to provide such services shall not limit

the right of any individual to refuse to accept any of the services so offered, except as provided in § 63.2-1608.

2.4 Definitions

The following words and terms are defined in 22 VAC30-100, Adult Protective Services, unless indicated otherwise.

<u>Term</u>	<u>Definition</u>
Abuse	The willful infliction of physical pain, injury, or mental anguish or unreasonable confinement of an adult as defined in 63.2-1603 of the Code of Virginia.
Adult	Any person 60 years of age or older, or any person 18 years of age or older who is incapacitated and who resides in the Commonwealth; provided, however, “adult” may include qualifying nonresidents who are temporarily in the Commonwealth and who are in need of temporary or emergency protective services.
Adult Protective Services or APS	Services provided by the local department that are necessary to protect and adult as defined in § 63.2-1603 of the Code of Virginia from abuse, neglect, or exploitation.
APS Case Management Information System	The computer system that collects and maintains information on APS reports, investigations, and service provision. The system is the official state automated system for APS.
Agent	A person granted authority to act for a principal under a power of attorney, whether denominated an agent, attorney-in-fact, or otherwise. The term includes an original agent, co-agent, successor agent, and a person to which an agent's authority is delegated (64.2-1600 of the Code of Virginia).
Aggravated Sexual Battery	Sexual abuse in which: the complaining witness is less than 13 years of age, or the act is accomplished through the use of the complaining witness's mental incapacity or physical helplessness, or the act is accomplished against the will of the complaining witness by force, threat or intimidation, and the complaining witness is at least 13 but less than 15 years of age, or the accused

<u>Term</u>	<u>Definition</u>
	causes serious bodily or mental injury to the complaining witness, or the accused uses or threatens to use a dangerous weapon (§ 18.2-67.3 of the Code of Virginia).
Annual Report	The report required to be filed by a guardian pursuant to § 64.2-2020. (§ 64.2-2000 of the Code of Virginia).
Collateral	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	The Commissioner of the Department.
Complaining Witness	The person alleged to have been subjected to rape, forcible sodomy, inanimate or animate object sexual penetration, marital sexual assault, aggravated sexual battery, or sexual battery (§ 18.2-67.10 of the Code of Virginia).
Conservator	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.” "Conservator" includes (i) a local or regional program designated by the Department for Aging and Rehabilitative Services as a public conservator pursuant to Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5 or (ii) any local or regional tax-exempt charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code to provide conservatorial services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person. If a tax-exempt charitable organization has been designated by the Department for Aging and Rehabilitative Services as a public conservator, it may also serve as a conservator for other individuals. (§ 64.2-2000 of the Code of Virginia).
Department or DARS	The Department for Aging and Rehabilitative Services.

<u>Term</u>	<u>Definition</u>
Director	The director or his designated representative of the local department of social services of any city or county in the Commonwealth.
Disorder	A disorder includes any physical or mental disorder or impairment, whether caused by injury, disease, genetics, or other cause (§ 37.2-1100 of the Code of Virginia).
Disposition	The determination by the local department of whether or not adult abuse, neglect, or exploitation has occurred.
Documentation	Information and materials, written or otherwise, concerning allegations, facts, and evidence.
Exploitation	The illegal, unauthorized, improper, or fraudulent use of an adult as defined in § 63.2-1603 of the Code of Virginia or the adult's funds, property, benefits, resources or other assets for another's profit, benefit, or advantage, including a caregiver or person serving in a fiduciary capacity, or that deprives the adult of his rightful use of or access to such funds, property, benefits, resources, or other assets. "Adult exploitation" includes (i) an intentional breach of a fiduciary obligation to an adult to his detriment or an intentional failure to use the financial resources of an adult in a manner that results in neglect of such adult; (ii) the acquisition, possession, or control of an adult's financial resources or property through the use of undue influence, coercion, or duress; and (iii) forcing or coercing an adult to pay for goods or services or perform services against his will for another's profit, benefit, or advantage if the adult did not agree or was tricked, misled, or defrauded into agreeing, to pay for such goods or services or perform such services.
Emergency	(i) An adult is living in conditions that present a clear and substantial risk of death or immediate and serious physical harm to himself or others or (ii) an adult has been, within a reasonable period of time, subjected to an act of violence, force, or threat or been subjected to financial exploitation. (§ 63.2-1603 of the Code of Virginia).
Family Abuse	Any act involving violence, force, or threat that results in bodily injury or places one in reasonable apprehension of death, sexual

Term

Definition

assault or bodily injury and that is committed by a person against such person's family or household member. Such act includes, but is not limited to, any forceful detention, stalking, criminal sexual assault in violation of Article 7 (§18.2-61 et seq.) of Chapter 4 of Title 18.2, or any criminal offense that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury (§16.1-228 of the Code of Virginia).

**Family or
Household
Member**

- The person's spouse, whether or not he or she resides in the same home with the person;
- The person's former spouse, whether or not he or she resides in the same home with the person;
- The person's parents, stepparents, children, stepchildren, brothers, sisters, half-brothers, half-sisters, grandparents, and grandchildren, regardless of whether such persons reside in the same home with the person;
- The person's mother-in-law, father-in-law, sons-in-law, daughters-in-law, brothers-in-law, and sisters-in-law who reside in the same home with the person;
- Any individual who has a child in common with the person, whether or not the person and that individual have been married or have resided together at any time; or
- Any individual who cohabits or who, within the previous 12 months, cohabited with the person, and any children of either of them then residing in the same home with the person (§ 16.1-228 of the Code of Virginia).

**Financial
Institution Staff**

Any employee, agent, qualified individual, or representative of a bank, trust company, savings institution, loan association, consumer finance company, credit union, investment company, investment advisor, securities firm, accounting firm, or insurance company. (§ 63.2-1603 of the Code of Virginia).

Guardian

A person appointed by the court who is responsible for the personal affairs of an incapacitated person, including responsibility for making decisions regarding the person's

Term

Definition

support, care, health, safety, habilitation, education, therapeutic treatment, and, if not inconsistent with an order of involuntary admission, residence. Where the context plainly indicates, the term includes a "limited guardian" or a "temporary guardian." The term includes (i) a local or regional program designated by the Department for Aging and Rehabilitative Services as a public guardian pursuant to Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5 or (ii) any local or regional tax-exempt charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code to provide guardian services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person. If a tax-exempt charitable organization has been designated by the Department for Aging and Rehabilitative Services as a public guardian, it may also serve as a guardian for other individuals. (§ 64.2-2000 of the Code of Virginia).

Guardian Ad Litem

An attorney appointed by the court to represent the interest of the adult for whom a guardian or conservator is requested.

Incapable of Making an Informed Decision

Unable to understand the nature, extent, or probable consequences of a proposed treatment or unable to make a rational evaluation of the risks and benefits of the proposed treatment as compared with the risks and benefits of alternatives to the treatment. Persons with dysphasia or other communication disorders who are mentally competent and able to communicate shall not be considered incapable of giving informed consent (§ 37.2-1100 of the Code of Virginia).

Incapacitated Person

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 responsible decisions concerning his or her well-being. For the purpose of establishing an adult's eligibility for APS, such adult may or may not have been adjudicated incapacitated by a court.

<u>Term</u>	<u>Definition</u>
Intimate Parts	The genitalia, anus, groin, breast, or buttocks of any person, or the chest of a child under the age of 15 (§ 18.2-67.10 of the Code of Virginia).
Involuntary Protective Services	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	A preliminary judgment of a local department of social services that an adult is unable to consent to receive needed services for reasons that relate to an emotional or psychiatric condition, intellectual disability, developmental disability, or other reasons that 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 local department shall 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	That a person has been adjudicated incapacitated by a circuit court because of a mental or physical condition that renders him, either wholly or partially, incapable of taking care of himself or his estate.
Legitimate Interest	A lawful, demonstrated right to access the requested information pursuant to §51.5-122 of the Code of Virginia.
Local Department	Any local department of social services in the Commonwealth of Virginia.
Mandated Reporters	Those persons identified in §63.2-1606 of the Code of Virginia who are required to report to APS when such persons have reason to suspect that an adult is abused, neglected, or exploited or is at risk of abuse, neglect, or exploitation.
Mental Anguish	A state of emotional pain or distress resulting from verbal or behavioral actions of an alleged perpetrator. The intent of the action is to threaten or intimidate, to cause sorrow or fear, to humiliate, change behavior or ridicule the adult. There must be

Term

Definition

observable or documented evidence that it is the alleged perpetrator's action that has caused the adult's emotional pain or distress.

Neglect

An adult as defined in § 63.2-1603 of the Code of Virginia is living under such circumstances that he is not able to provide for himself or is not being provided services 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 a 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:

1. The lack of clothing considered necessary to protect an adult'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 that 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 depends on the impairments of the 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 paid or unpaid caregiver who provides the supervision necessary to protect the safety and well-being of an adult in his care;

<u>Term</u>	<u>Definition</u>
	<p>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;</p> <p>6. Medical neglect includes, but is not limited to, the withholding of medication or aids needed by the adult including dentures, eye glasses, hearing aids, or walkers. It also includes the unauthorized administration of prescription drugs, over-medicating or under-medicating, and the administration of drugs for other than medical reasons, as determined by a licensed health care professional; or</p> <p>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.</p>
Notification	Informing designated and appropriate individuals or agencies of the local department's action and the individual's rights.
Preponderance of Evidence	Circumstances in which 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.
Principal	An individual who grants authority to an agent in a power of attorney (§ 64.2-1600 of the Code of Virginia).
Report	An allegation made in writing or orally by any person that an adult is suspected of being abused, neglected, or exploited, or at risk of being abused, neglected, or exploited. The report shall be made to the local department or APS hotline.
Responsible Person	An individual who is authorized by state law to make decisions concerning the adult and to receive information about the adult.
Serious Bodily Injury or Disease	The term "serious bodily injury or disease" shall include but is not be limited to (i) disfigurement, (ii) a fracture, (iii) a severe burn or laceration, (iv) mutilation, (v) maiming, or (vi) life-threatening

<u>Term</u>	<u>Definition</u>
	internal injuries or conditions, whether or not caused by trauma (§ 18.2-369 of the Code of Virginia).
Service Plan	A written 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.
Sexual Abuse	An act committed with the intent to sexually molest, arouse, or gratify any person, where: <ul style="list-style-type: none">• The accused intentionally touches the complaining witness's intimate parts or material directly covering such intimate parts;• The accused forces the complaining witness to touch the accused's, the witness's own, or another person's intimate parts or material directly covering such intimate parts; or• The accused forces another person to touch the complaining witness's intimate parts or material directly covering such intimate parts (§ 18.2-67.10 of the Code of Virginia).
Sexual Battery	Any sexual abuse against the will of the complaining witness by force, threat, intimidation, or ruse (§ 18.2-67.4 of the Code of Virginia).
Uniform Assessment Instrument or UAI	The department's designated assessment form (22 VAC 30-110-10).
Unreasonable Confinement	The use of physical or chemical restraints, isolation, or any other means of confinement when there is no emergency and for reasons other than the adult's safety or well-being or the safety of others.
Valid Report	The local department has evaluated the information and allegations of the report and determined that the local department

Term

Definition

shall conduct an investigation because all of the elements of 22VAC30-100-20 C for a valid report are present.

2.5 Adult Protective Services intake

2.5.1 Accepting reports

APS intake includes the receipt of reports concerning the abuse, neglect, or exploitation of adults. An LDSS may receive reports via:

- The 24-hour APS hotline.
- A phone call to the LDSS.
- The APS online reporting portal.
- Other means such as fax or mail.

Reports received by the LDSS are evaluated for validity and either sent for investigation or determined invalid and not investigated.

(§ 63.2-1605 of the Code of Virginia). Upon receipt of the report pursuant to § 63.2-1606, the local department shall determine the validity of such report and shall initiate an investigation within 24 hours of the time the report is received in the local department.

Valid reports that adults are at risk of abuse, neglect, or exploitation shall be accepted and investigated to determine if the individual needs protective services and, if so, what services are needed. Circumstances that fall within the purview of other licensing, regulatory, or other legal authority shall be referred to those entities at the time the report is received. However, such a referral does not negate the LDSS responsibility to investigate a report that is determined to be valid.

(§ 63.2-1605 of the Code of Virginia). 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.

2.5.2 Timeframe for entering reports into PeerPlace

The LDSS shall enter the report into PeerPlace, the APS case management information system **within 48 hours** of its receipt by the LDSS. (22VAC30-100-20).

An APS report in the agency's PeerPlace queue means the report has been received by the LDSS.

Reports received via fax or mail are received upon the LDSS physically obtaining the report. The LDSS should have a system in place to ensure prompt receipt of reports sent via fax or mail.

2.5.3 Source of reports

2.5.3.1 Mandated reporters

Virginia law requires that certain individuals, who have a reason to suspect that an adult is abused, neglected, or exploited, shall report the matter immediately to the LDSS or to the APS hotline.

(§ 63.2-1606 of the Code of Virginia). Matters giving reason to suspect the abuse, neglect or exploitation of adults shall be reported immediately upon the reporting person's determination that there is such reason to suspect.

(§ 63.2-1606 of the Code of Virginia). The report shall be made in accordance with subsection A to the local department of the county or city wherein the adult resides or wherein the adult abuse, neglect or exploitation is believed to have occurred or to the adult protective services hotline. Nothing in this section shall be construed to eliminate or supersede any other obligation to report as required by law.

Persons required to report suspected abuse, neglect, or exploitation include:

(§ 63.2-1606 of the Code of Virginia). 1. Any person licensed, certified, or registered by health regulatory boards listed in § 54.1-2503, with the exception of persons licensed by the Board of Veterinary Medicine;

- **Board of Nursing:** Registered Nurse (RN); Licensed Nurse Practitioner (LNP); Licensed Practical Nurse (LPN); Clinical Nurse Specialist; Certified Massage Therapist; Certified Nurse Aide (CNA); Medication Aides.
- **Board of Medicine:** Doctor of Medicine and Surgery, Doctor of Osteopathic Medicine; Doctor of Podiatry; Doctor of Chiropractic; Interns and Residents; University Limited Licensee; Physician Assistant; Respiratory Therapist; Occupational Therapist; Radiological Technologist; Radiological Technologist Limited; Licensed Acupuncturists; Certified Athletic Trainers.

- **Board of Pharmacy:** Pharmacists; Pharmacy Interns; Permitted Physicians; Medical Equipment Suppliers; Restricted Manufacturers; Humane Societies; Physicians Selling Controlled Substances; Wholesale Distributors; Warehousemen, Pharmacy Technicians.
- **Board of Dentistry:** Dentists and Dental Hygienists Holding a License, Certification, or Permit Issued by the Board.
- **Board of Funeral Directors and Embalmers:** Funeral Establishments; Funeral Services Providers; Funeral Directors; Funeral Embalmers; Resident Trainees; Crematories; Surface Transportation and Removal Services; Courtesy Card Holders.
- **Board of Optometry:** Optometrist.
- **Board of Counseling:** Licensed Professional Counselors; Certified Substance Abuse Counselors; Certified Substance Abuse Counseling Assistants; Certified Rehabilitation Providers; Marriage and Family Therapists; Licensed Substance Abuse Treatment Practitioners.
- **Board of Psychology:** School Psychologist; Clinical Psychologist; Applied Psychologist; Sex Offender Treatment Provider; School Psychologist – Limited.
- **Board of Social Work:** Registered Social Worker; Associate Social Worker; Licensed Social Worker; Licensed Clinical Social Worker
- **Board of Long-Term Care Administrators:** Nursing Home Administrator; ALF Administrator.
- **Board of Audiology and Speech Pathology:** Audiologists; Speech-Language Pathologists; School Speech-language Pathologists.
- **Board of Physical Therapy:** Physical Therapist; Physical Therapist Assistant.

The above list may not include every professional licensed by the Department of Health Professions (DHP). A complete list of professionals licensed by each health regulatory board is available on the DHP website.

(§ 63.2-1606 of the Code of Virginia). 2. Any mental health services provider as defined in § 54.1-2400.1;

3. Any emergency medical services provider certified by the Board of Health pursuant § 32.1-111.5, unless such provider 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;
8. Any person who engages in the practice of behavior analysis as defined in § 54.1-2900.

2.5.3.1.1 Requirements of employers of mandated reporters

(§ 63.2-1606 of the Code of Virginia). An employer of a mandated reporter shall not prohibit a mandated reporter from reporting directly to the local department or to the adult protective services hotline.

(§ 63.2-1606 of the Code of Virginia). Employers whose employees are mandated reporters shall notify employees upon hiring of the requirement to report.

Employers may use the Acknowledgment of Mandated Reporter Status form to document notification to their mandated reporter staff. Page two of the form contains a list of the indicators of adult abuse, neglect, or exploitation and is to be retained by the employee who signed the form.

2.5.3.1.2 Training for mandated reporters

LDSS are encouraged to notify and provide training directly to mandated reporters in their communities as well as to their employers to supplement state office efforts to inform mandated reporters of their responsibilities.

Mandated reporters of adult abuse, neglect, or exploitation may learn more about their mandated reporting responsibilities by taking the free, e-learning

course “DSA Mandated Reporters: Recognizing Adult Abuse, Neglect, and Exploitation in Virginia” available in the Virginia Learning Center and on the DARS public site. The same e-learning titled “ADS5055: Recognizing Adult Abuse, Neglect, and Exploitation in Virginia,” is available on the DSS public site.

2.5.3.1.3 Duplicate reports from mandated reporters

A mandated reporter has fulfilled the statutory responsibility to report suspected abuse, neglect, and exploitation to APS when the following information has been provided to the LDSS via phone or the APS online reporting portal, or to the 24-hour APS hotline at **1-888-832-3858** (1-888-83ADULT):

- A description of the situation.
- The information that caused the suspicion of abuse, neglect, or exploitation.

A mandated reporter who makes a report has no responsibility to make additional reports when the situation of the adult who is the subject of the report remains unchanged and when the mandated reporter has not received written notification from APS that the APS investigation has been completed.

When additional incidents of abuse, neglect, or exploitation are suspected, or when there is additional information relative to the original report, the mandated reporter is obligated to make an additional report or make the additional information available to the APS worker as prescribed by law (§ 63.2-1606 of the Code of Virginia).

(§ 63.2-1606 of the Code of Virginia). No person or entity shall be obligated to report any matter if the person or entity has actual knowledge that the same matter has already been reported to the local department or to the adult protective services hotline.

2.5.3.1.4 Exceptions to immediate reporting requirement for mandated reporters

(§ 63.2-1606 of the Code of Virginia). If a person required to report under this section receives information regarding abuse, neglect or exploitation while providing professional services in a hospital, nursing facility or similar institution, then he may, in lieu of reporting, notify the person in charge of the

institution or his designee, who shall report such information, in accordance with the institution's policies and procedures for reporting such matters, immediately upon his determination that there is reason to suspect abuse, neglect or exploitation.

Mandated reporters are encouraged to document when they suspect adult abuse, neglect, or exploitation and have reported it to the person in charge of the institution in accordance with the institution's policies and procedures for reporting such matters.

(§ 63.2-1606 of the Code of Virginia). Medical facilities inspectors of the Department of Health are exempt from reporting suspected abuse immediately while conducting federal inspection surveys in accordance with § 1846 of Title XVIII and Title XIX of the Social Security Act, as amended, of certified nursing facilities as defined in § 32.1-123.

Findings of abuse, neglect, or exploitation by the medical facilities inspectors shall be reported to APS after the exit interview with the facility.

2.5.3.1.5 Civil penalty for failure to report

(§ 63.2-1606 of the Code of Virginia). Any person who fails to make a required report or notification pursuant to subsection A shall be subject to a civil penalty of not more than \$500 for the first failure and not less than \$100 nor more than \$1,000 for any subsequent failures. Civil penalties under subdivision A 7 (Law enforcement) shall be determined by a court of competent jurisdiction, in its discretion. All other civil penalties under this section shall be determined by the Commissioner for Aging and Rehabilitative Services or his designee.

(22 VAC 30-100-70). A. The commissioner 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 law-enforcement officers shall be determined by a court of competent jurisdiction at its discretion.

22 VAC 30-100-80 addresses the procedures for imposition of a civil penalty for failure to report.

(22 VAC 30-100-80). 1. When a director determines that a mandated reporter failed to report as required by § 63.2-1606 of the Code of Virginia, the director shall prepare a written statement of fact on a form provided by the department concerning the mandated reporter's failure to report. The director also shall prepare a letter notifying the mandated reporter of the intent to request imposition of a civil penalty. The letter 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 director's notification shall be the date of the letter to the mandated reporter. Any supporting documentation that the director considered in requesting the imposition of a civil penalty shall be provided to the mandated reporter. The letter, statement of facts, and any supporting documentation that the director considered in requesting the imposition of a civil penalty shall be sent to the mandated reporter by registered or certified mail, return receipt requested.

The local director may request that the Commissioner for DARS impose a civil penalty on the mandated reporter for failure to report by completing the form "Request to Impose a Civil Penalty." This completed form serves as the written statement of fact concerning the mandated reporter's failure to report.

(22 VAC 30-100-80). 2. At such time as the letter required under subdivision 1 of this subsection is sent, the director shall send a letter to the commissioner requesting the imposition of a civil penalty on the mandated reporter for failure to report. The statement of fact and the letter to the mandated reporter shall accompany the letter to the commissioner. Any supporting documentation that the director considered in requesting the imposition of a civil penalty shall be provided to the commissioner.

The director shall provide the mandated reporter with written notification of the intent to request that a civil penalty be imposed. The written notification shall state the mandated reporter's right to submit a written statement to the Commissioner concerning the failure to report. A sample letter to the mandated reporter is found on the DSS intranet. The director's statement of fact shall accompany the written notification to the mandated reporter. The director's letter to the mandated reporter shall be mailed by registered or certified mail, return receipt requested.

Any supporting documentation that the director considered in his decision to request that a civil penalty be imposed shall also be provided to the mandated reporter. Confidential information, such as the identity of the reporter, shall be redacted.

(22 VAC 30-100-80). B. Within 45 calendar days from the date of the director's notification to the mandated reporter of intent to request the imposition of a civil penalty, the mandated reporter may submit a written statement concerning his failure to report to the commissioner. Statements received by the commissioner after 45 calendar days will be deemed untimely and will not be considered.

The mandated reporter's written statement concerning his failure to report shall be received by the Commissioner within 45 days of the director's notification to the mandated reporter of intent to request the imposition of a civil penalty. The Commissioner shall not consider a statement received after 45 days.

(22 VAC 30-100-80). 1. The commissioner's designee shall review the director's statement of facts, the mandated reporter's written statement, and any supporting documentation provided by the director in determining whether to impose a civil penalty.

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

(22 VAC 30-100-80). 3. Within 30 calendar days after the deadline for the commissioner's receipt of the mandated reporter's written statement, the commissioner's designee shall issue a final decision to the mandated reporter in writing, addressing whether a civil penalty will be imposed. The final decision shall include specifics of the violation charged, the reasons for the imposition of the civil penalty, and the amount of the penalty. The date of the final decision is the date the final decision is sent to the mandated reporter. The commissioner's designee shall also send a copy of the final decision to the director who recommended the imposition of the civil penalty.

2.5.3.1.6 Reconsideration of final decision to impose civil penalty

Reconsideration of the final decision imposing a civil penalty is conducted in accordance with § 2.2-4023.1 of the Code of Virginia. The Commissioner's review on reconsideration shall not include testimony, statements, or documentary submissions that were not included in the director's intent to request imposition of a civil penalty or presented to the Commissioner or the designee prior to the issuance of the final decision. (22 VAC 30-100-80).

2.5.3.1.7 Appeal of imposition of civil penalty

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 Part 2A of the Rules of the Supreme Court of Virginia. (22 VAC 30-100-80).

2.5.3.2 Financial institution staff

(§ 63.2-1606 of the Code of Virginia). Any financial institution staff who suspects that an adult has been exploited financially may report such suspected financial exploitation and provide supporting information and records to the local department of the county or city wherein the adult resides or wherein the exploitation is believed to have occurred or to the adult protective services hotline.

2.5.3.3 Voluntary reports

(§ 63.2-1606 of the Code of Virginia). Any person other than those specified in subsection A who suspects that an adult is an abused, neglected or exploited adult may report the matter to the local department of the county or city wherein the adult resides or wherein the abuse, neglect or exploitation is believed to have occurred or to the adult protective services hotline.

2.5.3.4 Anonymous reports

Any individual has the right to make an anonymous report of suspected abuse, neglect, or exploitation or a report that an adult is at risk of abuse, neglect, or exploitation. No one can require that the reporter disclose his or her identity as a condition for accepting the report. All valid reports shall be investigated regardless of whether the reporter is identified. If a mandated reporter reports anonymously, he or she shall be encouraged to document that a report was made.

2.5.3.5 Self-reports

Requests for protective services come in many forms and the words “neglect, abuse, or exploitation” may not always be used by the adult or the reporter requesting services. The fact that an adult requests services for himself or herself does not necessarily mean that he or she is able to protect himself or herself. A self-referral for protective services is appropriate when the described condition falls within the definition of an adult being abused, neglected, or exploited, or an adult at risk of abuse, neglect, or exploitation.

2.5.3.6 LDSS worker generated reports

When an LDSS worker recognizes that the circumstances meet the criteria for an APS report, a new report is made to the appropriate LDSS, and a new APS Program registration is entered in PeerPlace.

2.5.3.7 Electronic reports

Hotline and APS online portal reports are electronically submitted via PeerPlace to the LDSS of jurisdiction. If the electronic report indicates sexual abuse, death, serious bodily injury that is a result of abuse or neglect, suspected financial exploitation, or other criminal activity involving abuse or neglect that places the adult in imminent danger of death or serious bodily harm has occurred, the LDSS shall notify local law enforcement. The LDSS has responsibility for determining if the report received from the hotline or portal is a valid report.

If the LDSS determines the report was submitted to the incorrect locality, the LDSS will transfer the report in PeerPlace to the correct locality.

The date/time that the report is received in the queue by the LDSS from the hotline or portal determines the timeframe for initiating an investigation. Upon receipt of a hotline report, the LDSS shall contact the reporter and review reporter rights and acknowledgements. The portal enables the reporter to acknowledge reporter rights.

2.5.3.8 Types of reports

2.5.3.8.1 Reports of sexual abuse, death, serious bodily injury, financial exploitation, and other criminal activity

(§ 63.2-1605 of the Code of Virginia). The local department shall immediately refer the matter and all relevant documentation to the local law-enforcement agency where the adult resides or where the alleged abuse, neglect, or exploitation

took place or, if these places are unknown, where the alleged abuse, neglect, or exploitation was discovered for investigation, upon receipt of an initial report pursuant to § 63.2-1606 involving any of the following or upon determining, during the course of an investigation pursuant to this article, the occurrence of any of the following:

1. Sexual abuse as defined in § 18.2-67.10;
2. Death that is believed to be the result of abuse or neglect;
3. Serious bodily injury or disease as defined in § 18.2-369 that is believed to be the result of abuse or neglect;
4. Suspected financial exploitation of an adult; or
5. Any other criminal activity involving abuse or neglect that places the adult in imminent danger of death or serious bodily harm.

Local law-enforcement agencies shall provide local departments with a preferred point of contact for referrals.

The APS worker shall contact the local law-enforcement agency to coordinate the investigation. If the law-enforcement agency declines to participate in the APS investigation, the APS worker shall continue the investigation without the participation of the law-enforcement agency. A law enforcement agency's decision not to investigate has no bearing on whether the APS investigation proceeds.

2.5.3.8.2 Additional guidance on suspected adult financial exploitation

Pursuant to § 63.2-1605 of the Code of Virginia LDSS intake workers shall refer suspected adult financial exploitation immediately to local law enforcement.

An adult may experience a financial loss due the actions of an alleged perpetrator including the illegal, unauthorized, improper, or fraudulent use of his funds, property, benefits, resources or other assets including but not limited to:

- Credit cards
- Bank accounts

- Stocks and other investments
- Public assistance payments
- Jewelry
- Other valuables (e.g., antique coins or furniture)
- Personal property such as a car

2.5.3.8.3 Reports of deaths that are results of abuse and neglect

(§ 63.2-1606 of the Code of Virginia). Any mandated reporter who has reasonable cause to suspect that an adult died as a result of abuse or neglect shall immediately report such suspicion to the appropriate medical examiner and to the appropriate law-enforcement agency, notwithstanding the existence of a death certificate signed by a licensed physician. The medical examiner and the law-enforcement agency shall receive the report and determine if an investigation is warranted. The medical examiner may order an autopsy. If an autopsy is conducted, the medical examiner shall report the findings to law enforcement, as appropriate, and to the local department or to the adult protective services hotline.

2.5.3.8.4 Domestic violence (DV) reports

When a family or household member (of the adult who is suspected to be abused, neglected, or exploited) is the alleged perpetrator, the LDSS shall take the APS report if the alleged victim is 60 years of age or older or is 18 years of age or older and incapacitated.

Anyone experiencing intimate partner violence or DV or seeking additional information about these issues should be provided with the Virginia Statewide (DV) Hotline number, 800-838-8238.

2.5.3.8.5 Reports that the adult is incapable of making and signing an application for Medicaid

Medicaid policy states that eligibility workers shall make a report to APS when they suspect that an adult applying for Medicaid (or Medicaid redetermination) is incapacitated and incapable of understanding the Medicaid eligibility process, and the adult has no authorized representative or substitute family member who is willing and able to apply or sign on his or her behalf. The eligibility worker completes the Eligibility Worker Referral form

and forwards it to APS. The referral requests that APS begin an investigation to determine whether the person is abused, neglected, or exploited or at risk of abuse, neglect, or exploitation. If the need for guardianship is identified as a protective service need, the cost of petitioning is reimbursable to the LDSS through the Department of Medical Assistance Services. The APS worker completes the Response to Medicaid Referral form. See Chapter 3, Case Management, Appendix C for additional information on Cost Code 21704, Guardianship Petitions.

2.5.3.8.6 When an annual guardian report is not filed or is filed and creates reason to suspect

The LDSS has the responsibility to review the “Annual Report of Guardian for an Incapacitated Person” for incapacitated adults who reside in their jurisdiction. If the contents of the report provide reason to suspect that the subject of the annual report is abused, neglected, or exploited or is at risk of abuse, neglect, or exploitation, the worker shall make an APS report.

If the guardian fails to submit the report within four months from the last day of the reporting period and there is reason to suspect that the subject of the annual report is abused, neglected, or exploited or is at risk of abuse, neglect, or exploitation, the worker shall make an APS report.

2.5.3.8.7 Reports involving resignation of agent

(§ 64.2-1616 of the Code of Virginia). Unless the power of attorney provides a different method for an agent’s resignation, an agent may resign by giving notice to the principal and, if the principal is incapacitated:

1. To the conservator or guardian, if one has been appointed for the principal, and a co-agent or successor agent;
2. If there is no person described in subdivision 1, to an adult who is a spouse, child or other descendant, parent, brother or sister of the principal;
3. If none of the foregoing persons is reasonably available, another person reasonably believed by the agent to have sufficient interest in the principal’s welfare; or
4. If none of the foregoing persons is reasonably available, the adult protective services unit of the local department of social services for the county or city where the principal resides or is located.

2.5.4 Rights of persons who report

2.5.4.1 Immunity

(§ 63.2-1606 of the Code of Virginia). Any person who makes a report or provides records or information pursuant to subsection A (mandated reporters), C (financial institution staff) or D (voluntary reporters), or who testifies in any judicial proceeding arising from such report, records or information, or who takes or causes to be taken with the adult's or the adult's legal representative's informed consent photographs, video recordings, or appropriate medical imaging of the adult who is subject of a report shall be immune from any civil or criminal liability on account of such report, records, information, photographs, video recordings, appropriate medical imaging or testimony, unless such person acted in bad faith or with a malicious purpose.

2.5.4.2 Malicious reports

(§ 63.2-1606 of the Code of Virginia). Any person 14 years of age or older who makes or causes to be made a report of adult abuse, neglect or exploitation that he knows to be false is guilty of a Class 4 misdemeanor. Any subsequent conviction of this provision is a Class 2 misdemeanor.

2.5.4.3 Protecting the identity of the reporter

(§ 63.2-1605 of the Code of Virginia). The report and evidence received by the local department and any written findings, evaluations, records, and recommended actions shall be confidential and shall be exempt from disclosure requirements of the Virginia Freedom of Information Act (§ 2.2-3700).

Reports, documentary evidence, and other information gathered in the course of an APS investigation are exempt from the Virginia Freedom of Information Act (FOIA). APS records are not open to inspection by the public.

(22 VAC 30-100-50). 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.

The APS worker should request the reporter's consent to release his or her identifying information if needed during the investigation. The oral or written consent should be noted in the case record. Written consent should be obtained, if possible. If the reporter refuses to grant permission to release identifying information, the APS worker shall not release the information.

(§ 63.2-1606 of the Code of Virginia). Criminal investigative reports received from law-enforcement agencies shall not be further disseminated by the investigating agency nor shall they be subject to public disclosure; such reports may, however, be disclosed to the Adult Fatality Review Team as provided in § 32.1-283.5 or to a local or regional adult fatality review team as provided in § 32.1-283.6 and, if reviewed by the Team or a local or regional adult fatality review team, shall be subject to applicable confidentiality requirements of the Team or a local or regional adult fatality review team.

2.5.4.4 Information to be given to the reporter

The worker who receives an oral report should explain the following to the *reporter*:

- The rights of persons making a report (i.e., immunity, protection of identity).
- The LDSS' responsibility to contact the person making the report to notify him or her that the report has been investigated.
- If the report alleges sexual abuse, criminal abuse and neglect, or other criminal activity involving abuse, neglect, or exploitation that places the adult in imminent danger of death or serious bodily harm, the LDSS is required to report such suspected abuse, neglect, or exploitation to the local law enforcement agency and to the medical examiner, as appropriate.

2.5.4.5 Additional information to be given to mandated reporters

All mandated reporters identified in § 63.2-1606 of the Code of Virginia should be informed of their responsibility under that Code section to disclose all information that is the basis for the suspicion of adult abuse, neglect, or exploitation and, upon request, make available to the investigating APS workers any records or reports that document the basis for their suspicion of abuse, neglect, or exploitation.

The requirement to make pertinent information available is without regard to who made the protective services report (i.e., any mandated reporter shall make pertinent information available to the APS worker investigating the report whether he or she or some other person made the APS report).

(§ 63.2-1606 of the Code of Virginia). Upon request, any person required to make the report shall make available to the adult protective services worker and the local

department investigating the reported case of adult abuse, neglect or exploitation any information, records or reports which document the basis for the report. All persons required to report suspected adult abuse, neglect or exploitation shall cooperate with the investigating adult protective services worker of a local department and shall make information, records and reports which are relevant to the investigation available to such worker to the extent permitted by state and federal law.

Note: Applications for benefits such as Medicaid are not permitted to be disclosed to the APS worker per the Code of Federal Regulations (42 CFR 431.300 through 431.307). Unless the APS investigation is related to the administration of the Medicaid program, confidential information about the individual, including a Medicaid application, cannot be disclosed by DMAS or the LDSS that possesses the benefit information. The APS worker conducting the investigation may use the “Consent to Exchange Information” form to request that the adult or the adult’s representative release the Application for Benefits. If the adult or the representative refuses to sign the release, the APS worker may consult with the LDSS attorney regarding the appropriateness of obtaining a subpoena.

Section 164.512 of the Code of Federal Regulations for the Health Insurance Portability and Accountability Act of 1996 (HIPAA) authorizes covered entities to disclose health information that “is required by law and disclosure complies with and is limited to the relevant requirements of the law.” This includes sharing information with APS for the purposes of an APS investigation.

All providers of medical services are also authorized to disclose records of a patient to APS under the § 32.1-127.1:03 D6 of the Code of Virginia (Health Records Privacy).

2.5.5 Confidentiality

See Chapter 6 for general information on confidentiality. Information in Chapter 6 applies to all APS cases. Section 2.35 also provides information on confidentiality in APS cases and should be used in conjunction with Chapter 6.

2.6 Intake

The primary purpose of the intake interview with the reporter is to explore the allegations being made to determine whether there is reason to suspect that adult abuse, neglect, or exploitation is occurring or has occurred or that the adult is at risk of abuse, neglect, or exploitation.

The worker shall gather sufficient information to evaluate the concerns of the person making the report and to determine if the report is valid. The LDSS worker who is performing intake should make every effort to collect as much factual information as possible.

The LDSS worker who is performing intake shall obtain the following information to the extent the information is known by the person making the report:

- Name and location of the adult and directions to the adult's place of residence or location.
- Names and relationships of other members of the household.
- Age of the adult.
- Alleged incapacity of the adult (see the definition of "incapacitated person" in Section 2.4 of this chapter).
- Name and address of caregiver, if any.
- The circumstances that describe the abuse, neglect, or exploitation, or the reason(s) the reporter suspects the adult is at risk of abuse, neglect, or exploitation.
- The amount of the financial loss if the report alleges financial exploitation. Losses may include but are not limited to all or some of the items listed in Section 2.5.3.8.2.
- Whether there is imminent danger to the adult or others and if the circumstances may require an immediate response by the LDSS.
- Identity of person(s) who witnessed the incident, their addresses and telephone numbers.
- Any information about previous abuse, neglect, or exploitation of the adult.
- The name, address, and relationship of any other person(s) or agencies who might be concerned or have knowledge of the adult.
- Name of the adult's physician(s) and pharmacies.
- Known medication(s) and/or treatment(s).
- Identity and relationship of the alleged perpetrator.

- Living arrangement of the adult (e.g., in own home, lives with spouse, lives with alleged perpetrator, lives alone, etc.).
- Name, address, and phone number of person reporting if the reporter is willing to give this information.
- Source of the reporter's information.
- Any other information that might be helpful in establishing the cause of the suspected abuse, neglect, or exploitation or the risk of abuse, neglect, or exploitation.
- Permission to give the reporter's name and phone number to the appropriate regulatory authority.
- The adult's income and other resources, if known.
- Situations which may affect the safety of the responding APS worker such as the illegal drug dealing or manufacturing at the home or the presence of weapons or vicious animals at the location.

2.7 Determining validity of reports

(§ 63.2-1605 of the Code of Virginia). Local departments shall consider valid any report meeting all of the following criteria: (i) the subject of the report is an adult as defined in this article, (ii) the report concerns a specific adult and there is enough information to locate the adult, and (iii) the report describes the circumstances of the alleged abuse, neglect or exploitation.

2.7.1 Characteristics of a valid APS report

The following characteristics shall exist simultaneously in order for the APS report to be valid:

- Adult is 60 years or older or age 18 to 59 and incapacitated.
- Adult is living and identifiable.
- Circumstances allege abuse, neglect, or exploitation or risk of abuse, neglect or exploitation.
- The LDSS receiving the report is the LDSS of jurisdiction. (22 VAC 30-100-20)

2.7.1.1 Definition of adult

(22 VAC30-100-10). Adult means any person 60 years of age or older, or any person 18 years of age or older who is incapacitated and who resides in the Commonwealth; provided, however, "adult" may include qualifying nonresidents who are temporarily in the Commonwealth and who are in need of temporary or emergency protective services.

2.7.1.1.1 Age

Adults 60 years of age or older who are suspected of being abused, neglected, or exploited or at risk of abuse, neglect, or exploitation are eligible for protective services without any other qualifiers.

2.7.1.1.2 Incapacity

In determining the validity of the report, incapacity is an APS worker's judgment (see definition of "incapacitated person" in Section 2.4 of this document).

The definition of incapacitated person references the adult's impairment due to mental or physical illness. Mental illness includes those conditions that render the adult unable to recognize the consequences of his or her behavior, unable to identify his or her needs and take steps necessary to see that those needs are met, or unable to perceive relevant facts and reach a decision based on those facts. Examples of mental illness includes depression or schizophrenia though the adult may not have received a mental health diagnosis.

Physical illness or disability includes conditions that render the adult unable to take care of basic needs such as personal hygiene, necessary shopping, bill paying, food preparation, or obtaining required medical care. This includes adults who have some physical disability that renders them unable to take care of themselves and/or their affairs. Physical illness may also include cognitive impairments such as brain injury or dementia.

An adult may be considered incapacitated in one aspect of his or her life while able to function adequately in other areas.

Adults who are involuntarily committed to facilities operated by the Department of Behavioral Health and Developmental Services (DBHDS) are incapacitated for the purposes of this chapter.

2.7.1.2 Identifiable adult

The report must allege there is a specific adult with enough identifying information to locate the adult. (22 VAC 30-100-20).

The reporter may not know the adult's name or street address, or the adult may be homeless, but the reporter must be able to provide enough information to enable the APS worker to locate the subject of the report. A report of abuse, neglect, or exploitation of an adult who has died will not result in an APS investigation. The purpose of an APS investigation is to determine whether the adult alleged to be abused, neglected, or exploited needs protective services, and if so to identify those services.

2.7.1.3 Circumstances of abuse, neglect, and exploitation

The circumstances described must allege suspected abuse, neglect, or exploitation, or must allege that the adult is at risk of abuse, neglect, or exploitation. Abuse, neglect, or exploitation are defined in Section 2.4 of this chapter.

2.7.1.4 LDSS of jurisdiction

The LDSS receiving the report must be the LDSS of jurisdiction.

2.7.1.5 When report is received in the wrong jurisdiction

If the receiving LDSS is not the LDSS of jurisdiction, the LDSS that received the report has the responsibility for ensuring the report is transferred immediately. The supervisor of the receiving agency must be notified at the time of the transfer. The sending agency's Supervisor/Program Admin or APS Regional Consultant can assist with this task in PeerPlace.

2.7.2 Determining jurisdiction

The following order determines which LDSS has jurisdiction.

2.7.2.1 Place of residence

(22 VAC 30-100-20). Where the subject of the investigation resides when the place of the residence is known and when the alleged abuse, neglect, or exploitation occurred in the city or county of residence.

(22 VAC 30-100-20). An adult's residence is determined by the physical location of the residence. An adult's residence is not determined by the locality to which the adult may pay or previously paid taxes or by whether the adult currently or previously received services or public assistance from another local department.

If the adult lives in the jurisdiction of the LDSS that received the report and the alleged abuse, neglect or exploitation occurred or is occurring in the city or county where the adult lives, the LDSS that received the report has jurisdiction.

The adult for whom a report that alleges abuse, neglect, or exploitation, may be an individual living in the community, a nursing facility, an assisted living facility, an adult foster care home, an acute-care hospital, a operated or licensed facility or program, or other type of facility.

For the purposes of this section, an adult who is residing in a nursing facility, assisted living facility, group home, or facility licensed or operated by DBHDS is "residing" in the locality in which the facility is located.

- The adult lives in a facility in County A. The report alleges the adult was neglected in the facility. The LDSS in County A has jurisdiction.
- The adult resides in a nursing facility in County A. The person with power of attorney (POA) resides in County B and financial exploitation by the person with POA is alleged. County A has jurisdiction and County B may be asked to conduct a courtesy interview with the person with POA. For financial exploitation allegations, jurisdiction is where the adult lives. Law enforcement in County A and B shall be notified.

2.7.2.2 Outside of the place of residence

(22 VAC 30-100-20). Where the abuse, neglect, or exploitation is believed to have occurred when the report alleges that the incident occurred outside of the city or county of residence.

If the abuse, neglect, or exploitation occurred in a location other than the county or city where the adult resides, the LDSS in the county or city where the abuse occurred has jurisdiction.

- The adult resides in County B and attends a senior center in County C. The report alleges the adult was physically abused at the center by a staff person. The LDSS in County C has jurisdiction.

2.7.2.3 Where abuse, neglect, or exploitation was discovered

(22 VAC 30-100-20). 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.

If the abuse, neglect, or exploitation did not occur in the adult's city or county of residence, or if the adult's residence is not known and the location where the abuse, neglect or exploitation occurred is not known, then the LDSS in the city or county where the abuse, neglect or exploitation was discovered has jurisdiction.

- The adult occasionally is homeless and shows up one day at his relative's house in County E. He asks if he can stay at the house for a few days. The relative agrees and later that day the relative discovers the adult's back is covered in bruises. The adult refuses to talk about the bruises. The relative calls the LDSS in County E to make a report of physical abuse. The LDSS in County E has jurisdiction.
- The adult resides in County W. She attends day treatment services in County X, where she discloses to staff that the van driver has been sexually abusing her. These incidences have occurred in the van as she is being driven to the day treatment program. A day treatment staff person makes the report to the LDSS in County X. The LDSS in County X has jurisdiction.

2.7.2.4 Nonresident in the Commonwealth

(22 VAC 30-100-20). Where the abuse, neglect, or exploitation was discovered if the subject of the report is a nonresident who is temporarily in the Commonwealth.

If the adult is not a resident of the Commonwealth and is temporarily in the Commonwealth, the LDSS in the city or county where the abuse, neglect, or exploitation was discovered has jurisdiction.

- The adult who is homeless and living under a bridge overpass located in County G. He looks like he has not eaten recently and may also need medical attention. He may or may not be from Virginia. The LDSS in County G has jurisdiction.

2.7.2.5 When the alleged victim is incarcerated in a state corrections facility

The LDSS shall not investigate allegations of abuse, neglect, or exploitation of adults incarcerated in state correctional facilities (§ 63.2-1605 of the Code of Virginia). If the alleged victim is incarcerated in a state correctional facility, the reporter should be referred to the Virginia Department of Corrections (DOC) main number 804-674-3000 and directed to ask for to the Ombudsman Services Unit. DOC has established inmate grievance procedures for complaints.

A list of DOC correctional facilities is available on the DOC website.

2.8 Documenting an APS report in PeerPlace

PeerPlace is the system of record to document the receipt and investigation of APS reports. Please refer to the job aid “Registering an APS Case” on the APS Division page on the DSS intranet for more information.

2.8.1 Reporter’s identity

LDSS workers, who are responsible for taking APS reports, shall exercise caution when documenting the following information in PeerPlace:

- The reporter’s identity.
- Statements or information that could be used to identify the reporter.

Pursuant to 22 VAC 30-100-50, the reporter’s identity shall remain confidential unless the reporter authorizes disclosure, or the court orders the identity to be revealed. Workers must ensure that any identifying information about the reporter is redacted before sending records, forms, or documents to other agencies.

2.9 Determining Validity

Any report that meets the criteria specified in Section 2.7 of this chapter is a valid report.

2.9.1 When the report is not valid

If a report does not meet validity criteria, the LDSS shall:

- Inform the reporter of the reasons why the report is not being accepted for APS investigation, if the reporter’s identity is known. The reporter should also be informed that the report may be referred to another agency for administrative or criminal investigation if appropriate.

- Refer to the job aid “Registering an APS Case” on the APS Division page on the DSS intranet for an Invalid APS Report example.
- When appropriate, contact the individual who is the subject of the APS report to offer AS, provide consultation, or/and make direct referrals for other services.
- Refer the situation being reported to other entities as appropriate (i.e., local law enforcement, state or local Ombudsman, other state agencies for possible administrative actions).
- Refer reports that allege that the adult died as a result of abuse, neglect, or exploitation to law-enforcement authorities, the medical examiner, and/or appropriate regulatory agencies.
- Refer the adult to the local DV program when the report alleges DV and the subject of the report is neither 60 or older or incapacitated. When an alleged DV report meets APS report validity criteria, an investigation is initiated.
- Refer endangering situations to regulatory authorities where appropriate. If an adult, who was believed to have been abused, neglected, or exploited while residing in a licensed facility, is no longer in that facility and is no longer at risk when the report is received, regulatory authorities should be notified that a report was received and no protective services investigation will be conducted.
- If the adult alleged to have been abused, neglected or exploited is no longer at risk at the time the report is received, the report will be considered invalid, and no investigation will be conducted.
- If a facility staff person who is alleged to be the perpetrator of abuse, neglect, or exploitation of an adult residing in the facility has been permanently terminated as an employee of the facility at the time the report is received, the report is invalid. However, the situation should be reported to other entities as appropriate. **Note:** If the facility staff person who is alleged to be the perpetrator of abuse, neglect, or exploitation has been suspended or reassigned, the report is considered valid and an investigation shall be conducted.
- If the person alleged to be the perpetrator of abuse, neglect, or exploitation is another patient/resident who has been permanently separated from the alleged victim, and the separation is such as to assure that no further abuse, neglect, or exploitation will occur, the report is considered invalid and no investigation will be conducted. For situations alleging resident-to-resident abuse, see Section 2.22.2 of this chapter.

- Refer the reporter to the APS program in the appropriate state if the reporter indicates that the alleged abuse, neglect, or exploitation occurred in a state other than Virginia. Contact information for State APS units is available on the National Elder Care Locator website.

Note: Workers shall use the Referral for Investigation Form in PeerPlace to notify Regulatory or Statutory entities (identified in Section 2.26).

2.9.2 When the report is valid

Utilize the job aid “Registering an APS Case” on the APS Division page on the DSS intranet for a valid APS Report example. Once a report is determined valid and the Report Close Reason is “Sent for Investigation” it shall not be reopened.

For APS reports received in the queue from the APS hotline or the APS online portal, the date/time the report was received by the LDSS is the timeframe to use to initiate the investigation. Therefore, reports received in the APS Program queue in PeerPlace shall be acknowledged forthwith. The LDSS successfully completes this process once they acknowledge reports from the queue.

2.10 Initiating the investigation

An investigation has been initiated when the worker takes at least one of the following actions:

- Searches PeerPlace to determine if the alleged victim is registered or has been registered in any PeerPlace programs.
- Searches other state operated or local databases to which the worker may have access and may contain information on the alleged victim.
- Contacts the alleged victim, the reporter, or collaterals listed in the report to obtain additional information.

2.10.1 Determining need for an immediate response

(22 VAC 30-100-20). 1. To initiate the investigation, the local department shall gather enough information concerning the report to determine 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, neighbors, service providers, or other sources of information.

(22 VAC 30-100-20). When determining the need for an immediate response, the local department should consider the following factors:

- a. The imminent danger to the adult;
- 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.

After initiating the APS investigation and determining if an immediate response is required, the APS worker decides who will be interviewed and in what order. In most situations, the APS worker should contact the alleged victim first, as he or she is usually the primary source of information.

The APS worker decides whether to notify the adult and/or any legally appointed guardian or conservator before conducting the initial visit. While advance notification may be desirable, circumstances may warrant unannounced visits.

2.10.2 Coordinating with other investigators

The LDSS has primary responsibility for investigating all valid reports of adult abuse, neglect, or exploitation in all settings except state correctional facilities. The LDSS shall not delegate responsibility for an APS investigation to any other entity. However, the APS worker may investigate jointly with other authorities. The APS worker takes the following actions for coordinating investigations:

- Notify the local law-enforcement agency when a report alleges sexual abuse, serious bodily injury as a result of criminal abuse and neglect, suspected financial exploitation, or other criminal activity involving abuse or neglect that places the adult in imminent danger of death or serious bodily harm.
- Refer any appropriate matter and all relevant documentation to the appropriate licensing, regulatory, or legal authority for administrative action or criminal investigation. (§ 63.2-1605 of the Code of Virginia).
 - Allegations of maltreatment by a transportation provider should be referred to the disAbility Law Center (dLCV). A referral may also be made to the “CCC Plus Advocates” located in the state Long Term Care Ombudsman office who assist with issues involving Medicaid

managed care organization (MCO) non-emergency medical transport providers.

- Determine the need to include other investigators as participants in planning for how the investigation will be conducted. Joint investigations are encouraged but not required. The form “Referral for Investigation from Adult Protective Services” is used to notify appropriate agencies of the receipt of an APS report in which the allegation may also fall within the purview of that entity. When dLCV is selected on the “Referral for Investigation” the referrals to dLCV are made electronically through PeerPlace.

2.10.3 Where the investigation extends across city or county lines

(22 VAC 30-100-20). When an investigation extends into the jurisdiction of another local department, the local department in the other jurisdiction shall assist with the investigation at the request of the local department with primary responsibility for the investigation.

2.10.4 Conflict of interest

Some situations may present a conflict of interest for an LDSS in fulfilling its responsibility to investigate and/or provide protective services.

Examples of such situations include, but are not limited to, reports of suspected abuse, neglect, or exploitation that:

- Implicate an LDSS employee or relative or spouse of an LDSS employee;
- Implicate a member of the local board or relative or spouse of a member of the local board;
- Implicate other local governmental entities or officials;
- Implicate famous or well-known community members;
- Implicate the LDSS-approved provider of a service (i.e., companion services);
or
- Present other situations in which LDSS staff may feel compromised or pressured.

If the LDSS believes there is a conflict of interest, the LDSS shall contact a neighboring LDSS for assistance in investigating the report and/or delivering protective services. The LDSS requesting assistance retains financial responsibility for the purchase of

services needed during the investigation and/or the delivery of services. The LDSS shall contact the appropriate APS Regional Consultant for assistance in assigning investigatory and/or service delivery responsibility to another LDSS.

The LDSS shall protect APS report information in a conflict-of-interest case. PeerPlace enables the worker to limit who has access to a case that is determined to be a conflict of interest.

2.11 Conducting the investigation

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 needs protective services and, if so, to identify those services.

The need for protective services may be based on the circumstances of abuse, neglect, or exploitation identified in the report, or it may be based on the circumstances of abuse, neglect, or exploitation the APS worker identifies during the investigation, or both.

2.11.1 Authority to initiate and conduct investigations

LDSS are given authority by the § 63.2-1605 of the Code of Virginia to initiate and facilitate investigations of suspected abuse, neglect, or exploitation. The courts have the power to enforce this statutory authority.

The LDSS has the authority and responsibility to:

- Determine an adult's need for protective services.
- Identify the specific services needed.
- Provide or arrange for the provision of protective services (§ 63.2-1605 of the Code of Virginia and 22 VAC 30-100-60).

(22 VAC 30-100-20). The local department of social services shall conduct a thorough investigation of the report.

2.11.2 Consultation with collaterals

(22 VAC 30-100-20). The investigation shall include consultation with others who may have knowledge or information about the report.

Virginia law and regulations state that information may be disclosed to persons having legitimate interest in the matter in accordance with § 51.5-122 and pursuant to official interagency agreements or memoranda of understanding between state agencies.

The investigation shall include information gathered from relatives and friends when appropriate. Background information about the adult may be significant to determine whether the current situation represents a change of behavior or level of functioning.

The APS worker shall gather information from the adult's physicians and/or mental health provider if the adult's medical and/or mental health history needs to be clarified or confirmed. The APS worker may need to contact other agencies and persons to gather additional information for assessing the adult's needs.

2.11.3 Requests to include other individuals in interviews with collaterals

When the collateral requests the presence of another person in the interview, the APS worker shall determine on a case-by-case basis as to whether the request appears legitimate and is not the result of coercion or intimidation. If the other person is not included in the interview, the collateral may choose not to be interviewed. If the request to have another person present appears to be the result of coercion or intimidation and the collateral does not agree to be interviewed alone, the department may choose not to conduct the interview. The reason for not conducting the interview shall be documented in the APS Investigation Notes section in PeerPlace.

2.11.4 Collaterals in facilities

For facility investigations, the APS worker should inform the collateral and others present that it is a violation of § 32.1-138.4 of the Code of Virginia (Nursing Facility), § 63.2-1731 of the Code of Virginia (Assisted Living Facility) and § 32.1-125.4 of the Code of Virginia (Hospital) to retaliate or discriminate against any person who in good faith provides information to or otherwise cooperates with the department.

The APS worker may schedule an interview with the collateral at another time and location and setting that would promote greater cooperation from the collateral.

2.11.5 Authority to gain access

Without permission or court authorization, an APS worker cannot enter or remain in the home. If the LDSS is denied access to the adult, the APS worker should advise that he or she is required to investigate the report and may need to seek court authorization to gain entry to conduct the investigation. The reason for the inability to complete the visit shall be documented in the APS Investigation Notes section in PeerPlace.

(§ 63.2-1605 of the Code of Virginia). If a local department is denied access to an adult for whom there is reason to suspect the need for adult protective services, then the local department may petition the circuit court for an order allowing access or entry or both. Upon a showing of good cause supported by an affidavit or testimony in person, the court may enter an order permitting such access or entry.

2.11.6 Required visit and private interview

(22 VAC 30-100-20). The investigation shall include a visit and private interview with the adult alleged to be abused, neglected or exploited.

A visit with the adult alleged to be the victim of abuse, neglect, or exploitation or alleged to be at risk of abuse, neglect, or exploitation is required. A private interview with this individual is essential. In most situations, the adult alleged to be the victim should be interviewed at the beginning of the investigation, as he or she is usually a primary source of information.

The visit shall occur face-to-face within **seven calendar days** after the date of the initiation of the investigation (22 VAC30-100-20).

There may be occasions in which the adult requests the presence of another person in the interview. The APS worker shall determine on a case-by-case basis as to whether the request should be honored or whether the request is the result of coercion or intimidation. If the private interview is not conducted, the reason for not conducting the interview shall be documented in the APS Investigation Notes section in PeerPlace.

2.11.7 When the required visit and private interview cannot be completed

There may be times when the required visit and private interview with the adult may need to be discontinued because the individual is uncooperative or violent. The APS worker should take any necessary precautions to protect himself or herself.

In some situations, the adult and/or homeowner may refuse to permit an APS worker to enter the home. In other situations, an APS worker may be asked to leave before the interview is completed. In either situation, the APS worker must respect the homeowner and/or adult's decision.

If the adult's capacity to consent is in question, the investigation should continue using other sources of information in order to reach a determination about the adult's capacity to consent.

2.11.8 Separate interviews with alleged victim and alleged perpetrator

The alleged perpetrator and the alleged victim should be interviewed separately.

2.11.9 Taking and using photographs, video or appropriate medical imaging of an adult

(§ 63.2-1605 of the Code of Virginia). In any case of suspected adult abuse, neglect or exploitation, local departments, with the informed consent of the adult or his legal representative, shall take or cause to be taken photographs, video recordings, or appropriate medical imaging of the adult and his environment as long as such measures are relevant to the investigation and do not conflict with § 18.2-386.1. However, if the adult is determined to be incapable of making an informed decision and of giving informed consent and either has no legal representative or the legal representative is the suspected perpetrator of the adult abuse, neglect, or exploitation, consent may be given by an agent appointed under an advance medical directive or medical power of attorney, or by a person authorized, pursuant to § 54.1-2986. In the event no agent or authorized representative is immediately available then consent shall be deemed to be given.

Written consent is recommended and shall be uploaded to the case record using the Attachments tab in the APS client registration. The form "Consent for Photography in APS Investigations" is located on the DSS intranet. APS investigation photography guidelines are available in Appendix C.

2.11.10 The alleged perpetrator

2.11.10.1 Identity of perpetrators

Perpetrators of adult abuse, neglect, or exploitation may be family members, friends, caregivers, service providers, neighbors, or any other person whose treatment of an adult conforms to the definition of adult abuse, neglect or exploitation. However, it is not necessary for the APS worker to know the identity of the alleged perpetrator(s) to initiate an investigation.

2.11.10.2 Timing of interview with the alleged perpetrator

The APS worker should conduct a private interview with the alleged perpetrator.

The interview with the alleged perpetrator should be conducted as late in the investigation as possible so that the APS worker has a significant amount of information concerning the investigation and has assembled all available documentation. An exception should be made if a delay in conducting the interview will intensify the risk to the alleged victim, result in a lost opportunity to interview the alleged perpetrator or could negatively impact the interview in other ways.

2.11.10.3 Setting for the interview with the alleged perpetrator

The private interview with the alleged perpetrator should occur in the setting that offers the best opportunity to elicit the cooperation of the alleged perpetrator and information pertinent to the investigation. If the alleged perpetrator is alleged to be violent, this should be considered in selecting a setting for the interview. Law enforcement should be contacted and requested to accompany the APS worker if there is a concern about the APS worker's safety.

2.11.10.4 Interview with the alleged perpetrator who is a minor

When the alleged perpetrator is a minor, written permission to interview shall be obtained from a parent or a legal guardian before the private interview. Without permission, the minor may not be interviewed. The APS worker should document the reason for not interviewing the minor and should complete the investigation without the interview.

The APS worker should determine what services may need to be provided to the alleged juvenile perpetrator as well as to the responsible parent or guardian or should make an appropriate referral for the determination of service needs. Such services should be offered and arranged.

2.11.10.5 The interview with the alleged perpetrator is not conducted or completed

There may be times when an interview with the alleged perpetrator is not conducted. For example, the alleged perpetrator may not be able to be located, conducting the interview may not be in the best interest of the alleged victim, or other information gathered during the investigation indicates that an interview with the alleged perpetrator is not needed.

There may be times when the interview with an alleged perpetrator may need to be discontinued particularly if the APS worker feels his or her safety or the safety of the alleged victim is in jeopardy. The APS worker must always give priority to the safety of the alleged victim and to his or her own safety.

If the interview with the alleged perpetrator is not conducted or completed, the reason shall be documented in the APS Investigation Notes and the reason entered in PeerPlace the Alleged Perpetrator section.

2.11.11 Mandated reporters are required to release information

All persons mandated to report and identified in § 63.2-1606 of the Code of Virginia shall disclose all information that is the basis for the suspicion of abuse, neglect, or exploitation of the adult. Upon the APS worker's request, all mandated reporters shall make available any information, records or reports that document the basis for their suspicion of abuse, neglect, or exploitation.

Mandated reporters shall make pertinent information, records, or reports available to the APS worker whether the mandated reporter or some other person made the APS report.

2.11.12 Authority to access information and records regarding action taken by power of attorney or other agents

The APS unit of the LDSS is designated by § 64.2-1614 of the Code of Virginia as an entity that may petition the court to construe a power of attorney or review the agent's conduct and grant appropriate relief.

The APS worker who is conducting an APS investigation or providing protective services and who needs information and/or records pertaining to actions taken within the past five years by the agent, should request the needed information and/or records from the agent, citing § 64.2-1612 I of the Code of Virginia. If so requested, **within 30 days** the agent shall comply with the request or provide in writing or other record why additional time is needed and shall comply with the request within an additional 30 days.

If the agent fails to comply with the request for information and/or records, a petition for discovery of information and records pertaining to actions taken within the past five years from the date of request may be filed in circuit court.

(§ 64.2-1614 of the Code of Virginia). The court, upon the hearing on the petition and upon consideration of the interest of the principal and his estate, may dismiss the petition or may enter such order or orders respecting discovery as it may deem appropriate, including an

order that the agent respond to all discovery methods that the petitioner might employ in a civil action or suit subject to the Rules of the Supreme Court of Virginia. Upon the failure of the agent to make discovery, the court may make and enforce further orders respecting discovery that would be proper in a civil action subject to such Rules and may award expenses, including reasonable attorney fees, as therein provided. Furthermore, upon completion of discovery, the court, if satisfied that prior to filing the petition the petitioner had requested the information or records that are the subject of ordered discovery pursuant to § 64.2-1612, may, upon finding that the failure to comply with the request for information was unreasonable, order the agent to pay the petitioner's expenses in obtaining discovery, including reasonable attorney fees.

2.11.13 Financial exploitation discovered during the investigation

If the APS worker discovers financial exploitation during the investigation, the worker is required to refer the matter to local law enforcement immediately. The APS worker shall make all relevant documentation related to the referral available to local law enforcement personnel. Such documentation includes, but is not limited to, financial statements, property deeds, bills of sale, and invoices. See Section 2.12.1.6 for additional information on financial exploitation case documentation.

2.11.14 Transferring an investigation to another LDSS

If the subject of the APS report relocates to another jurisdiction during the 45-day investigation period, the APS worker has not completed the investigation, and there is reason to suspect that the individual remains at risk, the APS worker should:

- Consult with the supervisor and APS Regional Consultant and if appropriate transfer the investigation to the correct LDSS.
- Notify the new jurisdiction of the previous LDSS investigation and involvement.

2.11.15 Medical records from Veterans Administration Medical Centers

There may be instances when the APS worker needs to obtain medical records from a Veterans Administration Medical Center. LDSS shall follow the instruction on the sample form letters available on the APS Division page on the DSS intranet to request medical records from Veterans Administration Medical Center (VAMC) in Virginia.

Workers who need access to records from a VAMC outside of Virginia should contact the appropriate APS Regional Consultant for guidance on how to obtain these records.

2.11.16 Actions initiated by financial institution staff in response to suspected financial exploitation

Pursuant to 63.2-1606 of the Code of Virginia, financial institution staff may refuse to execute a transaction, may delay a transaction, or may refuse to disburse funds if the financial institution staff (i) believes in good faith that the transaction or disbursement may involve, facilitate, result in, or contribute to the financial exploitation of an adult or (ii) makes, or has actual knowledge that another person has made, a report to the LDSS or APS hotline, stating a good faith belief that the transaction or disbursement may involve, facilitate, result in, or contribute to the financial exploitation of an adult.

Financial institution staff may refuse to execute a transaction, delay a transaction, or refuse to disburse funds for a period no longer than 30 business days after the date upon which such transaction or disbursement was initially requested based on a good faith belief that the transaction or disbursement may involve, facilitate, result in, or contribute to the financial exploitation of an adult, unless otherwise ordered by a court of competent jurisdiction.

Financial institutions refusing to execute a transaction, delaying a transaction, or refusing to disburse funds, shall report such refusal or delay within five business days to the LDSS or APS Hotline.

Absent gross negligence or willful misconduct, the financial institution and its staff shall be immune from civil or criminal liability for providing information or records to APS or refusing to execute a transaction, delaying a transaction, or refusing to disburse funds pursuant to this subsection. The authority of a financial institution staff to refuse to execute a transaction, to delay a transaction, or to refuse to disburse funds pursuant to this subsection shall not be contingent upon whether financial institution staff has reported suspected financial exploitation of the adult to the LDSS or APS hotline.

(§ 6.2-103.1 of the Code of Virginia). Notwithstanding any other provision of law, any financial institution subject to the provisions of this title shall cooperate in any investigation of alleged adult abuse, neglect, or exploitation conducted by a local department of social services pursuant to Chapter 16 (§ 63.2-1600 et seq.) of Title 63.2 and shall make any financial records or information relevant to such investigation available to the local department and to any court-appointed guardian ad litem for the adult who is the subject of such adult protective services investigation upon request to the extent allowed under the Gramm-Leach-Bliley Act (15 U.S.C. § 6801 et seq.) and 12 U.S.C. § 3403. Absent gross negligence or willful misconduct, any financial institution and its staff shall be immune from civil or criminal liability for providing information or records to the local department of social services or to a court-appointed guardian ad litem pursuant to this section.

For purposes of actions initiated by financial institutions:

(§63.2-1603 of the Code of Virginia). "Financial exploitation" means the illegal, unauthorized, improper, or fraudulent use of the funds, property, benefits, resources, or other assets of an adult, as defined in §, 63.2-1603, for another's profit, benefit, or advantage, including a caregiver or person serving in a fiduciary capacity, or that deprives the adult of his rightful use of or access to such funds, property, benefits, resources, or other assets. "Financial exploitation" includes (i) an intentional breach of a fiduciary obligation to an adult to his detriment or an intentional failure to use the financial resources of an adult in a manner that results in neglect of such adult; (ii) the acquisition, possession, or control of an adult's financial resources or property through the use of undue influence, coercion, or duress; and (iii) forcing or coercing an adult to pay for goods or services against his will for another's profit, benefit, or advantage if the adult did not agree, or was tricked, misled, or defrauded into agreeing, to pay for such goods or services.

2.12 APS assessment

Accurate assessment of the adult's abilities and needs is crucial to making the disposition and determining if services are needed to alleviate the abuse, neglect, or exploitation.

The assessment is based on the APS worker's observations, interviews with the alleged victim and the alleged perpetrator, and information obtained from collateral contacts. The assessment shall be documented in the Investigation Assessment section.

2.12.1 The investigation assessment

(22 VAC 30-100-20). An APS assessment shall be required for all APS investigations and shall be entered into the APS case management information system. The APS assessment shall address the following:

1. Allegations in the report or circumstances discovered during the investigation that meet the definitions of adult 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. How the adult's environment, functional ability, physical and mental health, support system, and income and resources may be contributing factors in the abuse, neglect, or exploitation.
4. The risk of serious harm to the adult.

5. The need for an immediate response by the local department to a valid report.
6. The circumstances and information concerning an interview with the alleged victim, the alleged perpetrator (if known), and any collateral contacts having knowledge of the case.

There are text boxes and pick lists in the Investigation Assessment section where the worker enters or identifies information about the alleged victim. Core areas needing to be addressed include: Environment, Functional Ability, Physical Health, Mental Health/Psychosocial, Support System, Income and Resources.

2.12.1.1 Environment

Assessment of adult's physical environment should include an evaluation as to whether:

- The dwelling is structurally sound.
- The adult is mobile to the extent that he or she can exit the building.
- The living quarters are adequately heated or cooled.
- Toilet facilities are available and in working condition.
- There is refrigeration and other adequate storage for food.
- There is ready availability of a telephone to summon help.
- There is no animal, rodent, or insect infestation.
- Utilities are working.
- There are no other endangering housing deficiencies.
- The living setting at start of investigation.

The assessment of the physical environment should include identification of type and feasibility of needed improvements or changes to the adult's environment, and whether the adult is isolated in his or her environment.

2.12.1.2 Functional ability

There is a direct relationship between an adult's risk of being abused, neglected, or exploited and his or her dependence on others for performance of activities of daily living (ADLs). An assessment of the adult's ability to manage these activities helps determine if the adult needs protective services. The Katz Index of Independence in Activities of Daily Living assessment is programed in PeerPlace and is used to evaluate the individual's ability to handle tasks such as bathing, dressing, toileting, transferring, and eating.

The Lawton-Brody Instrumental Activities of Daily Living Scale is programed in PeerPlace and is used to evaluate the adult's ability to perform instrumental activities of daily living (IADLs) such as the ability to use the telephone, shop for essential supplies, prepare food, perform housekeeping and laundry tasks, travel independently, assume responsibility for medication, and manage his or her own finances.

The APS worker shall request records from physicians and other health care professionals when needed to facilitate a determination of the adult's functional abilities and need for protective services.

2.12.1.3 Physical health

The assessment of the adult's physical health may be based on reports of illness, disabilities, and symptoms by the individual or by friends, relatives, or other contacts, or by the APS worker's observation of apparent medical problems. Additional areas to consider when assessing physical health include:

- The adult's current medical condition, including any diagnosis or prognosis available, and any services being used.
- Symptoms observed by the APS worker or reported by the adult or other observers that may not have been diagnosed or treated.
- The number and types of medication(s) the adult is currently taking (prescription and non-prescription) and whether medication is being prescribed by multiple physicians.
- Diet and eating habits (nutrition and hydration).
- The adult's need for assistive devices (eyeglasses, hearing aids, dentures, and mobility aids to compensate for physical impairments, etc.).
- The adult's disabilities.

2.12.1.4 Mental/psychosocial health

While an APS worker's assessment of an adult's psychological functioning cannot take the place of a formal clinical evaluation, it can suggest that a psychiatric condition is present and is contributing to the adult's endangerment. This assessment may be the basis for recommending an assessment by mental health professionals. Additional areas to consider when assessing psychosocial status include:

- The adult's general appearance is appropriate and consistent with age, social, and economic status. This includes, but is not limited to, an evaluation of appropriateness of dress and personal hygiene.
- The adult's perceived emotional or behavioral condition(s).
- Adult's orientation to person, place, and time as well as memory and judgment capacity.
- Any manifestations of emotional or behavioral conditions (e.g., insomnia, nightmares, crying spells, depression, agitation, delusions, hallucinations, etc.).
- Any major life changes/crises in the past year (e.g., death of a significant person, loss of income, a move, an illness, divorce, institutional placement, etc.).
- Ability to follow simple instructions, ability to manage financial affairs, appropriate responses to questions.
- Self-endangering behavior of the adult (e.g., suicidal behavior, refusal of medical treatment, gross self-neglect, wandering, aggression against others who may retaliate, etc.).
- The APS worker's evaluation regarding the adult's ability to make responsible, rational, and informed decisions as well as the ability to understand the probable consequences of his or her decisions.

Guidelines for determining capacity to consent

Mental illness, intellectual disability, physical illness, dementia, disability, alcohol and substance abuse, and other conditions may be reasons why an adult is unable to make, communicate, or carry out responsible decisions concerning his or her well-being.

A review of the following abilities will help the APS worker differentiate between those who are and those who are not able to make, communicate, or carry out responsible decisions concerning his or her well-being.

- Ability to communicate a choice

Assess the adult's ability to make and communicate a choice from the realistic choices available. Assess the adult's ability to maintain the choice made until it can be implemented.

- Ability to understand relevant information

Assess the adult's ability to understand information that is relevant to the choice that is to be made (i.e., without treatment gangrene will likely cause death).

- Ability to compare risks and benefits of available options

Assess the adult's ability to compare risks and benefits of available options. This requires weighing risks and benefits of a single option and weighing more than one option at the same time. Can the adult give a logical explanation for the decision he or she reached in terms of its risks and benefits?

- Ability to comprehend and appreciate the situation

Assess the adult's ability to comprehend and appreciate the situation. An adult may be able to understand relevant information (i.e., without treatment gangrene will likely cause death) and yet be unable to appreciate his or her own situation (i.e., believes his or her own gangrenous foot will not cause his or her death or disregards medical opinion and denies that the foot is gangrenous). An adult who comprehends and appreciates the situation will acknowledge illness when it is shown to be present and acknowledge the risks and benefits of available treatment options for himself or herself.

2.12.1.5 Support system

To assess the adult's support system, the APS worker must first identify those family, friends, neighbors, religious and other voluntary groups, and any formal supports that comprise the adult's social network. To assess the support of these persons or groups, it may be helpful to answer the following questions:

- Does the adult have family, friends, neighbors, and organizations available to assist him or her?

- Are these persons and organizations able to provide effective and reliable assistance?
- What is the frequency and quality of assistance available to the adult from informal and formal support systems?
- Does the adult have a substitute decision maker at the start of the APS investigation?

2.12.1.6 Income and resources

Assess the adult's knowledge of his income and resources and his ability to manage his financial affairs. Dementia, disorientation, and short-term memory loss leaves an individual vulnerable to financial exploitation by others or can lead to self-neglecting circumstances such as utility cut-offs or the inability to purchase needed medication. If the adult is unable to discuss his income and financial management ability, the APS worker should contact family members, supportive friends, substitute decision makers or financial institutions who have knowledge of an individual's income and resources. Obtaining this information will not only address the issue of exploitation but also be useful for service planning and assistance with benefit program eligibility determinations.

When investigating financial exploitation, the APS worker shall make every effort to document the extent of the exploitation including:

- The methods or techniques used by the alleged perpetrator (e.g., undue influence, coercion)
- The estimated amount of the financial loss.
- A description of any personal items or valuables and resources taken and approximate or estimated value, if known by the victim or collateral.
- The adult's income level.
- Any benefits the client may be receiving.

2.12.2 Investigation Documentation

It is important for the APS worker to document the APS investigation assessment thoroughly. Case documentation shall adequately describe all areas of assessment, including the risk of harm and the analysis of findings. The APS worker is required to certify in PeerPlace that all elements of the investigation including the assessment are accurate, factual, and complete.

2.13 Disposition and application

(22 VAC 30-100-40). After investigating the report, the local department shall 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.

2.13.1 Documentation of disposition and time frame for making dispositions

(22 VAC 30-100-40). The investigation shall be completed and a disposition assigned by the local department within 45 calendar days of the date the report was received. If the investigation is not completed within 45 calendar days, the local department shall document reasons for the delay. The disposition shall be entered into the APS case management information system no later than five working days of the conclusion of the investigation.

The investigation shall be completed no later than **45 days** from the date the report was received. Any delay in completing the investigation within the 45-day period shall be documented in the APS Investigation notes.

Evidence supporting the disposition shall be documented in the Investigative Findings. Depending on the outcome of the investigation, the worker shall select one or more types of substantiated abuse, neglect, or exploitation.

Based on the investigative findings, the APS worker can reach one of five dispositions. Upon determining that the adult needs protective services, the need for protective services no longer exists, or the report is unfounded or determined to be invalid, the APS worker documents the finding and enters supporting documentation into the Investigative Findings text box. The APS worker shall review the definitions of adult abuse, neglect, or exploitation and determine if the findings align with one or more of these definitions.

Investigation dispositions shall be entered in PeerPlace no later than five days after the conclusion of the investigation. The registration shall be closed within 15 days of entering the disposition, unless a right to review notification was sent, or the case remains open to APS ongoing services.

See Chapter 8, Right to Review regarding notification to alleged perpetrators when the investigation has resulted in a substantiated disposition that the LDSS has communicated to a licensing, regulatory, or legal authority.

2.13.1.1 “Needs protective services and accepts”

(22 VAC 30-100-40). 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; and
 - (1) The adult consents to receive services pursuant to § 63.2-1610 of the Code of Virginia; or
 - (2) Involuntary protective services are ordered 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; or
- 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; and
 - (1) The adult consents to receive services pursuant to § 63.2-1610 of the Code of Virginia: or
 - (2) Involuntary protective 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.

The LDSS may be unable to determine the identity of the alleged perpetrator but the inability to determine the identity of the alleged perpetrator shall not prohibit the LDSS from issuing a disposition reflecting the need for protective services.

A finding that an adult needs protective services is based on the substantiation of information reported or it is based on circumstances discovered during the investigation, or both.

When the adult has the capacity to consent to receive services

(§ 63.2-1610 of the Code of Virginia). The local department shall provide or arrange for protective services if the adult requests or affirmatively consents to receive these services.

If the adult needs protective services and agrees to accept services, a service application will be completed (see Chapter, 3 Case Management, regarding notice of action on an application). A service plan will be developed and service delivery initiated.

If the adult needs protective services and refuses to accept specific services(s) offered (i.e., nursing facility placement), but will accept other protective services (i.e., home-based services), a service application will be completed, a service

plan will be developed, and service delivery initiated. The appropriate disposition is “needs protective services and accepts.”

When the adult’s capacity to consent to receive services is questionable

When the adult’s capacity to consent to receive services is questionable, an evaluation must be made to determine if the adult has sufficient understanding and/or capability to make, communicate, or carry out responsible decisions concerning his or her well-being.

If the adult needs protective services and lacks the capacity to consent, the services may be ordered by the circuit court on an involuntary basis (see Section 2.18.3).

When services are ordered by the circuit court, the appropriate disposition is “needs protective services and accepts.” A department-initiated service application shall be completed, a service plan developed, and service delivery initiated.

2.13.1.2 “Needs protective services and refuses”

(22 VAC 30-100-40). 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.

(§ 63.2-1610 of the Code of Virginia). If the adult withdraws or refuses consent, the services shall not be provided.

If an adult needs protective services and has capacity to make decisions for himself or herself, he or she may accept or refuse the services needed.

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

If the capable adult refuses to accept all of the services offered, then the disposition of needs protective services and refuses shall be entered. Please see

Chapter 8, Right to Review for additional information on notification to alleged perpetrator.

2.13.1.3 “Need for protective services no longer exists”

(22 VAC 30-100-40). This disposition shall be used when:

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 due to circumstances or actions that have occurred or have been initiated by the adult or an entity or person other than the local department.

If there is a preponderance of evidence that abuse, neglect or exploitation has occurred and one of the following scenarios occurs at the time the investigation is initiated or during the course of the investigation, then the disposition shall be “need no longer exists:”

- The adult resides in a facility and the perpetrator of the abuse, neglect, or exploitation has been permanently terminated as an employee of the facility, thereby removing the risk to the adult; or
- The adult permanently relocated and will never return to the setting where the abuse, neglect, or exploitation occurred, thereby removing the risk to the adult, or
- The perpetrator of abuse, neglect, or exploitation is another patient/resident who has been permanently separated from the adult so that future contact between the two is not possible, thereby removing the risk to the adult, or
- The subject of the report died during the investigation, or
- For reasons other than an intervention by the APS worker, the risk of abuse, neglect, or exploitation has been removed.

The case shall be reported to the local law enforcement agency and the medical examiner when there is a suspicion that the adult’s death was the result of abuse or neglect.

See Chapter 8, Right to Review for additional information on notification to alleged perpetrator.

2.13.1.4 “Unfounded”

(22 VAC 30-100-40). This disposition shall be used when:

A 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.

If an investigation lacks a preponderance of evidence that abuse, neglect, or exploitation occurred, the disposition shall be entered as unfounded.

If the APS worker is unable to complete the investigation, the disposition should be unfounded.

If the disposition is unfounded, protective services are not offered. AS may be offered if the adult is eligible for services and agrees to the service delivery. After the APS Program registration is closed, if the adult was referred to and accepted AS, a new registration shall be opened. Please refer to the job aid “Registering an AS Case” on the APS Division page on the DSS intranet.

The APS worker shall notify regulatory or licensing authorities if the investigation indicated a situation (e.g., maintenance issues in a facility) that should be addressed by these entities.

2.13.1.5 “Invalid”

(22 VAC 30-100-40). This disposition shall be used when:

After initiating the investigation, it is determined that the report does not meet the criteria for a valid report.

If, after the worker initiated the investigation, the report is found not to have met the criteria of a valid report (see Section 2.7.1), the APS worker should select “Invalid” as the disposition. The report close reason shall never be changed from ‘Sent for Investigation’ to ‘Invalid’.

If the disposition is invalid, the investigation will immediately cease, and other potential investigators and jurisdictions must be notified as appropriate. The worker shall enter the disposition and close the registration. The following are examples of investigations that were determined to be invalid after the investigation was initiated.

- Example #1: An APS report was accepted as valid. However, after the investigation was initiated, the evidence supports the determination that the adult, who is under age 60, has capacity. The investigation is suspended, other potential investigators are notified as appropriate, and the disposition is entered as invalid.
- Example #2: An APS report was accepted as valid. At the initial contact with the subject of the APS report, the APS worker learns that the adult will not turn 18 for another month. The investigation is stopped, other potential investigators are notified as appropriate, and the disposition is entered as invalid.

2.13.2 Reopening a closed investigation

Once the investigation is certified it is locked from further editing. The Supervisor/Program Admin or APS Regional Consultant may reopen an investigation if any edits need to be made to the investigation such as documentation being omitted.

The Supervisor/Program Admin or APS Regional Consultant may also reopen an investigation if the alleged perpetrator requests a right to review hearing and documentation in the record needs updating in response to the outcome of the right to review hearing.

2.13.3 Overdue investigation dispositions

APS workers can identify APS investigations with overdue dispositions by reviewing the ASAPS APS Compliance report or the APS Investigation Status View Builder in PeerPlace.

APS workers shall check for overdue APS investigations at least quarterly. Cases that are overdue shall have a disposition entered immediately or shall have an explanation entered in the APS investigation notes describing why the investigation is extending beyond 45 days.

2.14 Time frames for notifications

2.14.1 Notification to reporter

(22 VAC 30-100-40). Notification of the completion of the investigation shall be made in writing and shall be mailed to the reporter within 10 working days of the completion of the investigation.

The APS worker shall notify the reporter in writing and mail the notice within ten working days of the completion of the investigation. Notification letters are found under the APS/Report Investigation tab.

2.14.2 Notification to alleged perpetrator

There are circumstances in which notification to the alleged perpetrator is required. See Chapter 8, Right to Review for additional information. Right to review notification letters are found under the APS/Report Investigation tab.

(22 VAC 30-100-40). 1. The local department shall provide written notification to the alleged perpetrator within 30 calendar days of the conclusion of the investigation when:

- a. The disposition (i) is needs protective services and accepts, (ii) needs protective services and refuses, or (iii) need for protective services no longer exists; and
- b. The local department notified a licensing, regulatory, or legal authority of the disposition pursuant to § 63.3-1605 D of the Code of Virginia.

2.14.3 Notification of the adult or his or her legal guardian and/or conservator or responsible person

The adult who is the subject of the investigation or his or her legally appointed guardian and/or conservator or responsible person should be informed of the findings of the investigation. This notification may be either oral or written and should be documented in the APS Investigation Notes within ten working days of the completion of the investigation.

If, in the APS worker's judgment, informing the adult or his or her legal guardian and/or conservator or responsible person would not be appropriate, the reason(s) should be documented in the APS Investigation Notes.

2.14.4 Notification to local or regional adult fatality review team

The Code of Virginia does not mandate the creation of local and regional Adult Fatality Review Teams (AFRTs). Therefore, AFRTs do not operate in all jurisdictions. AFRTs are designated in 22 VAC 30-100-50 as having a legitimate interest in confidential information when such information is relevant and reasonably necessary for the fulfillment of their legal responsibilities. LDSS shall provide information to a local or regional AFRT upon request. The APS Regional Consultant shall provide technical assistance to the LDSS about the manner in which the LDSS shall transmit information to a regional or local AFRT.

2.14.5 Notification to law enforcement and medical examiner

The APS worker is required to notify law enforcement immediately of the following circumstances:

- When the APS report indicates that sexual abuse, serious bodily injury that is a result of abuse or neglect, criminal activity involving abuse or neglect that places the adult in imminent danger of death or serious bodily harm, suspected financial exploitation has occurred, or there is a suspicious death that may have been the result of abuse or neglect.
- When the investigative findings (including at disposition) indicate that sexual abuse, serious bodily injury that is a result of abuse or neglect, criminal activity involving abuse or neglect that places the adult in imminent danger of death or serious bodily harm, suspected financial exploitation has occurred, or there is a suspicious death that may have been the result of abuse or neglect.

The APS worker is required to notify the medical examiner immediately of the following circumstances:

- When the APS report indicates there is a suspicious death that may have been the result of abuse or neglect. The Commonwealth's attorney may also be notified.
- When the adult dies during the investigation and investigative findings indicate the death may have been the result of abuse or neglect. The Commonwealth's attorney may also be notified.

2.14.6 Agencies or programs with a legitimate interest

Agencies or programs identified in Section 2.36.1 have a legitimate interest in the disposition of the report. The Referral for Investigation form may be used to notify these agencies or programs, except for dLCV. See Section 2.10.2 for information about dLCV referrals).

2.15 Post investigation service provision

(22 VAC 30-100-60). The local department shall offer a range of services to the adult when the disposition is needs protective services and accepts as defined in 22VAC30-100-40.

The purpose of continuing APS services, commonly referred to as “APS ongoing,” is to ensure the adult is no longer at risk and receives services to resolve the need for protection. A monthly contact is required for adults receiving APS ongoing services. APS ongoing services should not exceed six months. Refer to Section 2.20 for APS services exceeding six months.

2.15.1 Application for services

(22 VAC 30-100-60). The local department shall obtain an application when the disposition is needs protective services and accepts.

(22 VAC 30-100-60). Representatives who may complete and sign an application on behalf of an adult who needs protective services include:

- a. The adult’s legally appointed guardian or conservator;
- b. The adult’s responsible person; or
- c. The local department

The APS worker may complete and sign the service application when the adult is believed to be incapacitated or in cases of an emergency. The APS worker shall document the need for an LDSS initiated application in the notes section of the APS client registration. The signed service application shall be uploaded under the attachments tab in the APS client registration. See Chapter 3 for information on Notice of Action on the application.

2.15.2 Opening a case for protective services

(22 VAC 30-100-60). A case shall be opened for protective services when:

1. The service needs are identified;
2. The disposition is needs protective services and accepts; and
3. The adult or the adult’s representative agrees to accept protective services or protective services are ordered by the court.

2.16 Service planning and service delivery

2.16.1 The service plan

(22 VAC 30-100-60). A service plan that is based on the investigative findings and the adult’s need for protective services shall be developed. The service plan is the basis for the activities that the local department, the adult, and other individuals will undertake to protect the adult. The service plan shall be documented in the APS case management information system.

Regardless of whether the alleged perpetrator has requested a review, if the APS worker has determined that the adult needs protective services and the adult has accepted services or services have been ordered by the court, services shall be provided to protect the adult.

2.16.2 Completing the UAI

The APS worker shall complete a full Virginia Uniform Assessment Instrument (UAI) in PeerPlace, using the UAI List tab in the APS client registration, if the disposition is needs protective services and accepts.

2.16.3 Service plan requirements

The development of the service plan involves reaching agreement with the adult and with formal and informal community resources regarding a specific, time-limited plan for addressing his or her needs and for utilizing available resources in order to eliminate or mitigate the risk to the adult of abuse, neglect, or exploitation. The plan should include initial linkages with community supports and ongoing contacts to assess service delivery and make appropriate modifications to the plan.

Services may also be provided to the perpetrator, as appropriate, in order to stop the abuse, neglect, or exploitation and protect the adult (i.e., respite care may be appropriate to a family caregiver whose abusive behavior is related to the stress of unrelieved caregiving).

- When the disposition is needs protective services and accepts, the APS client registration shall have an active service plan that addresses the protective service needs of the adult. The APS worker shall develop a service plan within 15 days of the date that the adult agrees to accept services. Please refer to the job aid “APS Service Plans” on the APS Division page on the DSS intranet.
- When there are multiple APS registrations with needs protective services and accepts dispositions for one client at the same time, only one service plan is required to be created and activated.
- The details in the service plan will vary according to the individual’s situation and will be based on the investigative findings, the assessment, and the adult’s preferences.
- The LDSS shall not purchase services (e.g., homemaker, chore, or emergency shelter or food) unless these services are identified on the adult’s service plan.

- If Budget Line (BL) 895 is used to purchase services to remediate abuse, neglect, or exploitation, it shall be documented in the service plan. The worker shall select BL 895 in the funding source section of the service plan. The worker will select the service type and provider of the service purchased.

2.16.4 Participation of the adult

The APS worker should discuss all possible resources and services with the adult. When the individual who is the subject of the service plan has capacity, his or her participation in the development of his or her service plan is essential. The adult needs to be presented with options, informed about those options, and then decide which services to accept.

(22 VAC 30-100-40). The local department shall respect the rights of adults with capacity to consider options offered by the local department and refuse services, even if those decisions do not appear to reasonably be in the best interests of the adult.

2.16.5 Participation of the adult's representative

When working with an incapacitated adult, the APS worker shall adhere to the following:

- When the adult has a legally appointed guardian or conservator, that person is the spokesperson for the adult.
- When the adult has an informal representative (usually a family member), this person should participate in the development of the service plan. The adult should also participate to the fullest extent possible.
- When the adult's representative is incapable or unwilling to assure the adult's protection, the LDSS needs to take action to insure the needed protection.

2.16.6 Incapacitated adult with no representative

When the adult appears to be incapacitated but does not have either a legal or an informal representative or the representative is the alleged perpetrator of the abuse, neglect, or exploitation, the APS worker may need to complete a service plan without the participation of the adult or his or her representative. In this situation, a service plan objective will be to secure appropriate representation for the adult (see Section 2.18).

2.16.7 Review of available resources

The APS worker should identify the services needed to protect the adult.

It is necessary for the APS worker to be aware of resources that are available to alleviate the situation that is causing the adult to be abused, neglected, or exploited or at risk of abuse, neglect, or exploitation.

The APS worker should consider the extent to which the adult is able to participate in implementing the service plan. Responsible relatives or other appropriate persons may be available to help facilitate resolution of the problem. In some cases, family and/or friends will be able to meet some of the individual's needs and the LDSS may be needed only to provide guidance and support.

The APS worker needs to identify other professionals necessary to facilitate resolution of the problem. The APS worker should make full use of the knowledge and expertise of other professionals in determining the adult's ability or lack of ability to care for himself or herself or his or her affairs in planning for the adult and in service delivery. Physicians, psychiatrists, public health and mental health professionals, domestic violence professionals, and professionals in the field of aging should be appropriately involved.

2.16.8 Community-based services

If the adult is found to need protective services, the first consideration shall be to provide the needed services in the individual's own home or place of residence. Any one or a combination of services (e.g., medical care, counseling, homemaker/chore/companion services, day services, nutrition services, transportation, financial management, financial assistance for which the adult may be eligible, informal supportive services, home repair, protective orders, or referral to other community services etc.) should be considered as methods of protection in one's own home.

2.16.9 Alternative living arrangements

Some adults may be unable to remain in their own homes even with a variety of services. An appropriate out-of-home setting should be considered in these circumstances.

2.16.9.1 When the adult consents to an alternative living arrangement

When alternative living arrangement such as a nursing facility, an assisted living facility, an adult foster care home, or some other out-of-home setting is indicated, it is important for the APS worker to have the consent of the adult, the adult's guardian, or a substitute decision-maker designated by the adult. Without the adult's consent or consent by one of the substitute decision makers, changing an adult's residence will require legal action.

2.16.9.2 Voluntary admission to a state facility

(§ 37.2-805 of the Code of Virginia). Any state facility shall admit any person requesting admission who has been

- (i) Screened by the community services board or behavioral health authority that serves the county or city where the person resides or, if impractical, where the person is located,
- (ii) Examined by a physician on the staff of the state facility; and
- (iii) Deemed by the board or authority and the state facility physician to be in need of treatment, training, or habilitation in a state facility.

2.16.9.3 Placement when the adult lacks capacity to consent

Section 2.18 addresses the provision of protective services when the adult lacks the capacity to consent.

2.16.10 Protective services ordered by the court

If an adult needs protective services and lacks the capacity to consent to receive the services, the court may order these services through:

- An emergency order for adult protective services (§ 63.2-1609 of the Code of Virginia);
- A judicial authorization of treatment and detention of certain persons (§ 37.2-1101 of the Code of Virginia);
- The appointment of a guardian or conservator in accordance with § 64.2-2000 of the Code of Virginia;
- Medical treatment for certain persons incapable of giving informed consent (§ 54.1-2970 of the Code of Virginia); or
- Emergency custody (§ 37.2-808 of the Code of Virginia) and involuntary temporary detention (§ 37.2-809 of the Code of Virginia).

2.16.11 Purchased services

Services may be purchased for the adult during an investigation as well as during the service delivery phase when the need for the service(s) has been documented. In providing protective services to adults, purchased service components may be provided, within limits approved by the local board, without regard to income, to stabilize the situation of the individual and provide the needed protection.

Purchased services include home-based services, adult day services, home-delivered or congregate meals, emergency shelter, transportation, other emergency needs, and any other services to stabilize the situation and/or prevent institutionalization. Purchased services for APS cases are funded through BL 895. The use of 895 shall be documented in the service plan.

(22 VAC 30-100-60). Local departments are required to provide services beyond the investigation to the extent that federal or state matching funds are made available.

2.16.12 The least restrictive level of intervention

The least restrictive intervention is the most appropriate. The adult has the right to make decisions about himself or herself and his or her affairs unless he or she has voluntarily given that right to another person or the court has assigned that right to another person.

2.16.13 Components of the service plan

All APS service plans shall include the following components:

- Goal(s).
- Unmet need(s).
- Objectives(s).
- Start dates are the date the task begins.
- Task(s) (e.g., services to be provided, service-related activities, resources to be used).
- Target dates are estimated dates for tasks to be completed.
- Dates resolved indicate when the objectives are met and closes out the services.

- Evaluation of services once tasks are actually completed.

Goals and objectives are developed after the APS assessment is completed and a determination made regarding the protective services needed and the adult's preferences.

2.16.13.1 Goals

The following are goals for APS:

- To stop the abuse, neglect, or exploitation by providing the protection the adult requires with the least restriction of his or her liberty;
- To assist the adult in remaining in his or her own home as long as possible and as long as this is the most appropriate plan of care;
- To restore or retain independent functioning to the greatest extent possible; and/or
- To assist in arranging out-of-home placement when that is appropriate and it is the choice of the adult or guardian or the court orders it.

2.16.13.2 Unmet needs

An unmet need is an identified need that is not being met in a way that assures the safety and well-being of the adult. Refer to the job aid "APS Service Plans" on the APS Division page on the DSS intranet.

2.16.13.3 Objectives

- Objectives reflect the desired outcome of service delivery. Objectives and services selected should be relevant to the goal.
- Each objective shall state clearly WHAT will be achieved to accomplish the goal(s).
- Objectives should be:
 - Identified to eliminate or diminish identified need(s).
 - Supportive of the goal(s) selected.
 - Stated in terms of measurable results to be achieved or desired outcome(s).

- As behaviorally specific as possible.
- Updated as the adult's situation changes.
 - Example of an objective: To assist client in obtaining medical care to manage health issues.

2.16.13.4 Tasks required

Tasks describe the actual provision of services, identifying HOW to achieve each objective WHO will be involved in accomplishing each objective, WHERE services will be provided, and WHEN services will be provided. Tasks shall be specific and measurable. All service types shall be selected from the drop-down menu in the service plan.

Note: Expenditures of funds on behalf of an individual shall be documented in the service plan. Identify the appropriate provider, funding source, rate of pay, and hours for each service task.

- Example of a service type: Transportation
- Example task: Worker will assist adult in securing transportation to medical appointments.
- Example Provider: Yellow Cab
- Example funding source: 89501 Adult Protective Services
- Example hours per week: 4
- Example rate of pay: \$15.00

If a Provider is being paid by public or private insurance, out of pocket, or some other means, "Other" should be chosen as the Funding Source.

2.16.13.5 Start and target dates

The service plan shall include dates for services to start and target dates for achievement of objectives. These dates should be realistic. Target dates for ongoing tasks, such as home-based care, may not exceed 12 months. Target dates for APS ongoing cases shall not exceed six months, and will be reassessed at six months for closure, a referral to AS, or continued ongoing APS services.

2.16.13.6 Date resolved

The date resolved will indicate when the objective is met and closes out the service task in the service plan.

2.16.13.7 Evaluation of services

The evaluation of services will provide a brief description of the status of the task at its conclusion, and whether objectives were accomplished in a timely manner. When all services have been completed and evaluated, the worker shall close the service plan in PeerPlace.

2.17 Implementation of the service plan

(22 VAC 30-100-60). 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 part of the implementation.

Implementation is:

- Delivery of the services needed to provide adequate protection to the adult.
- Continuous monitoring of the adult's progress towards reaching the service plan goals; and
- Revising the objectives and tasks in response to progress or lack of progress

Once the investigation has been completed and a service plan has been developed, the APS worker has the responsibility to:

- Contact the adult to clarify any issues around service delivery (what services, provided by whom, for how long, etc.).
- Initiate delivery of those services identified in the service plan.
- Monitor the progress made toward meeting the objectives and time frames set forth in the service plan and reassess and revise the service plan as appropriate.
- Make a face-to-face, home visit, office visit, or phone to/from contact with the adult, the legal representative, or the designated primary caregiver at least monthly and

more frequently as needed to monitor progress and assure protection of the adult. The APS worker should verify by observation or personal interview that the adult is receiving the planned services. If the monthly contact with the adult does not occur, the reason(s) should be documented in the Notes section of the APS client registration.

- At a minimum, six months after the implementation of the service plan, evaluate the need for ongoing protective services and determine if the adult may be served by another program (e.g., AS) or if the case needs to be closed.

2.18 Judicial proceedings

Protective services may be provided without the consent of the adult when the adult lacks capacity to consent and the court orders the provision of the services needed to protect the adult.

It is the shared responsibility of the LDSS and the circuit court to protect incapacitated adults from abuse, neglect, or exploitation. A cooperative working arrangement between the LDSS and the court is essential to provide effective adult protective services. Procedures will vary across localities.

The filing of petitions is the practice of law and must be performed by the LDSS attorney. APS workers may offer background information and other facts and provide other assistance, as requested, by the LDSS attorney.

2.18.1 Access to provide protective services

(§ 63.2-1605 of the Code of Virginia). If a local department is denied access to an adult for whom there is reason to suspect the need for adult protective services, then the local department may petition the circuit court for an order allowing access or entry or both. Upon a showing of good cause supported by an affidavit or testimony in person, the court may enter an order permitting such access or entry.

2.18.2 Order to enjoin interference

(§ 63.2-1610 of the Code of Virginia). No person shall interfere with the provision of adult protective services to an (i) adult who requests or consents to receive such services, or (ii) for whom consent has been lawfully given. If interference occurs on a continuing basis, the director may petition the court of competent jurisdiction to enjoin such interference.

Obtaining an order to enjoin interference is appropriate when the APS worker has made every effort to alleviate the fear or hostility of the person who interferes with the provision of protective services.

2.18.3 Emergency order for Adult Protective Services (§ 63.2-1609 of the Code of Virginia)

(§ 63.2-1608 of the Code of Virginia). If an adult lacks the capacity to consent to receive adult protective services, these services may be ordered by a court on an involuntary basis through an emergency order pursuant to § 63.2-1609 or by a guardian or conservator appointed pursuant to Chapter 20 (§64.2-2000 et seq.) of Title 64.2.

If the adult needs protective services, an emergency exists, and the adult is incapacitated and lacks the capacity to consent to receive adult protective services, a petition should be filed through the LDSS attorney for a hearing requesting a court order to provide protective services on an emergency basis.

LDSS shall follow the guidance of their LDSS attorney when requesting a petition for an emergency order.

- The following information should be provided to the LDSS attorney:
 - The name, address, and interest of the petitioner.
 - The name, age, and address of the adult in need of protective services.
 - The nature of the emergency, including the nature of any acts of violence, force, or threat, or financial exploitation; the date and location of any acts of violence, force, or threat or financial exploitation.
 - If the 24-hour notice will seriously jeopardize the adult's welfare, clearly explain in the petition why the notice should be waived.
 - Written notice will be given to the alleged perpetrator if the petition alleges the adult has been subjected to an act of violence, force, or threat or financial exploitation.
 - The nature of the adult's incapacity.
 - Evidence of the adult's incapacity and lack of capacity to consent.
 - Facts showing attempts to obtain the adult's consent and the outcomes of attempts.
 - The specific authority requested and rationale for the request.
 - The proposed adult protective services.

- If the adult who is subject of the emergency order is indigent, the department should request that the costs of the proceeding be borne by the Commonwealth (see Section 2.19.1.2).

Upon receipt of a petition for emergency order for adult protective services, the court shall hold a hearing.

- The hearing shall be held no earlier than 24 hours and no later than 72 hours after the notice required has been given, unless such notice has been waived by the court.
- The adult who is the subject of the hearing shall have the right to be present and be represented by counsel at the hearing.
- A Guardian ad litem shall be appointed.

Written notice of the time, date, and place for the hearing shall be given to the adult, to his spouse, or if none, to his nearest known next of kin, and to the alleged perpetrator if the petition alleges the adult has been subjected to an act of violence, force, or threat or financial exploitation, and a copy of the petition shall be attached.

- Notice will be given at least 24 hours prior to the hearing for emergency intervention.
- The court may waive the 24-hour notice requirement upon showing that (i) immediate and reasonably foreseeable physical harm to the adult or others will result from the 24-hour delay, and (ii) reasonable attempts have been made to notify the adult, his spouse or if none, his nearest known next of kin, and the alleged perpetrator if the petition alleges the adult has been subjected to an act of violence, force, or threat, or financial exploitation.

(§ 63.2-1609 of the Code of Virginia). Upon petition by the local department to the circuit court, the court may issue an order authorizing the provision of adult protective services on an emergency basis to an adult after finding on the record, based on a preponderance of evidence, that:

1. The adult is incapacitated;
2. An emergency exists;
3. The adult lacks the capacity to consent to receive adult protective services; and
4. The proposed order is substantially supported by the findings of the local department that has investigated the case, or if not so supported, there are compelling reasons for ordering services.

An emergency order can be granted for a period of 15 days. The order may be renewed once for a five-day period upon a showing to the court that continuation of the original order is necessary to remove the emergency.

Upon a finding that the adult has been within a reasonable period of time, subjected to an act of violence, force, or threat, or been subjected to financial exploitation the court may include in its order one or more of the following conditions to be imposed on the alleged perpetrator:

- Prohibit acts of violence, force, or threat or criminal offenses that may result in injury to person or property.
- Prohibit contact by the alleged perpetrator with the adult or the adult's family or household members as the court deems necessary for the health and safety of such persons.
- Such other conditions the court deems necessary to prevent acts of violence, force, or threat, or criminal offenses that may result in injury to person or property, communication or other contact of any kind by the alleged perpetrator; or
- Financial exploitation by the alleged perpetrator (§ 63.2-1609 of the Code of Virginia)

At the conclusion of the hearing:

- An APS worker or other person appointed as temporary guardian or conservator should immediately request a copy of the court order and certification to document authority to carry out the order.
- If the 15 days allotted is inadequate, the LDSS, in consultation with the agency attorney, should petition the court for a renewal as soon as it is realized that additional time is needed.
- If an ongoing guardian or conservator will be needed, the APS worker needs to locate a suitable person to be appointed.

Upon completion of the emergency services or upon expiration of the emergency order for protective services, the emergency guardian files a report with the court to inform the court about:

- Services provided during the emergency guardianship or conservatorship period.

- The status of the adult.
- Any plan for ongoing protection of the adult.

2.18.4 Judicial authorization of treatment and detention of certain persons

If the protective service needed is a specific treatment or course of treatment for a mental or physical condition, the LDSS or any person may file a petition with the circuit court, a district court, or special justice, or with a judge requesting authorization of the specific treatment or course of treatment. Before authorizing treatment pursuant to this section, the court shall find:

- (§ 37.2-1101 of the Code of Virginia). 1. That there is no legally authorized person available to give consent;
2. That the person for whom treatment is sought is incapable of making an informed decision regarding treatment or is physically or mentally incapable of communicating such a decision;
3. That the person who is the subject of the petition is unlikely to become capable of making an informed decision or of communicating an informed decision within the time required for decision; and
4. That the proposed course of treatment is in the best interest of the person and is medically and ethically appropriate with respect to (i) the medical diagnosis and prognosis and (ii) any other information provided by the attending physician of the person for whom treatment is sought. However, the court shall not authorize a proposed treatment that is contrary to the provisions of an advance directive executed by the person pursuant to § 54.1-2983 or is proven by a preponderance of the evidence to be contrary to the person's religious beliefs or basic values or to specific preferences stated by the person before becoming incapable of making an informed decision, unless the treatment is necessary to prevent death or a serious irreversible condition. The court shall take into consideration the right of the person to rely on nonmedical, remedial treatment in the practice of religion in lieu of medical treatment.

2.18.5 Filing petition for appointment of a guardian and/or conservator (§ 64.2-2001 of the Code Virginia)

Any person may file a petition for the appointment of a guardian or conservator with the circuit court of the county or city in which the adult resides or is located or in which the adult resided immediately prior to becoming a patient in a hospital or admission to in a nursing facility, state mental health facility, assisted living facility or any other

similar institution. If the petition is for the appointment of a conservator for a nonresident with property in the state, the petition may be filed in the city or county in which the adult's property is located. (See Chapter 7, Guardianship and Conservatorship for procedures for petitioning for a guardian and/or conservator.)

2.18.6 Appointment of a guardian

If the adult has become incapacitated to the extent that he or she lacks the capacity to meet essential requirements for his or her health, care, safety or therapeutic needs without the assistance or protection of a guardian, the LDSS may petition the circuit court to appoint a guardian.

2.18.7 Appointment of a conservator

The LDSS may petition the circuit court to appoint a conservator if an adult has become incapacitated to the extent that he or she lacks the capacity to:

- Manage property or financial affairs;
- Provide for his or her support; or
- Provide for the support of legal dependents without the assistance or protection of a conservator.

2.18.8 Procedure in absence of an advance directive (§ 54.1-2986 of the Code of Virginia)

In the absence of an Advanced Directive, several individuals in a specific order of priority are authorized to make decisions concerning the health care of an incapacitated adult. Health care is defined as:

(§ 54.1-2982 of the Code of Virginia). "Health care" means the furnishing of services to any individual for the purpose of preventing, alleviating, curing, or healing human illness, injury or physical disability, including but not limited to, medications; surgery; blood transfusions; chemotherapy; radiation therapy; admission to a hospital, nursing home, assisted living facility, or other health care facility; psychiatric or other mental health treatment; and life-prolonging procedures and palliative care.

The attending physician of an adult patient must certify in writing upon personal examination of the patient that the patient is incapable of making an informed decision regarding health care and has obtained written certification from a capacity reviewer that, based upon a personal examination of the patient, the patient is incapable of making an informed decision. However, certification by a capacity reviewer shall not

be required if the patient is unconscious or experiencing a profound impairment of consciousness due to trauma, stroke, or other acute physiological condition. When the determination has been made that the adult is incapable of making an informed decision about providing, withholding, or withdrawing a specific health care treatment or course of treatment because of mental illness, intellectual disability, or any other mental disorder or a physical disorder that precludes communication or impairs judgment, and if the adult patient has not made an advance directive, the attending physician may provide, continue withhold, or withdraw from the adult patient any health care or treatment upon the authorization of any of the following persons, in the specified order of priority:

- A guardian for the patient. (This shall not be construed to require the appointment of a guardian in order that a treatment decision can be made.); or
- The patient's spouse except where a divorce action has been filed and the divorce is not final; or
- An adult child of the patient; or
- A parent of the patient; or
- An adult brother or sister of the patient; or
- Any other relative of the patient in the descending order of blood relationship; or
- Except in cases in which the proposed treatment recommendation involves the withholding or withdrawing of a life-prolonging procedure, any adult, except any director, employee, or agent of a health care provider currently involved in the care of the patient, who (i) has exhibited special care and concern for the patient and (ii) is familiar with the patient's religious beliefs and basic values and any preferences previously expressed by the patient regarding health care, to the extent that they are known. A quorum of a patient care consulting committee as defined in § 54.1-2982 of the facility where the patient is receiving health care or, if such patient care consulting committee does not exist or if a quorum of such patient care consulting committee is not reasonably available, two physicians who (a) are not currently involved in the care of the patient, (b) are not employed by the facility where the patient is receiving health care, and (c) do not practice medicine in the same professional business entity as the attending physician shall determine whether a person meets these criteria and shall document the information relied upon in making such determination.

The capacity reviewer providing written certification that a patient is incapable of making an informed decision, if required, shall not be otherwise currently involved in the treatment of the person assessed, unless an independent capacity reviewer is not reasonably available.

(§ 54.1-2982 of the Code of Virginia). "Capacity reviewer" means a licensed physician or clinical psychologist who is qualified by training or experience to assess whether a person is capable or incapable of making an informed decision.

(§ 54.1-2982 of the Code of Virginia). "Incapable of making an informed decision" means the inability of an adult patient, because of mental illness, intellectual disability, or any other mental or physical disorder that precludes communication or impairs judgment, to make an informed decision about providing, continuing, withholding or withdrawing a specific health care treatment or course of treatment because he is unable to understand the nature, extent or probable consequences of the proposed health care decision, or to make a rational evaluation of the risks and benefits of alternatives to that decision. For purposes of this article, persons who are deaf, dysphasic or have other communication disorders, who are otherwise mentally competent and able to communicate by means other than speech, shall not be considered incapable of making an informed decision.

2.18.9 Admission of incapacitated persons to a mental health facility pursuant to advance directives or by guardians

Absent a prohibition in an Advance Directive or with the authority granted in the court order appointing a guardian; the agent or guardian may admit an adult to a mental health facility for no more than 10 calendar days if the following conditions are met:

- Prior to admission, a physician on the staff of or designated by the proposed admitting facility examines the person and states, in writing, that the person:
 - Has a mental illness,
 - Is incapable of making an informed decision, as defined in § 54.1-2982 regarding admission, and
 - Is in need of treatment in a facility;
- The proposed admitting facility is willing to admit the person

In addition, for admission to a state facility, the person shall first be screened by the community services board that serves the city or county where the person resides or, if impractical, where the person is located (§ 37.2-805.1 of the Code of Virginia).

2.18.9.1 Additional requirements for admission

- Advance directive agent

(§ 37.2-805.1 of the Code of Virginia). The person has executed an advance directive in accordance with the Health Care Decisions Act (§ 54.1-2981 et seq.) authorizing his agent to consent to his admission to a facility and, if the person protests the admission, he has included in his advance directive specific authorization for his agent to make health care decisions even in the event of his protest as provided in § 54.1-2986.2.

- Guardian

(§ 37.2-805.1 of the Code of Virginia). The guardianship order specifically authorizes the guardian to consent to the admission of such person to a facility, pursuant to § 64.2-2009.

A person admitted to a facility pursuant to this section shall be discharged no later than 10 calendar days after admission unless, within that time, the person's continued admission is authorized under other provisions of law (§ 37.2-805.1 of the Code of Virginia).

2.18.10 Involuntary admission

(§ 37.2-801 of the Code of Virginia). Any person alleged to have a mental illness to a degree that warrants treatment in a facility may be admitted to a facility by compliance with one of the following admission procedures:

1. Voluntary admission;
2. Admission of incapacitated persons pursuant to § 37.2-805.1; or
3. Involuntary admission by the procedure described in §§ 37.2-809 through 37.2-820.

When hospitalization in a mental health facility or a facility providing intellectual disability services is needed, the APS worker should consult with the local community services board for procedures in that locality.

Criteria for commitment include:

(§ 37.2-815 of the Code of Virginia). (i) The person has a mental illness and there is a substantial likelihood that, as a result of mental illness, the person will, in the near future;

- (a) Cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or
- (b) Suffers serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, and
 - (ii) Requires involuntary inpatient treatment.

2.18.11 Mental Health Emergency Custody and Involuntary Temporary Detention Orders

A magistrate may issue an order for emergency custody of an individual upon the sworn petition of any person when he has probable cause to believe that the individual meets the criteria for involuntary commitment.

(§ 37.2-808 of the Code of Virginia). When considering whether there is probable cause to issue an emergency custody order, the magistrate may, in addition to the petition, consider (1) the recommendations of any treating or examining physician or psychologist licensed in Virginia, if available, (2) any past actions of the person, (3) any past mental health treatment of the person, (4) any relevant hearsay evidence, (5) any medical records available, (6) any affidavits submitted, if the witness is unavailable and it so states in the affidavit, and (7) any other information available that the magistrate considers relevant to the determination of whether probable cause exists to issue an emergency custody order.

The Emergency Custody Order (ECO) will require that the adult be taken into custody and transported to a convenient location to assess the need for hospitalization or treatment. The evaluation will be conducted by a person designated by the community services board or behavioral health authority who is skilled in the diagnosis and treatment of mental illness. The period of custody shall not exceed eight hours from the time the law-enforcement officer takes the person into custody.

If, after examination of all available evidence, the magistrate concludes that the adult is mentally ill and in need of hospitalization, the magistrate may issue a Temporary Detention Order (TDO) that may include transportation to a medical facility for emergency medical evaluation and/or treatment.

A magistrate may issue a TDO without an emergency custody order proceeding. A magistrate may also issue a TDO without a prior in-person evaluation if:

(§ 37.2-809 of the Code of Virginia). (i) The person has been personally examined within the previous 72 hours by an employee or designee of the local community services board

or (ii) there is a significant physical, psychological, or medical risk to the person or to others associated with conducting such evaluation.

2.18.12 Preliminary protective order in cases of family abuse

(§ 16.1-253.1 of the Code of Virginia). Upon the filing of a petition alleging that the petitioner is or has been, within a reasonable period of time, subjected to family abuse, the court may issue a preliminary protective order against an allegedly abusing person in order to protect the health and safety of the petitioner or any family or household member of the petitioner.

If the adult eligible for adult protective services is a victim of family abuse, the preliminary protective order may be used to provide temporary protection. Abuse is considered family abuse when an act of violence is committed by the abuser against the abuser's family or household member. The definition of family or household member appears in Section 2.4.

2.18.13 Emergency protective orders authorized in certain cases

When a law enforcement officer or an allegedly abused person asserts under oath and a judge or magistrate finds reasonable grounds to believe that a person has committed assault and battery against a family or household member and there is probable danger of a further offense against a family or household member by the person, the judge or magistrate may issue a written or verbal emergency protective order:

- Prohibiting acts of family abuse or criminal offenses that result in injury to persons or property;
- Prohibiting contact between the parties;
- Granting the family or household member possession of the premises occupied by the parties, and exclude from the premises the offending party; and
- Granting the petitioner the possession of any companion animal as defined in § 3.2-6500 if such petitioner meets the definition of owner in § 3.2-6500. (§16.1-253.4 of the Code of Virginia)

2.18.14 Arrest without a warrant in cases of assault and battery against a family or household member

Law-enforcement officers shall make an arrest without a warrant in cases in which family or household members are abused and when there is probable cause that assault and battery has occurred (§ 19.2-81.3 of the Code of Virginia).

2.18.15 Criminal abuse and neglect of vulnerable adults

(§ 18.2-369 of the Code of Virginia). A. It is unlawful for any responsible person to abuse or neglect any vulnerable adult. Any responsible person who abuses or neglects a vulnerable adult in violation of this section and the abuse or neglect does not result in serious bodily injury or disease to the vulnerable adult is guilty of a Class 1 misdemeanor. Any responsible person who is convicted of a second or subsequent offense under this subsection is guilty of a Class 6 felony.

B. Any responsible person who abuses or neglects a vulnerable adult in violation of this section and the abuse or neglect results in serious bodily injury or disease to the vulnerable adult is guilty of a Class 4 felony. Any responsible person who abuses or neglects an vulnerable adult in violation of this section and the abuse or neglect results in the death of the vulnerable adult is guilty of a Class 3 felony.

C. For purposes of this section: "Abuse" means (i) knowing and willful conduct that causes physical injury or pain or (ii) knowing and willful use of physical restraint, including confinement, as punishment, for convenience or as a substitute for treatment, except where such conduct or physical restraint, including confinement, is a part of care or treatment and is in furtherance of the health and safety of the vulnerable adult.

"Neglect" means the knowing and willful failure by a responsible person to provide treatment, care, goods, or services which results in injury to the health or endangers the safety of a vulnerable adult.

"Responsible person" means a person who has responsibility for the care, custody, or control of a vulnerable adult by operation of law or who has assumed such responsibility voluntarily, by contract or in fact.

"Serious bodily injury or disease" includes but is not be limited to (i) disfigurement, (ii) a fracture, (iii) a severe burn or laceration, (iv) mutilation, (v) maiming, or (vi) life-threatening internal injuries or conditions, whether or not caused by trauma.

"Vulnerable adult" means any person 18 years of age or older who is impaired by reason of mental illness, intellectual or developmental disability, physical illness or disability, or other causes, including age, to the extent the adult lacks sufficient understanding or capacity to make, communicate, or carry out reasonable decisions concerning his well-being or has one or more limitations that substantially impair the adult's ability to independently provide for his daily needs or safeguard his person, property, or legal interests.

APS workers should refer investigation information and evidence meeting the definitions and criteria under § 18.2-369 of the Code of Virginia to the Commonwealth's Attorney for possible prosecution.

2.18.16 Financial exploitation of vulnerable adults

(§18.2-178.1 of the Code of Virginia). A. As used in this section, "vulnerable adult" means the same as that term is defined in § 18.2-369

B. It is unlawful for any person who knows or should know that another person is a vulnerable adult to, through the use of that other person's impairment, take, obtain, or convert money or other thing of value belonging to that other person with the intent to permanently deprive him thereof. Any person who violates this section shall be deemed guilty of larceny.

C. Venue for the trial of an accused charged with a violation of this section shall be in any county or city in which (i) any act was performed in furtherance of the offense or (ii) the accused resided at the time of the offense, (iii) the vulnerable adult resides or resided at the time of the offense, or (iv) the vulnerable adult sustained a financial loss as a result of the offense.

D. This section shall not apply to a transaction or disposition of money or other thing of value in which the accused acted for the benefit of the vulnerable adult or made a good faith effort to assist such person with the management of his money or other thing of value.

Financial exploitation of a vulnerable adult as described in § 18.2-178.1 of the Code of Virginia should be referred to the Commonwealth's Attorney for possible prosecution.

Section 18.2-178.2 of the Code of Virginia addresses criminal penalties when the adult's power of attorney is the one who is financially exploiting the adult. These circumstances should also be referred to the Commonwealth's Attorney for possible prosecution.

2.19 Reimbursement for legal services

Legal representation for advice to and representation of the LDSS on an adult-specific basis for cases before the court related to adult protective services may be reimbursed from administration funds or BL 895 if the adult is eligible for APS.

When an LDSS is the petitioner and the subject of the proceedings is indigent, all fees and court costs will be waived by the court. Section 17.1-266 of the Code of Virginia prohibits payment to clerks, sheriffs, or other officers from the state treasury for services rendered in Commonwealth cases, except when it is allowed by statute. LDSS, as recipients of state funds, are considered Commonwealth agencies and are included in this provision.

2.19.1 Payment for emergency order proceedings

2.19.1.1 When cost is borne by the subject of the petition

(§ 63.2-1609 of the Code of Virginia). If the adult is not indigent, the court may order that the cost of the proceeding shall be borne by such adult.

2.19.1.2 When cost is borne by the Commonwealth

(§ 63.2-1609 of the Code of Virginia). If the adult is indigent, the cost of the proceeding shall be borne by the Commonwealth.

2.19.2 Payment for guardianship proceedings

2.19.2.1 When cost is borne by the petitioner

The petitioner is responsible for payment of the filing fee and costs. The court may waive service fees and court costs if it is alleged under oath that the estate of the adult is unavailable or insufficient.

(§ 64.2-2008 of the Code of Virginia). If a guardian or conservator is appointed and the court finds that the petition is brought in good faith and for the benefit of the respondent, the court shall order that the petitioner be reimbursed from the estate for all reasonable costs and fees if the estate of the incapacitated person is available and sufficient to reimburse the petitioner.

2.19.2.2 When cost is borne by the Commonwealth

(§ 64.2-2008 of the Code of Virginia). If the adult subject of the petition is determined to be indigent, any fees and costs of the proceeding that are fixed by the court or taxed as costs shall be borne by the Commonwealth.

2.19.3 Payment for guardians ad litem and other attorney fees

2.19.3.1 When cost is borne by the petitioner

(§ 64.2-2003 of the Code of Virginia). The guardian ad litem shall be paid a fee that is fixed by the court to be paid by the petitioner or taxed as costs, as the court directs.

(§ 64.2-2006 of the Code of Virginia). Counsel appointed by the court shall be paid a fee that is fixed by the court to be taxed as part of the costs of the proceeding.

2.19.3.2 When cost is borne by the Commonwealth

(§ 64.2-2008 of the Code of Virginia). In any proceeding filed pursuant to this article, if the adult subject of the petition is determined to be indigent, any fees and costs of the proceeding that are fixed by the court or taxed as costs shall be borne by the Commonwealth.

2.19.3.3 Payment for guardianship proceeding for Medicaid referrals

When an LDSS petitions for the appointment of a guardian for an adult who was referred by an eligibility worker for the purpose of determining whether the adult needs a guardian appointed to apply or re-apply for Medicaid on his or her behalf, the cost of petitioning, which cannot be waived by the court, is reimbursable through BL 217.

The funds are only for those cases referred by an eligibility worker (via the Eligibility Worker Referral form) and in which the appointment of a guardian is necessary for making and signing a Medicaid application. The form "Response to Medicaid Referral" is used to request reimbursement for the costs of these guardianship proceedings and is located on the DSS intranet.

See Chapter 3, Case Management, Appendix C for additional information on Cost Code 21704, Guardianship Petitions.

2.19.4 Payment for psychological and physical examination

The cost of psychological and physical examinations may be paid from administrative funds when they are not available under Title XVIII (Medicare), Title XIX (Medicaid), or other sources.

The cost of an evaluation for an adult who has been referred to APS by an eligibility worker to determine whether the adult needs a guardian appointed in order to apply for Medicaid on his or her behalf may also be reimbursed using the form “Response to Medicaid Referral” located on the DSS intranet.

2.19.5 Reimbursement for cost of providing protective services

Sections 63.2-1608 and 63.2-1610 of the Code of Virginia permit the court to authorize reasonable reimbursement to the LDSS for the cost of providing protective services, excluding administrative costs.

Reimbursement to the LDSS would be authorized by the court from the adult’s assets after a finding that the adult is financially able to make such payment.

2.19.5.1 Involuntary adult protective services

(§ 63.2-1608 of the Code of Virginia). The adult shall not be required to pay for involuntary adult protective services, unless such payment is authorized by the court upon a showing that the person is financially able to pay. In such event the court shall provide for reimbursement of the actual costs incurred by the local department in providing adult protective services, excluding administrative costs.

2.19.5.2 Voluntary adult protective services

(§ 63.2-1610 of the Code of Virginia). The actual costs incurred by the local department in providing adult protective services shall be borne by the local department, unless the adult or his representative agrees to pay for them or a court orders the local department to receive reasonable reimbursement for the adult protective services, excluding administrative costs, from the adult's assets after a finding that the adult is financially able to make such payment.

2.20 Reassessment

2.20.1 Reassessment

The worker shall reassess the adult’s situation and evaluation of the effectiveness of services at least monthly and ideally should coincide with required monthly case

contacts. During the reassessment process, the worker shall determine if the case should remain open for adult protective services, registered in the AS Program, or closed.

However, the APS worker shall evaluate the need for ongoing protective services, at a minimum, six months after the implementation of the services. The APS worker shall document in the notes section of the APS client registration the need for ongoing protective services lasting greater than six months after service plan implementation.

2.20.1.1 Continue APS

The APS case should be continued and the service plan updated to address current needs when:

- The adult is being abused, neglected, or exploited or is at risk of abuse, neglect, or exploitation.
- Unmet needs are identified in the reassessment and documented on the UAI.

2.20.1.2 Registered in AS Program

The APS case should be closed and the adult registered in the AS Program when:

- The adult is no longer being abused, neglected, or exploited and is not at risk of abuse, neglect, or exploitation.
- The adult continues to need services but service needs are no longer protective in nature.

2.20.2 Closing the ongoing APS case

The ongoing APS case should be closed when:

- The goals and objectives outlined in the service plan have been attained and the adult is no longer at risk and has no other service needs;
- The adult decides to terminate services and the LDSS determines that the individual has the capacity to consent and court action is not warranted;
- The adult moves out of the department's jurisdiction. If the adult continues to need protective services, a referral should be made to and case information shared with the locality to which the individual relocates; or

- The adult dies.

2.20.2.1 Procedure for closure

When a decision is made to close an ongoing APS, the APS worker shall:

- Send a written notice of action to the adult and/or his or her legally appointed guardian and/or conservator pursuant to § 51.5-147 of the Code of Virginia if home-based services were being provided.
- Document in the case the reasons for not notifying, if notification is not appropriate.
- Close the registration in PeerPlace no later than 15 days after issuing the notice of action (if required).
- Initiate referrals, if appropriate, to other services within the LDSS, to another LDSS, or to community resources.

2.21 Facility investigations

For the purposes of this section, facilities include but are not limited to:

- Acute-care hospitals.
- Nursing facilities.
- Assisted living facilities.
- State hospitals.
- Private psychiatric facilities.
- Group homes.
- Facilities that provide programs for adults for some part of the day (e.g., adult day services, senior centers, day treatment centers, sheltered workshops, and school systems).

Reports of suspected abuse, neglect, or exploitation of adults perpetrated by employees of agencies providing home-based care to adults (e.g., hospices, home care organizations) shall be investigated according to procedures outlined in Section 2.5 to Section 2.20.

All reports of suspected abuse, neglect, or exploitation of adults in facilities are investigated without consideration of the relationship of the alleged perpetrator to the adult, i.e., the alleged perpetrator may be facility staff or faculty, persons visiting the facility, another individual residing at the facility, or any other person.

2.22 Accepting facility reports

(§ 63.2-1605 of the Code of Virginia). 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.

Upon receipt of a valid report involving a facility, the APS worker should **immediately** contact the appropriate licensing or regulatory agency to report the receipt of the information and coordinate an investigation if appropriate. Sexual abuse, criminal abuse and neglect, or other criminal activity involving abuse, neglect, or exploitation that places the adult in imminent danger of death or serious bodily harm shall be immediately reported to local law enforcement and the APS worker should coordinate the investigation with law enforcement.

2.22.1 Person-specific reports

If the APS worker determines that the report is valid, the APS worker shall assess the appropriateness of a joint investigation and determine who should participate in the joint investigation. Individual investigations shall be conducted on each individual on whom a valid report is received.

If the information received alleges that a specific group(s) of individuals residing in the facility or the entire population of the facility is abused, neglected, or exploited or is at risk of abuse, neglect, or exploitation, the LDSS shall decide on the appropriateness of APS investigations on a case-by-case basis. The case-by-case decision will be based on the probability of mental or physical damage or injury to individuals residing in the facility.

2.22.2 Resident-to-resident reports

When a report is received that both the alleged perpetrator and alleged victim of abuse, neglect, or exploitation reside in the facility, the report is considered valid if it meets validity criteria set forth in this chapter and one or more of the following situations are alleged:

- One or more individuals received injuries that required medical attention from a physician or a nurse; or

- Sexual abuse of one resident by another; or
- One resident profited financially at the expense of another resident; or
- Abuse, neglect, or exploitation of a resident at the hands of another resident is on-going; or
- Facility staff has not taken action to stop and/or address the abuse, neglect, or exploitation of the individual.

2.22.3 When the perpetrator resident continues to reside in the facility

When an investigation of a report of resident-to-resident abuse, neglect, or exploitation finds that one of the residents needs protection from the second resident, the service plan shall address how the resident in need of protection will be protected.

2.22.4 Incident reports

A Facility Reported Incident (FRI) that is made available to APS should be accepted as a report of suspected abuse, neglect, or exploitation, and, if it meets the validity criteria, an investigation should be initiated.

2.22.5 Injuries of unknown origin

When an individual residing in the facility sustains an injury and the cause of the injury is unknown, and there is reason to suspect that the injury is the result of abuse, neglect, or exploitation, an APS report shall be taken and investigated. Reports of repeated injuries of unknown origin involving the same individual shall be taken and investigated.

2.22.6 Sexual abuse and sexual assault in facilities

When one adult does not consent to sexual activity, or when one or more adults involved in the sexual activity lack the capacity to consent, and sexual abuse and/or sexual assault is alleged, an APS investigation shall be initiated. The APS worker shall immediately contact local law enforcement to report the allegation of sexual abuse and coordinate the investigation. If the law enforcement agency does not investigate, the APS worker shall initiate the investigation within required timeframes.

2.22.7 Abuse, neglect, or exploitation of a resident who is away from the facility

If there is a report of suspected abuse, neglect, or exploitation about an individual who resides in a facility, while that individual is away from the facility (e.g., during a home

visit), procedures in Section 2.7.2 shall be followed to determine which LDSS has responsibility for the investigation.

The LDSS with responsibility for the investigation will notify the facility's administrator of the report and will enlist the cooperation of the facility, where appropriate, in completing the investigation.

If the alleged abuse, neglect, or exploitation occurred outside of the jurisdiction in which the facility is located, and if contact with the facility is essential to the investigation, the LDSS responsible for the investigation may request assistance from the LDSS in the jurisdiction in which the facility is located.

2.23 Facility reports that do not meet validity criteria

In some instances, a report involving a facility does not meet criteria for a valid APS report. For example, at the time the report was received, the subject of the report has been permanently relocated or the facility staff person who is alleged to be the perpetrator has been permanently discharged or terminated from the facility. However, the circumstances reported are within the purview of licensing or regulatory agencies.

If the APS worker determines that the report is not valid and does not meet criteria for an APS investigation but is within the purview of licensing or regulatory agencies, the APS worker shall refer the person making the report to the appropriate regulatory authority. The APS worker shall enter the invalid report into the APS Report/Investigation tab and promptly forward a written summary of the reported incident(s) to the appropriate licensing, regulatory, legal authority. The written summary should state the reason an APS investigation will not be conducted. The form "Referral for Investigation from Adult Protective Services" in the notification letters section may be used for the referral/summary.

2.23.1 Reports that address the general conditions of a facility

Reports/complaints addressing the general conditions of a facility (i.e., food choices, building maintenance issues, etc.) that are not specific to a resident(s) are not appropriate for an APS investigation. Upon determining that the report is of a general nature, the LDSS shall refer the person making the report to the appropriate regulatory or licensing authority. The APS worker should also promptly forward a written summary of the reported incident(s) to the appropriate regulatory authority. The form "Referral for Investigation from Adult Protective Services" may be used for the referral/summary.

2.24 Responsibility of the APS worker in facility investigations

Valid reports alleging that individuals residing in long-term care facilities, acute care facilities, and other group care facilities are abused, neglected, or exploited or at risk of abuse, neglect, or exploitation shall be investigated by the LDSS. Except for state correctional facilities, LDSS have the same responsibility for investigating, determining the need for protective services, and providing and/or arranging the needed services for all individuals residing in long-term care and acute care facilities and other group care facilities as they have for adults in other living arrangements. The responsibility to investigate shall not be delegated to other investigatory authorities. However, joint investigations, when appropriate, are encouraged.

2.25 Coordination with investigators with related responsibilities in facility investigations

The receipt, investigation, disposition, and provision of protective services in response to reports of suspected abuse, neglect, or exploitation is closely aligned with the authority and responsibilities of state organizations with regulatory functions and statutory authority to provide services to a targeted population.

In an investigation in a facility for which there is not a state regulatory authority, such as in schools, the APS worker may ask the facility administrator or school superintendent to designate a staff person to assist in the investigation.

- When a valid APS report is received on an individual residing in a long-term care or acute care facility or other group care facility, the APS worker shall determine whether it is appropriate to ask other agencies or programs with regulatory or licensing responsibility for investigations to participate in a joint investigation. In all cases, the APS worker shall notify the appropriate agencies or programs that a report has been received concerning an individual residing in a regulated facility.
- It is appropriate to give other agencies and programs an opportunity to participate in a joint investigation when such agency or program has regulatory authority that is compatible with the LDSS's responsibility to provide protective services to incapacitated and/or older adults.
- If staff from other agencies or programs are not available to participate in a joint investigation within the timeframe that APS shall initiate the investigation, the APS investigation shall not be delayed.

2.26 Investigators with regulatory or statutory authority responsibilities in facility investigations

2.26.1 The Department of Social Services, Division of Licensing Programs

The Division of Licensing Programs (DOLP) has regulatory authority for assisted living facilities and adult day care centers. The Licensing Programs staff should be given the opportunity to participate when the suspected abuse, neglect, or exploitation is alleged to have occurred in a licensed assisted living facility or a licensed adult day care facility.

Note: Pursuant to § 63.2-1701 of the Code of Virginia, adult day care facilities that provide services only to individuals enrolled in Programs of All-Inclusive Care for the Elderly are not required to be licensed by DSS.

2.26.2 The Department of Health, Office of Licensure and Certification

The Office of Licensure and Certification (OLC) the Virginia Department of Health has regulatory authority for nursing facilities, acute care hospitals, hospices, and home health care organizations. OLC shares oversight of intermediate care facilities (ICFs) with the Department of Behavioral Health and Developmental Services. OLC staff is not generally available for joint investigations. However, OLC shall be informed when an APS report has been received on an adult in an OLC licensed facility and whether the report will be investigated.

2.26.3 The Department of Behavioral Health and Developmental Services (DBHDS)

When there are concerns about vulnerable adults who are receiving services in a facility or program operated, licensed, or funded by DBHDS, the Office of Human Rights (OHR) should be given the opportunity to participate. This includes, but is not limited to, clients of a community services board or behavioral health authority or a facility licensed by DBHDS.

The OHR is located in Richmond with Human Rights Advocates located in communities and in each state facility. The advocate acts as the representative of individuals who are receiving services and whose rights are alleged to have been violated. The advocate also investigates conditions or practices that may interfere with the free exercise of an individual's rights. Human Rights Advocates are available throughout the state and can be reached through the state hospitals and other state programs. The OHR will inform the DBHDS Office of Licensing if its investigation results in a founded violation involving an entity licensed by DBHDS.

2.26.4 The Office of the State Long-Term Care Ombudsman

The State Long-Term Care Ombudsman (SLTCO) is located at DARS. In addition to the SLTCO, local long-term care ombudsmen (LTCO) are located in area agencies on aging throughout the state. The LTCO serves as an advocate for older adults who receive long-term care services and works to resolve complaints made by or on behalf of those older adults. When suspected abuse, neglect, or exploitation is alleged to have occurred in a licensed nursing facility or licensed assisted living facility, the LTCO should be provided the opportunity to participate in the investigation.

2.26.5 The disAbility Law Center of Virginia

The disAbility Law Center of Virginia (dLCV) is the federally mandated protection and advocacy system for Virginians with disabilities. dLCV has broad authority to receive and investigate complaints involving any abusive, negligent, or exploitative incident, activity, practice, policy, or procedure that adversely affects the health, safety, welfare, civil rights, or human rights of people with disabilities in any setting. This includes the authority to investigate complaints involving financial exploitation by any individual or organizational representative payee appointed by the Social Security Administration. Additionally, dLCV investigates complaints when there is an issue or maltreatment by a DMAS transportation provider. dLCV's protection and advocacy mandates and authority extend to all Virginians with disabilities (e.g. developmental, mental health, cognitive, sensory, and physical disabilities), including those with age related disabilities (e.g. dementia or mobility impairments).

2.26.6 The Department of Health Professions

The Department of Health Professions (DHP) receives and investigates complaints made against regulated health care professionals (e.g., nursing facility and ALF administrators, physicians, nurses, nurse aides, medication aides, and pharmacists). When a report alleges abuse, neglect, or exploitation by a regulated health care professional, DHP should be notified and informed that the report will be investigated.

2.26.7 Office of the Attorney General, Medicaid Fraud Control Unit

The Medicaid Fraud Control Unit (MFCU) is located in Richmond. The unit conducts investigations statewide of alleged fraud by Medicaid providers and allegations of abuse and neglect of elderly and incapacitated adults in the care of providers who are receiving payment through the Medicaid program. The MFCU conducts criminal investigations of abuse and neglect of elderly and incapacitated adults in either home or institutional settings even if victims have died or been transferred to other facilities or home.

2.26.8 Local law enforcement

The LDSS shall immediately notify local law enforcement if the report alleges the following or if the following are discovered during the course of the investigation:

- (§ 63.2-1605 of the Code of Virginia). 1. Sexual abuse as defined in § 18.2-67.10;
2. Death that is believed to be the result of abuse or neglect;
3. Serious bodily injury or disease as defined in § 18.2-369 that is believed to be the result of abuse or neglect;
4. Suspected financial exploitation of an adult; or
5. Any other criminal activity involving abuse or neglect that places the adult in imminent danger of death or serious bodily harm.

Local law-enforcement agencies shall provide local departments a preferred point of contact for referrals.

2.27 Information sharing in facility investigations

See Chapter 6 for general information on confidentiality which also applies to APS cases. Section 2.35 also applies to APS cases and should be used in conjunction with Chapter 6.

2.27.1 Sharing information when coordinating a joint investigation

When a joint investigation is appropriate, team members should review their respective needs for information and determine whether these needs coincide and can be met with joint interviews or with information sharing.

The following information relative to the report being investigated may be shared with other members of the investigatory team for the purpose of coordinating a joint investigation:

- Name, address, age, race, and gender of the adult who is the subject of the report.
- Name, address, age, race, and gender of the person who is alleged to have perpetrated the abuse, neglect, or exploitation, if this person's identity is known.

- Description of suspected incident(s) of abuse, neglect, or exploitation.
- Description of any alleged medical (physical and/or mental/cognitive) conditions of the adult who is the subject of the report.

If requested to do so, the LDSS may share the APS report with the investigative team. However, any information that identifies the reporter shall be redacted unless the reporter has authorized disclosure of his identity.

It is appropriate to share the Referral for Investigation from APS form with the investigative team.

2.27.2 Information sharing when a joint investigation is not planned

When agencies with legitimate interest in confidential information, as specified in Section 2.36.1 are not participants in a joint investigation, the information specified in Section 2.36.3 shall be shared as needed.

2.27.3 Assurances that information will be held confidential

The APS worker shall obtain assurances according to Section 2.36.4 and Section 2.36.5 that the persons or agencies identified in Section 2.36.1 and Section 2.36.2 who receive confidential information will protect the information. State-level agreements pursuant to Section 2.36.5 are in effect with:

- Department for Aging and Rehabilitative Services (DARS).
- Department of Behavioral Health and Developmental Services (DBHDS).
- Department for the Blind and Vision Impaired (DBVI).
- Department of Health (VDH).
- Department of Health Professions (DHP).
- DSS Division of Licensing Programs (DOLP).
- Department of Medical Assistance Services (DMAS).

When sharing confidential information with representatives of these programs, additional assurances are not necessary.

2.27.4 Confidential information collected by the investigatory team

Information collected by the investigatory team should be considered as information that belongs to the team and treated as confidential by all members of the team.

2.27.5 Confidential information not collected by the investigatory team

Information that is maintained in APS records and not included in information collected by the investigatory team shall be shared according to guidance outlined in Section 2.35.

2.28 Preparing for the facility investigation

The APS worker and other members of an investigatory team should review the available information thoroughly to familiarize themselves with the allegations and supporting facts.

2.28.1 Availability of records

Any person who is required to report suspected abuse, neglect, or exploitation to the LDSS is also required to make available to the APS worker any records and/or reports that document the basis for the report. Mandated reporters are required to make pertinent records and reports available without regard to who reported the alleged abuse, neglect, or exploitation.

Section 164.512 of the Code of Federal Regulations for the Health Insurance Portability and Accountability Act of 1996 (HIPAA) authorizes covered entities to disclose health information that “is required by law and disclosure complies with and is limited to the relevant requirements of the law.” This includes sharing information with APS for the purposes of an APS investigation.

All providers of medical services are also authorized to disclose records of a patient to APS under § 32.1-127.1:03 D.6 of the Code of Virginia (Health Records Privacy).

2.28.2 Sources of information available within a facility

The following sources of information may be useful in documenting the alleged abuse, neglect, or exploitation of an adult residing in a facility:

- Admission records.
- Emergency Room (ER) records.
- Dietary records.

- Medical records.
- Nurses' notes.
- Therapy records.
- Physicians' orders.
- Medication charts.
- Staff time sheets.
- Psychosocial records.
- Minimum Data Set (MDS).
- Incident reports.
- Adult's financial records.
- Individual Service Plans (ISPs).
- Lab and X-ray reports.

2.28.3 DBHDS incident reports

Incident reports in DBHDS facilities are confidential and are filed separately from the medical record. The APS worker should be permitted access to review the incident reports.

2.29 Persons to inform when a facility report will be investigated

2.29.1 Facility administrator/director/superintendent/person in charge

Before entering a facility to investigate, the APS worker shall make a good faith effort to contact the facility administrator, director, superintendent, or other person who is considered "in charge" to inform the individual that a report has been received and to request cooperation with the investigation. Contact with the person in charge may be by telephone prior to the initial on-site visit, or it may be during the initial on-site visit after arriving at the facility, but before initiating the investigation. It is the APS worker's decision to arrive at the facility unannounced or to call prior to arrival.

Without prior contact with the person in charge, the APS worker may initiate the investigation without entering the facility (e.g., interview individuals residing in an

assisted living facility at another location; interview facility staff in their homes; interview students or school personnel in their homes).

2.29.2 When the person in charge cannot be located

When an APS worker arrives at a facility to investigate a report and no person on the premises is in charge, the APS worker should take reasonable steps to locate a person in charge to provide notification of the APS worker's presence in the facility and the purpose of the visit. If reasonable efforts to locate a person in charge are unsuccessful, the APS worker should initiate the investigation, and document in the APS Investigation Notes that no person was in charge at the facility.

2.29.3 Notification when no person is in charge

When an APS worker finds no person in charge at a facility, the appropriate licensing authority should be immediately notified.

2.29.4 Legally appointed guardians/conservators

If the adult who is alleged to be abused, neglected, or exploited or at risk of abuse, neglect, or exploitation has a legally appointed guardian and/or conservator, that person(s) should be notified that a valid APS report has been received and will be investigated.

If the legally appointed guardian and/or conservator is also the alleged perpetrator, the APS worker should notify him or her of the report and interact with him or her according to Section 2.14.3.

2.29.5 Responsible person

When an adult residing in a facility or a participant in a facility program has designated a person to receive information on his or her behalf or to be notified in case of injury, that person may be informed that a report has been received and will be investigated.

If the person designated by the individual to receive information is the alleged perpetrator, the APS worker should notify him or her of the report and interact with him or her according to Section 2.14.3.

2.30 Facility investigation interviews

The APS worker shall arrange for a private face-to-face interview with the individual who is the alleged victim of abuse, neglect, or exploitation. If the private interview does not occur, the reason it did not occur shall be documented in the APS Investigation Notes.

The APS worker shall arrange for private interviews, when appropriate, with facility staff. Such interviews should occur in non-resident areas of the facility. If the facility management refuses to allow private interviews with staff, the APS worker shall arrange for private interviews with staff at some location other than the facility.

The APS worker shall arrange for private interviews, as appropriate, with individuals residing in the facility, the alleged perpetrator, available witnesses, and other persons having knowledge of the facts of the case. See Section 2.11.4 for information about protections afforded any person who cooperates with an agency having responsibility for protecting the rights of individuals in facilities, such as hospitals, ALFs, or nursing facilities.

If the LDSS investigates independently and not in conjunction with an investigatory team, the APS worker should review all records, reports, and other documentation as appropriate; interview all appropriate persons; and prepare a report of the findings. The APS Referral for Investigation Form may be used for the report.

If the investigation is a team effort, the APS worker, as a team member, shall participate in planning for and implementation of the review of all pertinent information and the interviewing of all persons who can reasonably be expected to have knowledge of the facts of the case.

2.31 Conclusion of a facility investigation

At the conclusion of the facility investigation, the APS worker:

- Makes a disposition. If the APS worker makes a disposition that varies or is in conflict with the findings of other members of the investigatory team, the worker shall document the differences in the Investigative Findings screen.
- Completes all appropriate screens in PeerPlace.
- Prepares a written report of findings. The letter to a facility or others may serve as the written report. The worker should specify whether the report is a department or team report. If it is a team report, the worker identifies what agencies or programs participated on the team. This report should include only the specific confidential information that may be disclosed as outlined in Section 2.36.3. This report may be shared with agencies or persons with a legitimate interest as specified in Section 2.36.2.

The APS Referral for Investigation Form may be used for the report.

2.32 Notifications and Reports in facility investigations

2.32.1 Notifications

The APS worker notifies, in writing, the following persons regarding findings of facility investigations:

- Long-term care and group care facility administrators, directors, and superintendents.
- Acute-care hospital administrators.
- Administrators and/or owners of group care facilities (e.g., nursing facilities, assisted living facilities, facilities operated by DBHDS).
- Superintendents of school systems.
- The person who made the report.

The person who made the initial report shall be notified according to procedures in Section 2.14.1.

The adult's legally appointed guardian, conservator, or authorized representative shall be notified according to Section 2.14.3.

2.32.2 Reports

The APS worker sends the report to:

- The Investigatory Team shall receive a copy of the written report of the APS worker's findings when members of the investigation team reach different conclusions regarding the disposition.
- Regulatory or statutory agencies/programs shall receive relevant information except the identity of the reporter unless the release is authorized by the reporter (See Section 2.36.1).

A completed Referral for Investigation from APS form may be used for the report.

2.33 Identification of service needs and service planning in facility investigations

When the investigation finds that the adult needs protective services as described in Section 2.13.1, a service plan shall be developed. When other agencies/facilities will participate in implementing the service plan, the plan shall specify what each participant agrees to do to eliminate or reduce the risk of abuse, neglect, or exploitation. If the service plan is developed without the consensus of all concerned, points of disagreement shall be noted.

While services are being identified and the service plan developed, the APS worker should be aware that deficiencies in licensure and certification requirements should be assessed by the appropriate regulatory staff. The authority to cite non-compliance with licensure or certification requirements rests with the appropriate regulatory agency. The APS worker shall not make recommendations about the continued employment of staff by a facility.

2.34 Monitoring and follow-up in facility investigations

The APS worker shall make follow-up contacts and take other appropriate action, as needed, in cases with a “needs protective services and accepts” disposition until the service plan goals have been met and the adult is no longer at risk of abuse, neglect, or exploitation.

Post-investigative follow-up with the facility to ensure corrective action of regulatory deficiencies is the responsibility of the regulatory authority and the facility administration or, in public schools, the local school board.

If the facility administrator, local school board, and/or the appropriate regulatory authority do not agree with the findings of the APS investigation and indicate that action will not be taken to protect the adult, the APS worker shall consult with the adult, appropriate family members, a legally appointed guardian, and/or other persons with a legitimate interest in the well-being of that individual to discuss options to assure that the adult is protected.

2.35 Confidentiality in all APS cases

(§ 63.2-1605 of the Code of Virginia). The report and evidence received by the local department and any written findings, evaluations, records, and recommended actions shall be confidential and shall be exempt from disclosure requirements of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), except that such information may be disclosed to persons having a legitimate interest in the matter in accordance with §§ 63.2-102 and 63.2-104 and

pursuant to official interagency agreements or memoranda of understanding between state agencies.

Criminal investigative reports from law-enforcement agencies shall not be disseminated by APS or disclosed to the public. However, investigative reports may be disclosed to an AFRT.

(§ 63.2-1606 of the Code of Virginia). Criminal investigative reports received from law-enforcement agencies shall not be further disseminated by the investigating agency nor shall they be subject to public disclosure; such reports may, however, be disclosed to the Adult Fatality Review Team as provided in § 32.1-283.5 or to a local or regional adult fatality review team as provided in § 32.1-283.6 and, if reviewed by the Team or a local or regional adult fatality review team, shall be subject to applicable confidentiality requirements of the Team or a local or regional adult fatality review team.

See Chapter 6 for general information on confidentiality that also applies to all APS cases. The following language also applies to APS cases and should be used in conjunction with Chapter 6.

2.36 Release of information in all APS cases

Agencies and/or individuals receiving confidential information shall provide the LDSS with assurances that the information will be held confidential. See Section 2.36.5 for methods of obtaining assurances.

Exception: Such assurances are not required of:

- Department staff who shall have regular access to APS records maintained by LDSS.
- An attorney representing an LDSS in an APS case.
- Collaterals contacted as part of the investigation.

2.36.1 Agencies with licensing, regulatory and legal authority who have a legitimate interest in confidential information

(22 VAC 30-100-50). 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. disAbility Law Center of Virginia;
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 Office of Licensure and Certification and the Office of the Chief Medical Examiner;
6. Department of Medical Assistance Services;
7. Department of Health Professions;
8. Department of 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. Commonwealth's attorneys; and
15. Any other entity deemed appropriate by the Commissioner or director that demonstrates a legitimate interest.

The local department shall disclose all relevant information to representatives of the agencies identified (above) 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.

LDSS are required to share information with certain agencies that need this information to fulfill their licensing, regulatory and legal responsibilities. Relevant

information to be shared includes investigative findings as well as the investigation disposition. The “Referral for Investigation from APS” form is an appropriate form to use to provide this information. However, in some instances certain agencies, such as the Department of Health Professions, may be required to share information with the alleged perpetrator if the alleged perpetrator is licensed by that state agency. LDSS may redact information on the “Referral for Investigation from APS” form before sending the form. The LDSS attorney should be consulted for additional questions regarding the sharing of confidential information.

There may be instances when the agency requests additional information not included on the form. If this information is needed for the agency to perform their licensing, regulatory or legal responsibilities, with the exception of the name of the individual who made the report, the LDSS shall provide the requested information.

2.36.2 Other individuals or agencies with legitimate interest

(22 VAC 30-100-50). 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 §51.5-122 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 or other licensed health care professional 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 APS report;
5. A family member who is responsible for the welfare of an adult who is the subject of an APS report;
6. An attorney representing a local department in an APS matter;
7. The Social Security Administration; or
8. Any other entity that demonstrates to the commissioner or director that legitimate interest is evident.

2.36.3 Specific confidential information that may be disclosed

Any or all of the following specific information may be disclosed at the discretion of the LDSS to agencies or persons specified in Section 2.36.2:

- (22 VAC 30-100-50). 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 of abuse, neglect, or exploitation;
4. Description of the adult's medical conditions to the extent known;
5. Disposition of the APS report; and
6. The protective services needs of the adult.

However, the identity of the person who reported the suspected abuse, neglect, or exploitation shall not be disclosed unless the reporter authorized the disclosure of his or her identity or disclosure is ordered by the court.

The LDSS may provide the above information in verbal or written format.

2.36.4 Assurances to the LDSS

Agencies or persons who receive confidential information pursuant to Section 2.36.1 and Section 2.36.2 shall provide the following assurances to the LDSS:

- (22 VAC 30-100-50). 1. The purpose for which information is requested is related to the adult protective services goal in the services plan for 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

2.36.5 Methods of obtaining assurances

Any one of the following methods may be used to obtain assurances.

- Use of the form “Consent to Exchange Information” located on the DSS intranet when the form has been completed and signed by the adult giving permission to share the information requested with the individual or organization making the request.
- An agreement between the LDSS and other community service agencies that provides blanket assurances required in Section 2.36.4 for all APS cases (see sample letter of understanding on DSS intranet).
- State-level agreements that provide blanket assurances required in Section 2.36.4 for all APS cases.
- Use the “Assurances of Confidentiality” form located on the DSS intranet.

2.36.5.1 Notification that information has been disclosed

(22 VAC 30-100-50). When information has been disclosed pursuant to this section, 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.

Notice to the adult is not required when information is shared with collateral sources to elicit information essential to the investigation.

2.36.6 Other circumstances mandating disclosure of confidential information

APS records are not subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia) and limited disclosure is authorized by the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq. of the Code of Virginia). However, if the court orders disclosure the LDSS shall comply.

2.36.6.1 When disclosure is ordered by the court

If a subpoena is issued for an APS case record, for LDSS representatives to testify in connection with an investigation, or for proceedings not directly related to the purpose for which the information in the record was collected and maintained, the worker needs to notify the LDSS attorney. The LDSS shall follow the advice of the attorney.

2.36.6.2 Notification to reporter

When a person has made an APS report and an investigation has been completed, the person who made the report shall be notified that the investigation has been completed and appropriate actions have been taken by the department.

2.36.6.3 Request for private information

LDSS are required to disclose information when a request for access to information is made pursuant to the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 of the Code of Virginia) (22 VAC 30-100-50).

Any individual has the right to review and challenge personal information **only** about himself or herself contained in an APS case record. The individual has a right to review personal information about himself or herself **only** and may not review other information contained in the case record. The name of the reporter is not disclosed. The individual has a right to challenge, correct, or explain information about himself or herself maintained in the APS record. The individual may file a statement of not more than 200 words explaining his or her position according to procedures set forth in § 2.2-3806 of the Code of Virginia.

LDSS are encouraged to consult the LDSS attorney for a request for information made pursuant to the Government Data Collection and Dissemination Practices Act.

2.37 Multidisciplinary teams (MDTs)

MDTs are an effective tool to address adult abuse, neglect, and exploitation. The Code of Virginia authorizes LDSS to foster, maintain, and coordinate community-based MDTs comprised of professionals representing health care, mental health, social work, nursing, education, legal, and law enforcement. The LDSS may decide to form an MDT “when practicable” and should take into account locality staffing, level of support from prospective MDT members, and possible MDT funding needs when deciding whether to form an MDT. MDTs are not prescriptive in size, mission, or objective and the MDT structure or focus may change over time to meet the needs of the community.

Community-based MDTs shall:

- Assist the LDSS in identifying abused, neglected, and exploited adults.

- Coordinate medical, social, and legal services for abused, neglected, and exploited adults and their families.
- Develop innovative programs for detection and prevention of the adult abuse, neglect, or exploitation.
- Promote community awareness to address abuse, neglect, and exploitation.
- Disseminate information to the general public regarding adult abuse, neglect, and exploitation, prevention methods, and treatment options for victims.

MDTs may share information among the parties in the performance of their duties but are bound by confidentiality and shall execute a sworn statement to honor the confidentiality of shared information. Violation of confidentiality is punishable as a Class 3 misdemeanor. All information and records shall be used by the team only for purposes of the MDT. No participant in the MDT and no MDT member shall be required to make a statement as to what transpired during the meeting or what information was collected during the meeting. All records and information concerning the adult shall be returned to the originating agency or destroyed. Any information exchanged as part of the MDT shall not be considered to be a violation of §§ 63.2-102, 63.2-104, or 63.2-105 of the Code of Virginia (§ 63.2-1605 of the Code of Virginia).

2.38 Appendix A: APS forms

The following forms may be used during the provision of Adult Protective Services. Unless otherwise indicated, these forms are located on the Adult Protective Services page of the DSS intranet. Look under “Resources,” then “Forms.”

Acknowledgment of Mandated Reporter Status

This optional form is used by employers to document that employees have been notified of mandated reporting responsibilities. The form is located on the DARS public site in the documents & forms repository.

Assurances of Confidentiality

This form is used by the LDSS to ensure that information provided by the LDSS to other agencies will be held confidential except to the extent that disclosure is required by law.

Consent to Exchange Information

This form can be used to assist the LDSS in obtaining information needed from other agencies to determine an individual’s eligibility for services or benefits.

Consent for Photography for APS Investigation

This form is used to document consent for photographs to be taken during an APS investigation.

Eligibility Worker Referral

This form is used by LDSS eligibility workers to refer to APS an individual who is incapable of understanding the Medicaid application process and has no authorized representative or substitute family member who is willing and able to apply and sign the application on his or her behalf.

Referral for Investigation from APS

This form is used to notify other agencies of an APS investigation. The form is available in ‘notification letters’ in PeerPlace.

Report of Guardian for Incapacitated Person

This form is used by the guardian to complete the initial report, annual and final guardianship report.

Request for Records from a Financial Institution

This form is used by the APS worker to request records from a financial institution. This is a model form used nationally and the content should not be altered. It is recommended that the form be placed on LDSS letterhead.

Request to Impose Civil Penalty

This form is used to request that the DARS Commissioner impose a civil penalty for a mandated reporter's failure to report.

Response to Medicaid Referral

This form is used by the APS worker to respond to the Eligibility Worker Referral form.

2.39 Appendix B: Preponderance of evidence

Evidence is the type of information gathered by the APS worker during an investigation that is used in making the disposition. Evidence may be either direct or circumstantial. **Direct** evidence includes statements by eyewitnesses, statements by experts such as physicians and nurses addressing certain medical conditions or injuries, observations by the APS worker, documents such as nursing notes and bank statements, objects, and photographs. **Circumstantial** evidence does not come directly from a witness, the alleged victim, or the alleged perpetrator, but relies upon inference and presumptions to prove or disprove the allegation of abuse, neglect, or exploitation.

In many APS cases, the eyewitness type evidence (“I saw him slap his mother”) may not be available or the alleged victim may be confused and disoriented. Developing circumstantial evidence becomes essential in providing the information needed to make the disposition. Prior threats to the alleged victim, previous substantiated incidents of abuse, neglect, or exploitation, proximity (an adult child living in the home) and access (a provider of direct care) to the alleged victim, unexplained injuries, and unaccounted for funds **may** point to a disposition of “Needs Protective Services”, but each piece of information is “**circumstantial**” evidence rather than “**direct**” evidence.

Preponderance of evidence is the greater weight of the evidence required to decide in favor of one side or the other. Effectively, preponderance of evidence is satisfied if there is a greater than 50% chance that an incident occurred. This preponderance is based on the more convincing evidence and its probable truth or accuracy, and not on the **amount** of evidence. As an example, statements of a credible eyewitness could meet this standard over statements made by a person suffering from dementia.

In making a disposition, the APS worker shall weigh both the credibility and probability of **all** the available evidence, both direct and circumstantial.

2.40 Appendix C: APS investigation photography guidelines

(§ 63.2-1605 of the Code of Virginia). In any case of suspected adult abuse, neglect, or exploitation, local departments, with the informed consent of the adult or his legal representative, shall take or cause to be taken photographs, video recordings, or appropriate medical imaging of the adult and his environment as long as such measures are relevant to the investigation and do not conflict with § 18.2-386.1. However, if the adult is determined to be incapable of making an informed decision and of giving informed consent and either has no legal representative or the legal representative is the suspected perpetrator of the adult abuse, neglect, or exploitation, consent may be given by an agent appointed under an advance medical directive or medical power of attorney, or by a person authorized, pursuant to § 54.1-2986. In the event no agent or authorized representative is immediately available then consent shall be deemed to be given.

Photographs taken during investigations

- Prior to taking any photographs during the APS investigation, the APS worker shall document all efforts to obtain consent from the adult or his or her legal representative in the APS investigation notes. Written consent is recommended and the form “Consent for Photography for Adult Protective Services (APS) Investigation” may be used. The consent form is located on the DSS intranet. Once the “Consent for Photography in APS Investigation” is completed it shall be uploaded to PeerPlace using the attachments link in the APS client registration.
- Photographs may be taken with an agency issued digital camera or an agency issued cell phone. The photographs shall be uploaded in PeerPlace to the corresponding APS investigation using the attachments link in the APS client registration. Once the photographs are uploaded to the investigation in PeerPlace they shall be deleted from the agency issued digital camera or agency issued cell phone.
- Under no circumstances should photographs be stored on a computer hard drive or on any network drive.
- Photographs cannot be digitally altered.
- The LDSS may share the photographs with a licensing, regulatory, or legal authority for administrative action or criminal investigation when appropriate. If

sharing photographs electronically, the files shall be encrypted to ensure confidentiality.

- If the APS worker leaves his or her position in the APS program, and has investigation photographs stored on a CD, the CD will be given to the APS supervisor.
- Any photographs stored on a CD shall be purged in accordance with the Library of Virginia Record Analysis Services record retention and disposition schedule for county and municipal governments social services records (GS-15). The LDSS is responsible for purging hard copy records.

Cases going to court

- If the photographs will be used in court, the photographs should be printed on photo paper with the size to be determined in consultation with the attorney representing the agency. Cases going to court should have all the photographs printed and each photograph or page of photographs should be labeled with the APS worker's name, the PeerPlace ID, the date of the APS report, APS report number, and the date the photographs were taken.

Equipment

- Digital cameras are recommended. The type of camera an LDSS selects should be based on price and ease of use. The camera should be able to produce good quality 8X10 images.
- Each LDSS APS unit should have a camera. APS units should consider making backup arrangements with the CPS unit to ensure a camera is available when needed.
- An agency issued cell phone may be used to take photographs. The camera should be able to produce good quality images.
- A color printer is recommended for printing photographs. Photo paper should be used when the photographs are to be used in court.

How to take photographs-rule of 3¹

Take at least three photographs: an overview, a mid-range, and a close-up.

¹ Adapted with permission from Montana APS.

- **Overview.** The overview or long-range shot captures the entire person or area of concern. The overview shot should cover the entire scene/environment to bring out the relationships between the objects, as appropriate. Leave measuring labels, rulers, and scales out of an overview photo.
- **Mid-range.** A mid-range shot captures a narrower region of the injury or area of concern. This shot shows a particular object or person in the immediate surroundings.
- **Close-up.** A close-up shot captures a detailed image of the injury or area of concern. The close-up photograph shows a key detail clearly or has a “standard” in the close-up shot to indicate the actual size of what is being photographed. Measuring scales, labels, and rulers may be added to the close-up shot to accomplish this purpose. For example, placing a ruler with readable graduations next to the wound will show its actual size in the photo. Other standards include coins, dollar bills, or pencils. If the ruler or scale covers the area of injury or concern, also take a close-up picture without the ruler.

3

CASE MANAGEMENT

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ADULT SERVICES CASE MANAGEMENT

3.1 Case management

The case management process is a systematic approach essential to effective service delivery that actively involves the service worker, the adult, and the adult's family in developing, achieving, and maintaining meaningful goals. The purpose of case management is to structure the service worker's focus and activities to assist the adult in reaching his or her goals and to assure that the adult receives appropriate services in a timely manner.

3.2 Definitions

The following terms are defined in state regulation 22 VAC30-130, Adult Services Standards, *unless indicated otherwise*.

Term	Definition
Activities of Daily Living or ADLs	Bathing, dressing, toileting, transferring, eating/feeding, and bowel and bladder continence.
Adult	An individual 18 years of age or older, or younger than 18 years of age if legally emancipated.
Adult Foster Care	<i>Room and board, supervision, and special services to an adult who has a physical or mental condition. Adult foster care may be provided by a single provider for up to three adults (22 VAC 30-120-10).</i>

Term	Definition
Adult Services	Services that are provided by local departments of social services to adults with an impairment.
Adult with an impairment	An adult whose physical or mental capacity is diminished to the extent that the adult needs counseling or supervisory assistance or assistance with ADLs or instrumental activities of daily living
Auxiliary Grants or AG	Cash payments made to certain aged, blind, or disabled individuals who receive benefits under Title XVI of the Social Security Act, as amended, or would be eligible to receive these benefits except for excess income.
Chore Services	Non-routine, heavy home maintenance services provided to adults, including minor repair work on furniture and appliances in the adult's home; carrying coal, wood, or water; chopping wood; removing snow; yard maintenance; and painting.
Companion Services	Services to an adult, including light housekeeping, companionship, shopping, meal preparation, transportation, laundry, money management, and assistance with ADLs.
Department	Department for Aging and Rehabilitative Services
Department Designated Case Management System	The official state automated computer system for adult services that collects and maintains information on adult services provided by the local department. Note: The case management system is called PeerPlace.
Eligibility Based on Income	An eligibility category under which the adult's eligibility for services is based upon an income scale issued annually by the department.
Home-based Services	Companion, chore, and homemaker services that allow adults to attain or maintain self-care and are likely to prevent or reduce dependency.
Homemaker Services	Services that provide the adult instruction in or the performance of activities to maintain a household. Homemaker services may include personal care, home management, household maintenance, nutrition, and consumer or hygiene education.

Term	Definition
Income Maintenance	An eligibility category under which the adult is eligible for a service because the adult receives Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI) or AG.
Instrumental Activities of Daily Living or IADLs	Tasks such as meal preparation, shopping, housekeeping, money management, transportation, using the telephone, home maintenance, and laundry.
Local Board	Local board of social services representing one or more counties or cities.
Local Department	The local department of social services of any county or city in this Commonwealth.
Public Assistance	TANF, AG, medical assistance, energy assistance, supplemental nutritional assistance program, employment services, child care, and general relief.
Responsible Person	An individual who is authorized under state or federal law to make decisions concerning the adult and to receive information about the adult.
Service Plan	A written plan to address the needs of the adult
Social Supports	Individuals or organizations who routinely provide assistance or support to the adult.
Uniform Assessment Instrument or UAI	The Department-designated assessment form. It is used to record information about the adult's level of service needs.
Universal Access	An eligibility category under which the adult is eligible for services without consideration of the adult's income.

3.3 Confidentiality

The Code of Virginia and federal laws and regulations require that LDSS keep an individual's information confidential. With certain Adult Protective Services (APS) program exceptions, the adult shall give written permission before information may be obtained from other sources or shared with another person or agency. The form, entitled "Consent to Exchange Information" is located on the DSS intranet and DARS public site and shall be used when sharing information. A copy of the completed Consent to Exchange Information form shall be uploaded to the attachments tab in the client registration. See Chapter 6, "Confidentiality" for additional information on confidentiality.

3.4 Adult services intake

(22VAC30-130-20). Intake is designed to provide a timely, coordinated method for the adult to request services or assistance or to obtain sufficient information about other resources.

The local department shall be responsible for performing intake activities. These activities may include information and referral or initial assessment for assistance as indicated by the adult's situation.

Upon determining that the request for assistance or services is not an APS report, the worker proceeds with the Adult Services (AS) intake process. The initial contact may be made by telephone, office visit, and/or through a referral from another agency. Services provided may include information and referral, initial screening and assessment, crisis intervention, and assistance with emergency needs if indicated by the case situation or assessment.

3.4.1 Information and referral

Information and referral is one way to handle a request for services that are not arranged or provided by the LDSS. Providing information and referral helps the individual locate and use resources to meet his or her needs. Any adult is eligible for information and referral assistance, regardless of income or eligibility for benefit or service programs.

A worker is not required to register a client in PeerPlace for information and referral. If assistance is needed beyond information and referral, the adult shall complete a Service Application.

3.4.1.1 Information

The service worker provides information on the availability, accessibility, and use of resources. This may be all the individual needs to make his or her own arrangements to access a resource.

3.4.1.2 Referral

The service worker contacts a resource and helps the adult arrange to receive the needed service. This is appropriate for individuals who are unable to use the information without additional help.

The Statewide Information and Referral (I&R) System, also known as 211, provides citizens of the Commonwealth with free and confidential information and referral to health and human service resources. To access 211, individuals may dial “211” on their phone or visit the 211 website.

3.5 Services and activities

Local departments shall provide the following ~~adult services~~:

- Screenings for long-term care services and supports pursuant to §32.1-330 of the Code of Virginia
- Public pay assisted living facility assessments pursuant to §63.2-1804 of the Code of Virginia
- Review of annual reports submitted by guardians pursuant to §64.2-2020 of the Code of Virginia
- Home-based services (HBS) to the extent that federal or state funding is available, as requested by an adult with an impairment who meets financial and functional eligibility criteria. (22 VAC 30-130-30).

The Department of Medical Assistance Services (DMAS) Screening Manual for Medicaid Long-term Services and Supports (LTSS) Chapter IV provides guidance regarding Medicaid LTSS screenings. The LTSS Screening Manual is located on the DMAS MES public portal.

LDSS should follow the Public Pay Assisted Living Facilities (ALF) Assessment Manual for procedures on assessment and placement in ALFs for AG applicants and recipients. The ALF Assessment Manual is located on the DARS public site.

LDSS should use Chapter 7, Guardianship and Conservatorship for procedures on petitioning for guardianship and conservatorship and review of annual guardian report forms.

3.5.1 Optional services

(§63.2-1601 of the Code of Virginia). Each local board is authorized to provide adult foster care services that may include recruitment, approval, and supervision subject to the supervision and in accordance with regulations of the Commissioner for Aging and Rehabilitative Services as provided in Article 4 (§ 51.5-144 et seq.) of Chapter 14 of Title 51.5.

3.6 AS Application

(22VAC30-130-40). To request home-based services, the adult or the adult's responsible person shall submit a service application (Application for Adult Services Form) to the local department.

- The service application shall be on a form provided by the department.
- The local department shall document receipt of the application in the department-designated case management system.
- A service application shall not be required to request an *LTSS* screening, for an *ALF* assessment, or for review of an annual guardian report. (22 VAC-30-130-40).
 - **Note:** Pursuant to state law, a request for a screening shall be processed as quickly as possible, but no later than 30 days from the date the screening was requested.
 - If additional services are requested beyond the reassessment, screening or guardianship report review, a signed service application shall be obtained.

Anyone may apply for services. There shall be no requirement as to citizenship or length of residence in the jurisdiction. The adult may request an application in person, by mail, or by telephone. Telephone calls to the LDSS are not considered an "application" unless the request is for a *Medicaid LTSS* screening. A Service Application, which includes the consent form, is available on the DSS intranet and the DARS public site.

- LDSS shall accept all applications.

- The LDSS shall give the adult the opportunity to complete an application in-person at the LDSS. An application requested by mail or telephone shall be mailed to the adult the same day. The individual should be informed that applications are also available on the DARS public site.
- The LDSS shall assist the individual with completing the application if the individual requests assistance. A home visit may be necessary if the individual is unable to get to the LDSS. If the individual is capable, the worker shall discuss the service request with the individual to ensure that the services requested or applied for are desired by the individual.
- The following shall be explained at intake:
 - How eligibility is determined.
 - Rights and responsibilities of the individual applying for services. Rights and responsibilities are listed on the service application.
- The individual shall be referred to public assistance programs or other financial assistance when appropriate.

3.6.1 Service application initiated by the individual

If the individual or responsible person applies for services, a service application shall be completed. Once the signed service application is received the LDSS shall upload it under the attachments tab in the AS Registration. The LDSS shall consider an application as “pending” until the LDSS has determined eligibility for the service.

3.6.2 LDSS-initiated service application

The LDSS may initiate a service application on behalf of an adult when the applicant is unable to sign the application or is incapacitated.

3.6.3 Date of application

The date of application is one of following:

- The day the completed and signed Service Application is received by the LDSS.
- The date of the receipt of a valid *APS report*. The report serves as the application until a disposition is made. If the disposition is “Needs Protective Services and Accepts,” the worker will obtain a signed and dated application from the individual or his representative or the worker will complete a department-initiated application.

3.6.4 When a new application is needed

A new application is needed only when a case is properly closed and the individual wishes to reapply for services. A new application is not needed when a new service is added to the service plan.

3.7 Determining eligibility for HBS

(22VAC30-130-30). Local boards shall establish a local home-based services policy that includes the types of home-based services that are offered in the locality, the functional eligibility criteria, and the financial eligibility criteria as decided by the local board.

LDSS should review the HBS policy annually to ensure it reflects the LDSS's mission, the community's needs, and state law and regulations. The policy should specify the maximum number of hours of HBS per adult per week and the rate of pay for a provider. A provider shall be paid at least the Virginia minimum wage. The APS Division AS Specialist is available to provide technical assistance to LDSS regarding the HBS policy at the time it is developed or revised.

3.7.1 Timeframe to determine eligibility

(22VAC30-130-40). Determinations for functional eligibility and financial eligibility are separate processes but shall be pursued simultaneously. Functional and financial eligibility shall be determined as promptly as possible. The local department shall notify the adult of its eligibility determination decision no later than 45 days from the date the application is received by the local department.

A service case is opened based on eligibility, determination of need, and the availability and intent to deliver the service. Processed applications shall be uploaded to the AS Registration screen in PeerPlace.

3.7.2 Service population and criteria

See Section 3.2 for AS definition.

An individual does not need to be determined eligible for Social Security or SSA, Supplemental Security Income or SSI, or Social Security Disability Income or SSDI benefits prior to receiving services from the LDSS. *Individuals whose SSI payment is temporarily reduced or temporarily terminated due to an overpayment, may continue to be eligible for services.*

HBS shall not be available to adults who reside in an institutional setting including a nursing facility, assisted living facility, or hospital (22 VAC 30-130-40).

An adult is eligible to receive HBS if the adult's residence is owned or jointly owned by the adult, the adult rents or shares rent in the residence, or the adult lives in the residence of a relative or friend, and the adult meets other eligibility requirements.

Eligibility for LDSS HBS does not necessarily preclude an adult's eligibility for home-based Medicaid LTSS, such as CCC Plus waiver. If an adult is eligible for other services (such as home-based Medicaid LTSS) but cannot afford the co-payment or chooses HBS in lieu of Medicaid LTSS, the LDSS cannot deny services to that adult if he or she meets eligibility requirements for the requested service(s) and funding for services is available. However, The LDSS shall terminate HBS when the adult chooses to receive home-based Medicaid LTSS and those services can meet the adult's needs.

3.8 Financial eligibility for HBS

(22VAC30-130-30). The local department, upon the decision of the local board, may choose to offer home-based services under universal access. If the local department does not offer home-based services under universal access, the adult shall be evaluated by the local department under the eligibility categories of income maintenance or eligibility based on income. Adults who are not eligible under universal access or income maintenance shall be evaluated by the local department under the eligibility based on income category.

(22VAC30-130-40). The local department shall determine the adult's financial eligibility for home-based services.

Eligibility for services shall be determined by a service worker or a volunteer under the supervision of a service worker. Eligibility shall be documented in PeerPlace using ASAPs Financial Eligibility in the client profile.

To receive services an individual shall meet one of three financial eligibility categories:

- Universal Access
- Income Maintenance
- Eligibility Based on Income

3.8.1 Universal access

(22VAC30-130-40). If the local department chooses to offer home-based services under universal access, the adult is financially eligible for home-based services without consideration of the adult's income.

An individual who requests an LTSS screening is not required to apply for Medicaid prior to the screening. Therefore, the worker shall select universal access for screenings.

3.8.2 Income maintenance

(22VAC30-130-40). If the local department chooses to offer home-based services under income maintenance, the local department shall verify and document the adult's source of income in the department-designated case management system, and document whether the adult is eligible for an Auxiliary Grant, Temporary Assistance for Needy Families, or Supplemental Security Income. Adults who receive an Auxiliary Grant, Temporary Assistance for Needy Families, or Supplemental Security Income meet the financial eligibility requirement for home-based services offered under the income maintenance category.

3.8.2.1 Verification of receipt of income maintenance

- The service worker views written verification or verifies the SSA income information by accessing SVES, SOLQ, or the SDX listing.
- AG eligibility should be verified by Benefit Programs staff at the LDSS that processed the individual's AG application.

3.8.3 Eligibility based on income

(22VAC30-130-40). If the local department chooses to offer home-based services under eligibility based on income, each local board shall select a threshold percentage of the median income to evaluate financial eligibility for adults. The department shall provide a scale of the median income for a family of four in Virginia as updated periodically in the Federal Register by the U.S. Department of Health and Human Services annually to local departments to use to determine financial eligibility. The adult's income, not resources, shall be counted when determining the adult's financial eligibility. The local department shall verify and document the adult's income in the department-designated case management system.

Certain income shall be disregarded when determining financial eligibility for *HBS* in eligibility based on income category. (22 VAC-30-130-40). See Appendix B for the disregarded income list.

Eligibility in this category is determined by measuring the gross income and the number in the family unit against the State Median Income (SMI) chart. The APS Division announces the updated Federal Fiscal Year (FFY) SMI by a broadcast each year prior to September 1. The SMI chart is available in PeerPlace and the VDSS

intranet. The local board selects the percentage cut-off point used and records this decision in the board minutes.

3.8.3.1 Verification of income eligibility and determination of monthly income

- Count only income (not resources). Income counted or excluded is listed in Appendix B. Income shall be verified, and the individual is expected to assist with the verification process. To obtain a monthly income, multiply a weekly income by 4 and 1/3.
- To verify income, viewing of recent written verification is acceptable.
 - If income fluctuates, the amount should be averaged over a period sufficient to take fluctuations into consideration. Usually three (3) months is sufficient; however, for farm income or seasonal employment, a year may be necessary.
 - Accept an individual's statement (preferably in writing) that he or she has no income unless there is reason to doubt the statement.

3.8.3.2 Family size and income

- The family is the basic unit for social services delivery. Family means any individual adult, spouses, adults, or adult(s) with minor children or minor grandchildren who function as a family unit.
- For purposes of determining financial eligibility, base the family size on the number of family members in the case.
- Count the income from those family members as well as income received from any legally responsible adult who may not be living in the family. Count income from family members temporarily absent from the household for whom the family claims financial responsibility for tax purposes.

3.9 AFC

Individuals seeking AFC placement must be assessed prior to placement using the UAI and meet residential level of care at a minimum. The assessment shall be updated annually. Local board policy should address the financial eligibility criteria for that LDSS's AFC program. The LDSS may rely on more than one of the funding sources listed below.

An agreement stating the amount to be paid by the adult shall be in writing and fully explained to the adult. A sample form “Agreement for AFC” is available on DSS intranet. Any modification in the amount to be paid shall be indicated on the agreement.

3.9.1 Local-only funding eligibility

Eligible individuals are those adults who meet local board policy, and who are assessed to need the service.

3.9.2 AG eligibility

Eligible individuals are those adults who meet the criteria for a payment under the AG Program (to be determined by the eligibility worker), and local board policy, and who are assessed to need the service. The LDSS where an individual resided prior to entering an institution or AFC is responsible for determining the individual’s eligibility for AG and issuing the AG payment. An LDSS that offers AFC must ensure follow AG Program regulations if the AFC provider accepts AG.

Both the service worker and the eligibility worker shall coordinate efforts to determine the adult’s financial eligibility for AG. Whoever has contact with the adult first shall refer the adult to the other.

Upon notification that the adult is eligible for AG, the service worker shall assist with the adult’s admission to the AFC. The service worker shall provide verification of the adult’s admission to the eligibility worker. The eligibility worker shall approve the case and determine the amount of the AG payment.

The AFC provider shall not receive more than the established AG rate. The AG payment shall be provided directly to the adult or responsible part who then pays the provider.

AFC providers shall provide each AG recipient and his authorized representative with a written list of the goods and services that shall be covered by the AG including a clear statement that the facility shall not charge an individual or the individual’s family or authorized representative additional amounts for goods or services included on such list. This statement shall be signed by the AG recipient or authorized representative as acknowledgment of receipt and shall be made available to the department upon request. (22 VAC 30-80-45).

3.9.3 Private pay

Eligible individuals are those adults who are incapable of independent living or unable to remain safely in their own homes and have the resources to pay for a private placement in an approved AFC home. This option should be outlined in the LDSS’s AFC local policy and approved by the local board of social services.

3.10 Facilitating the AFC admission

LDSS shall consider the following prior to the adult's admission to an AFC home:

- *The adult's assessed need(s).*
- *Compatibility with the provider and other individuals residing in the AFC home.*
- *Ability of the AFC provider to provide any needed special services as identified by the assessment.*

3.10.1 Medical examination - AFC

Each adult in an AFC home shall submit a medical statement from a licensed health care profession that contains the following information:

- *Date of last physical examination (must have been within 60 days of admission in AFC).*
- *Diagnoses of significant medical conditions.*
- *Documentation that the adult is believed to be free from tuberculosis in a communicable form.*
- *Recommendation for care including medication, diet, and therapy(ies).*

3.11 LDSS Coordination with CSB for AFC

LDSS may coordinate with CSBs on the provision of AFC for adult with mental illness and/or intellectual disability. If the LDSS should enter into an agreement with the CSB to specify which agency will be responsible for assessment, placement, service monitoring, and discharge. Only the LDSS is able to approve an AFC provider.

3.12 Auxiliary Grant Supportive Housing (AGSH)

Supportive Housing (SH) was added as an approved setting to the AG program in 2016. SH is defined as a residential setting with access to supportive services for an AG recipient in which tenancy as described in §37.2-421.1 of the Code of Virginia is provided or facilitated by a provider licensed to provide mental health community support services, intensive community treatment, programs of assertive community treatment, supportive in-home services, or supervised living residential services that has entered into an agreement with the Department Behavioral Health and Developmental Services (DBHDS) pursuant to §37.2-421.1 of the Code of Virginia.

At the time of the initial assessment or annual reassessment, the individual may apply to live in AGSH. The qualified assessor will evaluate the individual's level of care and will make a referral to the AGSH provider. The AGSH provider will conduct an SH evaluation.

Currently, AGSH is only available to 120 individuals and is only provided by certain entities approved by DBHDS. The list of DBDHS AGSH providers is available on the DARS public site and the DSS intranet. The AGSH Operational Manual is available on DSS intranet.

3.13 Registering cases in PeerPlace

Register the individual in the appropriate PeerPlace Program according to the adult's needs. The worker may register an individual in multiple programs depending on the individual's situation.

- AS Program: Individual is requesting services such as *HBS*, *LTSS* screening, ALF assessment, *AFC*, or another service such as LDSS monitoring.
- APS Program: Individual is the subject of an APS report. If report is valid, an investigation is conducted and if services are accepted, APS Program service plan is used.
- Guardianship Program: Individual has a guardian who is submitting an annual report.

3.13.1 Opening a case

For purposes of opening a case in PeerPlace, each individual has a separate registration. For example, if one spouse needs companion services and the other spouse does not, a registration would only be opened on the spouse needing services. If both spouses needed services, two separate registrations would be opened in PeerPlace.

However, when determining eligibility, spouses are considered a family of two and this should be reflected in the section "Number in Family Unit" in the Financial Eligibility section.

- Adult children are always considered a family of one.
- Spouses raising one minor child would be considered a family of three.
- A single adult raising one minor grandchild would be considered a family of two.

3.13.1.1 Documenting the opening of a case in PeerPlace

Enter a case opening statement in the client registration notes which may include the following:

- Initial contact with the agency using names and relationships
- Services requested
- Pertinent details concerning the client and the requested services
- System searches completed
- Informal and formal supports
- Information and referrals provided
- Income and resources

3.13.2 Effective dates and annual redetermination dates

The effective date is the date that the service began for the current eligibility period. The effective date for Universal Access is usually the date of the service application and the date that financial eligibility conditions are established for Income Maintenance and Eligibility Based on Income cases. The annual redetermination date is one year and one day less than the effective date.

See Section 3.23 for information on redetermination of eligibility.

3.14 Fraud

The LDSS shall explain to individuals applying for AS the importance of providing accurate and thorough information and of notifying the LDSS of changes during service delivery. Anyone who causes the LDSS to make an improper vendor payment by withholding information or by providing false information may be required to repay the amount of the improper payment. Section 63.2-522 of the Code of Virginia deems any person guilty of larceny who obtains assistance or benefits by means of a willful false statement or who knowingly fails to notify the LDSS of a change in circumstances that could affect eligibility for assistance. Individuals deemed guilty of larceny, upon conviction, are subject to penalties as specified in the § 18.2-95 of the Code of Virginia.

3.15 Assessment process

3.15.1 Basis

The assessment process is a mutual process between the service worker and the adult that begins at intake. Completing the assessment is the first step in service planning. The purpose of assessment is to determine whether the adult is in need of services, and, if so, to identify what services are needed. When an individual applies for a service, a preliminary assessment shall be made to determine the presenting issue(s) or immediate need(s).

The assessment *also documents* the long-range service objectives, the selection of services to fulfill those objectives, and the choices of resources to be used. *The assessment* may include observations, client and collateral statements, noted behaviors, formal assessment tools, professional consultations, and supporting documents. These activities will be reflected in the completed service plan. Assessment is an ongoing process and should take place throughout the entire case management process and is essential to service planning.

3.15.2 The UAI

(22VAC30-130-40). The local department shall assess the adult using the UAI, the department-designated form, including evaluating the adult's degree of independence or need for assistance with performing ADLs and IADLs.

The definitions used and procedures for completing the UAI are found in the User's Manual: Virginia Uniform Assessment Instrument. The User's Manual is available on the VDSS intranet and the DARS public site. The following guidance addresses the circumstances for UAI completion by an LDSS:

- The **entire** UAI shall be completed when the adult is being assessed for HBC, AFC, or adult day services purchased by the LDSS.
- If the APS investigation disposition is "needs and accepts" and services are provided, then the **entire** UAI shall be completed.
- The UAI shall be completed in accordance with the Department of Medical Assistance Services (DMAS) regulations and guidance for all Medicaid LTSS Screenings. Medicaid LTSS screenings are entered into the eMLS system. LDSS workers who are part of a screening team are not required to enter the UAI into PeerPlace as long as the individual is seeking a screening only and not receiving other services (e.g. homemaker or adult protective services). However, the LDSS worker is still required to register the adult in the AS program in PeerPlace. A brief case note should

document that the individual's UAI is located in eMLS as well as the eMLS Assessment Tracking Number (ATN). **Note: Do not enter case documentation for screenings for individuals under age 18 (child screenings) into PeerPlace.** The LDSS may establish their own method to track child screenings.

- Pages 1 through 4 and 12 shall be completed when:
 - The client is registered in the AS Program, the LDSS is **not** purchasing any services, and is **only** assisting the adult with issues such as SSI or Social Security applications or other non-purchased service activities; or
 - The client is registered in the AS Program and the LDSS is **only** addressing a short-term crisis, including arranging for or making a utility or rental payment.
- The UAI shall be completed for ALF assessments per guidance in the ALF Assessment Manual. For ALF assessments, the UAI is used for the initial assessment and one reassessment. The UAI shall be entered into PeerPlace. A PeerPlace UAI may be copied for purposes of the ALF reassessment and then updated.

The UAI is not required for a Guardianship Report case if review of the guardian report is the only reason the LDSS is following the adult.

3.15.3 Assessment areas

There are five assessment areas of the UAI.

3.15.3.1 Physical environment (section 1 of UAI)

An assessment of the individual's physical environment provides information about safety and health risks. When assessing the physical environment, the worker should consider:

- An evaluation of the dwelling for structural soundness, safety hazards, utilities, cleanliness, and barriers to mobility or use.
- Identification of type and feasibility of needed improvements or changes to the individual's environment.

3.15.3.2 Functional status (section 2 of UAI)

An assessment of the individual's ability to manage activities of daily living (ADLs) and instrumental activities of daily living (IADLs) shall be made when

assessing an individual's need for services. Some areas to consider when assessing functional capacity include:

- The physical, emotional, and cognitive status of the individual, assessing how well he or she performs the various ADL tasks including bathing, dressing, eating/feeding, toileting, transferring in and out of a bed or chair, and maintaining continence.
- The physical, emotional, and cognitive status of the individual, assessing how well he or she performs the various IADL tasks which include meal preparation, housework, laundry, shopping, transportation, money management, using the telephone, and/or home maintenance.

3.15.3.3 Physical health assessment (section 3 of the UAI)

The assessment of physical health may be based on the individual's reports of illness, disabilities, and symptoms, the individual's friends or family members, the individual's physician with an authorized release of information, other contacts or records, or based on worker observations. Some areas to consider when assessing physical health include:

- The individual's current medical condition, including any diagnosis or prognosis available, and any services being used.
- Symptoms observed by the worker that may not have been diagnosed or treated, including signs of physical injury.
- The number and type of medication(s) the individual is currently taking (prescription and non-prescription) and whether medication is being prescribed by multiple physicians. (**Note:** The worker may ask to see medication containers to get more accurate information.)
- Diet and eating habits (nutrition).
- The individual's general appearance and whether it is consistent with the adult's circumstances and environment.
- The adult's need for assistive devices (e.g., eyeglasses, hearing aids, dentures, mobility aid to compensate for physical impairments, etc.).

3.15.3.4 Psychosocial (mental health) assessment (section 4 of the UAI)

The worker's assessment of an individual's psychological functioning cannot take the place of a formal clinical evaluation. However, the worker's findings

may suggest that a psychiatric *condition* is present and contributing to the individual's need for services. This assessment can also provide the worker with documentation for recommending a more complete assessment by health professionals to rule out organic and/or physical causes of psychological symptoms. Some areas to consider when assessing psychosocial status include:

- Evidence that the individual is lonely, isolated, or lacking stimulation.
- The individual's perceived emotional or behavioral condition(s).
- Any manifestations of emotional, mental, or behavioral ~~problems~~ *conditions* (e.g., insomnia, nightmares, crying spells, depression, agitation, unusual fears, thoughts, or perceptions, delusions, hallucinations, etc.).
- Any major life change/crisis in the year (e.g., death of a significant person, divorce, loss of income, a move, an illness, institutional placement, etc.).
- A suspected untreated mental illness where the individual likely needs, but is not receiving, psychotropic medications or other appropriate treatment.
- Use of any psychotropic medication(s), who prescribed them, and for what purpose.
- The individual's orientation to person, place, and time as well as memory and judgment capacity.

3.15.3.5 Support systems (sections 1, 4, and 5 of the UAI)

The support systems assessment includes an assessment of the individual's family and community support system. It is important that the worker identify those family, friends, neighbors, faith-based, and other voluntary groups and formal supports that comprise the individual's social network. Some areas to consider when assessing support system(s) include:

- Any strong dynamics among family members/caregiver(s)/formal support systems as related to the care of the individual.
- Frequency and quality of contacts from informal and formal support systems.

- Social contacts and activities the individual has in the community and changes in the pattern of these contacts.

3.16 The service plan

(22VAC30-130-50). If an adult is determined eligible for home-based services, the local department shall develop a service plan, enter the plan into the department-designated case management system, and review the plan at least annually.

- A variety of interventions including referral to public assistance and other resources, case management, and other programs may be provided depending on the adult's needs. (22 VAC 30-130-50).
- The services or activities may be provided directly by local department staff or volunteers, purchased from local department approved providers or contracted vendors, or provided through referral to other community resources. (22 VAC 30-130-50).

A service plan includes the services to be provided, resources to be used to meet the presenting or immediate *need*, and an identification of initial target dates. The service plan may be printed from PeerPlace. It is recommended that the adult or the responsible person sign a completed service plan.

3.16.1 Service plan requirements

- Within 15 days of the date of eligibility, the worker shall enter the service plan in PeerPlace.

(22VAC30-130-50). A service plan shall not be required when the only intervention or activity provided by the local department is screening for long-term services and supports, public pay assisted living facility annual assessment, or review of an annual guardian report.

- The details in the service plan will vary according to the individual's situation and will be based on the assessment of the individual's strengths and needs.
- The local department, the adult, and the adult's family, the responsible person, or other social supports, if applicable, shall collaborate to evaluate progress toward meeting the goals and objectives of the service plan. (22 VAC 30-130-50).

- The local department shall document progress toward meeting service plan goals and objectives at least quarterly in the department-designated case management system. (22 VAC 30-130-50).
- For any services for which a payment is made on behalf of an adult, the service, service provider, and payment authorization shall be documented in the service plan. Any local department hard copy records documenting the provision of AS shall be made available to the department upon requests. (22 VAC 30-130-50).
- The service plan shall address the long-term and short-term needs of the adult. Components of the plan include:
 - Goal(s).
 - Unmet need(s).
 - Objective(s).
 - Task(s) (e.g., services to be provided, service-related activities, resources to be used).
 - Target dates are estimated dates for task completion.
 - Dates resolved indicate when the objectives are met and closes out the services.
 - Evaluation of services once tasks are completed.

Goals and objectives are developed after the UAI is completed and a determination made regarding the services needed and the adult's preferences.

3.16.2 Goals, unmet needs, objectives, tasks, and target dates

3.16.2.1 Goals

The following are goals for AS cases:

- To assist the individual to remain in his or her own home as long as possible provided that this is the most appropriate plan of care.
- To restore or retain the individual's independent functioning to the greatest extent possible.
- To assist in arranging out-of-home placement when that is appropriate and the individual or the guardian consents.

The goal “other” may be selected as appropriate.

See Chapter 2 for service plan goals for APS cases.

3.16.2.2 Unmet needs

An unmet need is an identified need that is not currently being met in a way that assures the safety and well-being of the adult. Unmet needs appear in section 5 (Assessment Summary) of the UAI. Unmet needs identified on the UAI should be in the service plan.

3.16.2.3 Objectives

- Objectives reflect the desired outcome(s) of service delivery. Objectives and services selected should be relevant to the goal.
- Each objective shall state clearly WHAT will happen to accomplish the goal(s).
- Objectives should be:
 - Identified by the individual or representative and worker to eliminate or diminish identified unmet need(s).
 - Supportive of the goal(s) selected.
 - Stated in terms of measurable result(s) to be achieved or desired outcome(s).
 - As behaviorally specific as possible.
 - Updated as the individual’s situation changes.
 - Example of an objective: The client will obtain medical care to manage health issues.

3.16.2.4 Tasks

Tasks describe the actual provision of services, identifying HOW to achieve each objective, WHO will be involved in accomplishing each objective, WHERE services will be provided, and WHEN services will be provided. Tasks shall be specific and measurable. All service types shall be selected from the drop-down menu in the PeerPlace service plan. Services definitions are available on the APS Division site on the DSS intranet.

Note: Expenditures of funds on behalf of an individual shall be documented in the service plan in PeerPlace. Identify the appropriate provider, funding source, rate of pay, and hours for each service task.

- Example of a service: Transportation.
- Example task: Worker will assist client in securing transportation to medical appointment.
- Example Provider: Yellow Cab
- Example funding source: 83306 Adult Services - Prevention Services
- Example hours per week: 4
- Example rate of pay: \$10.00

If a provider is being paid by public or private insurance, out of pocket, or some other means, “Other” should be chosen as the funding source.

3.16.2.5 Start and target dates

The service plan shall include dates for services to start and target dates for achievement of objectives. Target dates should be realistic. Target dates for ongoing tasks such as HBS should not exceed the redetermination date.

3.16.2.6 Date resolved

The date resolved will indicate when the objective is met and closes out the service task in the service plan.

3.16.2.7 Evaluation of services

The evaluation of services will provide a brief description of the status of the task at its conclusion, and whether objectives were accomplished in a timely manner. When all services have been completed and evaluated, the worker shall close the service plan in PeerPlace.

- Example: AS prevention funds were utilized to pay for cab fare for client’s medical appointment with Dr. Smith on 3/3/22. Client received needed medical treatment and updated prescriptions.

3.16.2.8 Sample Service plan

The guide “AS Service Plans in PeerPlace” located on the PeerPlace page on DSS intranet contains example screen shots of service plans.

After you have added all the Unmet Needs and supporting Services, you can print the Service Plan. Click on one of the links under the **Print Options** section of the Service Plan Summary screen. **DO NOT use the Print icon at the top of the screen.**

3.17 Service delivery

Services shall be provided directly, by referral, or by purchase as required to assure appropriate service delivery and resource utilization necessary for implementation of the service plan.

3.17.1 Direct services

Direct services are those services provided, arranged, monitored, and/or referred by the LDSS staff as outlined in the service plan.

3.17.2 Referrals

Referrals are made when the worker directs the adult to an outside source for assistance.

3.17.3 Purchased services

Purchased services are purchased by LDSS for adults from approved providers, including department-approved providers and providers with whom the LDSS contracts. A Purchase of Services Order is available on the VDSS intranet. *The Local Finance Guidelines Manual, Section 5.20-Purchase of Services, is also available on the DSS intranet.*

Adult Services Approved Providers, Chapter 5, addresses the approval process for locally approved homemaker, chore, and companion providers and AFC providers.

3.17.4 Ongoing service planning and delivery

Following the initiation of the service plan, the assessment is to continue on a mutual basis between the individual and worker to document further service needs as a basis for the setting of long-range service objectives, the selection of services to fulfill those objectives, and the choices of resources to be used.

3.18 Waiting lists

If LDSS funds are inadequate to maintain the level of service to adults, LDSS should maintain a waiting list. A date-based methodology (e.g., date in which application is

received) is just one example of how an LDSS may organize its wait list. The LDSS shall uniformly apply wait list criteria to all individuals requesting the service. The LDSS should review the waiting list at least annually.

The service worker should indicate on the service plan if the service request is not available, and the individual is on a waiting list. If the worker selects waiting list “yes” on the service plan, the worker does not close the service plan. If the worker closes the service plan, the wait-listed service will not be counted or identified when running reports.

3.19 Required contacts

For AS and APS, contact includes communication with the adult, the adult’s legal representative or the adult’s designated primary caregiver. More frequent contact should occur as needed. All contacts should be documented in the appropriate PeerPlace screen.

- Adult Services: Contacts and case actions shall be documented in the AS client registration notes.
- APS Investigations: Contacts and case actions shall be documented in the APS investigation notes.
- Ongoing APS: Contacts and case actions shall be documented in the APS client registration notes.

The worker shall make timely, regular contacts with providers to monitor the provision of services and the well-being of the individual. The worker should verify by observation or personal interview that the adult is receiving the planned services and identify any changes in his or her situation. Required provider monitoring contacts should be documented on the Compliance Form for Agency Approved Providers (See Chapter 5). Ideally provider monitoring contacts are documented in the PeerPlace provider screens.

3.19.1 Types of contact

To meet the requirement for appropriate contact with the adult, the contact shall occur with the adult, the adult’s legal representative, or the adult’s designated primary caregiver shall be in the form of face-to-face, home visit, office visit, phone to/from. *It is best practice that face-to-face contact with the adult be in-person.*

All contacts, including other types of contacts such as fax to/from and email to/from shall also be documented in the appropriate PeerPlace program registration notes. Contacts should be conducted for the purpose of determining the individual’s progress toward achieving objectives stated in the service plan.

The following table identifies who is considered a legal representative or designated primary caregiver:

Legal Representative	Designated Primary Caregiver
Power of Attorney, guardian, and conservator	Father, mother, daughter, son, spouse, wife, and husband

3.19.2 Monthly versus quarterly contacts

PeerPlace automatically assigns the intensity level of service plans and is dependent on the PeerPlace program. Services identified as “intense” require monthly contact. Services identified as a “less intense” require quarterly contact. The worker may make more frequent contact depending on the individual’s situation. Services listed in APS program service plans are designated as “intense.” Services listed in AS program service plans (e.g., homemaker or LDSS monitoring) are designated as “less intense.”

3.19.3 Collateral contacts

Collateral contacts with other interested parties, vendors of service, other community providers/agencies, volunteers working with the individual, and the court may include face-to-face, telephone conversations, and written or email correspondence.

3.19.4 Written correspondence

Written correspondences, including letter to/from, fax to/from, and email to/from and collateral contacts do not count as monthly or quarterly contacts.

3.19.5 Regular quarterly contact not required

Regular quarterly contacts are not required for ALF Reassessments only and Guardianship only cases.

3.19.6 When a contact is not made as required

The case record shall specify why a required contact was not made (e.g., the adult could not be located). Document efforts made to complete the required contact and gather information to locate the client including the communication method or number of attempts.

3.20 Case Documentation

All documentation should follow professional guidelines, be completed in a timely manner, use professional voice, and include relevant details required for the LDSS record.

The record may be part of an audit or court proceedings and provides evidence that mandated requirements have been completed. The record informs AS and APS assessment and service planning.

3.20.1 Timeframe for documentation

Documentation should occur on the day contact is made or within 24-48 hours but no later than 7 days after the contact. The LDSS is encouraged to utilize transcription services, if available, to assist with documentation.

3.21 Attachments

Documents such as faxes, history and physicals, physician notes, service applications, invoices, purchase orders, legal documents, advanced directives, and financial statements should be uploaded to the attachments section in the client registration of PeerPlace.

3.22 Monitoring

Monitoring is the process by which the service worker maintains contact with the individual, support systems, and service provider(s) to ensure the efficient and effective delivery of services relating to the achievement of the stated objectives. The monitoring function shall begin upon delivery of service(s) and shall be continuous. The LDSS will be responsible for the monitoring of service delivery whenever it uses a vendor or non-agency provider to offer services to an individual.

Monitoring contacts are documented in the client registration notes. Every contact should be documented. Documentation should include who was contacted, the details of the client's environment, functioning, physical, and emotional well-being, resources, and supports. Include the client or responsible party's evaluation of the services being delivered as part of the service plan.

3.23 Redetermination

ASAPS Financial Eligibility shall be performed at least annually. Redetermination shall be conducted in the same manner as the initial determinations (the adult does not have to sign a new service application). ASAPS Financial Eligibility is required at the annual redetermination before the service plan can be updated. The ASAPS Financial

Eligibility will populate on the service plan screen for completion. Initial ASAPS Financial Eligibility is recorded in the “ASAPS Financial Eligibility” section on the client profile screen in PeerPlace. The effective date and redetermination dates on the ASAPS Financial Eligibility screen in PeerPlace are updated to reflect the updated/new eligibility period.

If information is received in the interim that affects eligibility, redetermination shall be performed **within 30 days** of receipt of information.

3.24 Reassessment

The service worker shall reassess active cases when there is significant change in the individual’s circumstances, but no less than once every 12 months. A significant change in an individual’s condition occurs when the change is expected to last more than 30 days or appears to warrant a change in the individual’s service plan or level of care. The reassessment shall include an updated UAI and an update of the service plan as appropriate.

Based on the UAI annual reassessment, the worker shall document:

- Service plan updates, with task completion dates, target dates, and evaluation of services adjusted as needed. If the client is receiving ongoing services without change, such as companion services, that extend year to year, the task target completion date should be updated to reflect the extension of the continuing service, while leaving the task start date unchanged. Document in the client registration notes that the service plan has been updated.
 - Example: Previous task start date: 11/1/2020, target completion date: 10/31/2021
 - At reassessment, enter target completion date 10/31/2021 if all other task information remains constant

If the client is receiving ongoing services and there are changes such as a different companion provider, funding source, or rate of pay, enter the date resolved and evaluation of service for the current service plan task. This will close the task. Then create a new task with the updated information and new task start and target dates. Document in the client registration notes that the service plan has been updated.

- A description of the individual’s current situation in the AS registration notes with input from the individual and family, if applicable, to determine if there are needs which should be addressed.

- Whether additional services are needed. If so, the service plan shall be revised accordingly. If services are no longer needed, the service plan and the case shall be closed.

3.25 Closure of an AS registration

The local department shall close the adult's case in the department-designated case management system in the following circumstances, including:

- When the adult dies;
- When the adult with capacity or the adult's responsible person requests closure;
- When the local department is unable to locate the adult and attempts to contact the adult are unsuccessful;
- When the adult is no longer functionally or financially eligible for the service;
- When the local department has no funding to provide HBS;
- When the service or activity identified on the service plan is complete; or
- With the exception of annual guardian report reviews, when the adult relocates to another state. (22VAC30-130-60).
- If a Notice of Action (NOA) is required, the client shall be permitted to exercise appeal options (if appealing is an option) before the registration is closed. If the adult is not entitled to an appeal, the worker shall close the service plan and the registration. Refer to *Section 3.27* for further NOA guidance.

3.25.1 Documenting the case closure

Document a closing statement in the registration notes describing client's circumstances at case closure. Include any case closing notifications to the client or responsible party, information and referral, supports in place, relocation information, or notifications to other LDSS at case closure.

3.26 Relocation

If a relocation is temporary, the original jurisdiction keeps the case, and depending on the distance, provides any needed services or requests the new jurisdiction to assist. Service payments are the responsibility of the original jurisdiction in this situation.

A permanent relocation means the individual will be residing in a new locality. When the individual no longer needs services, the LDSS previously providing services shall close

the registration. When services continue to be needed, the individual may apply for AS in the jurisdiction where the individual now resides. Only APS reports can be transferred in the PeerPlace system. An ongoing APS registration cannot be transferred if the adult moves during service provision. Guardianship Report Tracking or ALF reassessment services in the PeerPlace program are not transferable. The Supervisor/Program Admin or APS regional consultant may assist with transferring a record in PeerPlace.

When an individual plans a permanent relocation to a facility in another jurisdiction and the individual will need services in the new jurisdiction, the LDSS involved should assist each other with needs concerning the individual's admission. If services will be needed, the sending LDSS should notify the receiving LDSS of the expected date of the admission, the facility selected, and the services (e.g. ALF reassessment) needed.

The worker in the original jurisdiction may offer to assist in completing a service application for the new jurisdiction if one is needed.

3.27 Notice of action

(22VAC30-130-60). The local department shall notify the adult on a form approved by the department when the local department takes an action regarding home-based services pursuant to § 51.5-147 of the Code of Virginia.

- NOA shall be used for any applicant or recipient of HBS and AFC services as they may appeal an LDSS case action decision pursuant to § 51.5-147 of the Code of Virginia.
- The (NOA) form for Service Programs is available on the VDSS intranet and the DARS website.

3.27.1 Documenting the NOA

Document the NOA in the client registration notes. Response to the NOA shall be documented in the registration notes. Upload the NOA under the attachments link in the PP client registration.

3.27.2 Withdrawal of application

- The individual may withdraw an application. Document the withdrawal in the client registration notes. For special procedures on Adult Protective Services, or APS home based care, see Chapter 2.
- If the withdrawal was done by letter, telephone call, or personal visit, a NOA shall be sent to acknowledge the withdrawal. Upload the withdrawal under the attachments link in the PP client registration.

- The individual should be told that he or she may reapply at any time.

3.27.3 Failure to follow through with services or disappearance

If an individual has submitted an application for AS, and then disappears or fails to follow through with the application and eligibility process after 45 days, the LDSS does not need to try to find the individual to ascertain their intent to proceed with the application, unless a valid APS report has been made. If there has been no valid APS report, a NOA terminating the application is sent 45 days after the application was received.

3.27.4 NOA for other case actions

- The NOA shall be mailed or given to the individual or his representative when an HBS or AFC case is approved, reduced, suspended, or terminated.
- Mail the NOA approximately **14 days before** the date the action is to become effective so that the individual has a 10-day notice. See Section 3.28.5 regarding early notification regarding HBS.
- Notices are not required for fluctuations in purchased service payments when the Purchase Order authorization remains the same.

3.27.5 Early notice due to reduction in funding for home based services

If the adult appeals the action within 10 days of the effective date of the NOA, services must continue. The LDSS is encouraged to provide notice earlier than the recommended 14 days before the action becomes effective, particularly when the action is due to lack of or reduction in funding to provide a particular service (e.g., companion services). Providing early notice of the intent to reduce or discontinue services due to funding constraints will provide sufficient time for services to continue during the appeal before funding is exhausted.

3.27.6 When notice of action not needed

The NOA is not issued for screening cases either at the conclusion of the screening or when the registration is closed in PeerPlace. The screening decision letter, issued by the screening team after the screening has been completed, serves as proper notice to the adult. The decision letter contains information about the screening results and appeal rights.

If the LDSS receives reliable information of an individual's death, the LDSS closes the registration. The NOA is not issued upon notification of an adult's death.

3.28 Appendix A: Forms

The following forms may be used for case management purposes. Unless otherwise indicated, these forms are located on the APS Division page on the DSS intranet.

Application for AS

This form should be used by an individual to apply for AS and APS. This form is also available in Spanish.

Adult Foster Care Agreement

This form is used as an agreement among the individual receiving AFC, the LDSS, and the AFC provider.

Adult Foster Care Interagency Agreement

This form is used when an LDSS is placing an adult in an AFC home in a neighboring jurisdiction.

Notice of Action-Adult Services & Adult Protective Services Programs

This form is used to notify an individual about certain actions that have been taken or will be taken on his or her case. This form is also available in Spanish.

Purchase of Services Order

This form is used to order services from vendors. This form is also used for unscheduled termination of, or change to, an existing POS Order.

Short-Form Attachment

This form is used when it is determined that an individual will only need residential level of care in an ALF setting. The attachment is used in conjunction with pages 1-4 of the UAI.

Uniform Assessment Instrument (UAI)

This form is used to assess an individual's need for services including assisted living, HBS, and Medicaid funded services.

3.29 Appendix B: Income eligibility determination

Income, not resources, is counted in determining if an individual meets the category of Eligibility Based on Income. All income, except items listed below, is to be counted.

Net income from self-employment, farm or non-farm, is to be counted. This is gross receipts minus expenses. The value of goods consumed by the client and his/her family is not to be counted.

The gross amount in wages or salary received is the figure to be used. However, if the wage earner voluntarily has additional amounts taken out for savings such as bonds, these amounts shall be counted as income.

Do count income from Social Security, but do not count income from Supplemental Security Income (SSI).

Income to be excluded

- Home produce utilized by the adult for his own consumption.
- The value of food benefits under the Supplemental Nutritional Assistance Program (SNAP).
- The value of supplemental food assistance under the Child Nutrition Act of 1966 (42 USC §§1771 through 1789). This includes all school meals programs; the Women, Infants, and Children program; and the Child Care Food Program.
- The value of foods donated under the U.S. Department of Agriculture Commodity Distribution Program, including those foods furnished through the school meals programs.
- Benefits received under Nutrition Program for the Elderly, Title VII of the Older Americans Act of 1965, as amended (42 USC §§3001 et seq.).
- Grants or loans to any undergraduate students for educational purposes made or insured under any program administered by the U.S. Secretary of Education;
- A scholarship or grant obtained and used under conditions that preclude its use for current living costs;
- Training allowance provided by the department for persons participating in rehabilitative services programs;

- Payment to VISTA volunteers.
- The Veterans Administration educational amount for the caretaker 18 years of age or older when used specifically for educational purposes. Any additional money included in the benefit amount for dependents is to be counted as income.
- Income tax refunds including earned income tax credit, advance payments, and refunds.
- Payments made under the Energy Assistance Program;
- All federal, state, and local government rent and housing subsidies and utility payments;
- Funds distributed to or held in trust for members of any Indian tribe under Public Laws 92-254, 93-134, 94-540, 97-458, 98-64, 98-123, 98-124. Additionally, interest and investment income accrued on such funds while held in trust, and purchases made with such interest and investment income.
- All bona fide loans. The loan may be for any purpose and may be from a private individual as well as from a commercial institution. The amount disregarded is limited to the principal of the loan.
- Monetary gifts for special occasions such as the adult's birthday, holidays, or graduations.
- Withdrawals of bank deposits.
- Payment to vendors for services provided to the adult.
- Lump sum insurance payments.

3.30 Appendix C: Expenditures for services

3.30.1 Funding allocations

Each LDSS receives funding to purchase services needed by an adult to meet the goals of the adult's service plan. LDSS are encouraged to make maximum use of this funding in providing services to adults and shall be aware of the number of cases their allocations will support throughout the year. During ~~the course of~~ the fiscal year, if the LDSS realizes that it has been allocated more funds than are needed to serve adults, the LDSS shall return the funds in a timely manner to the state for reallocation to other LDSS.

3.30.2 LASER

LASER (Locality Automated System for Expenditure Reimbursement) is an automated system used to allocate funding.

3.30.3 Budget lines, cost codes descriptions

Budget lines and cost code descriptions including examples of reimbursable expenses are available on the VDSS intranet.

21704 GUARDIANSHIP PETITIONS

Provides for the costs of petitioning the court for appointment of a guardian for a Medicaid applicant who is unable to apply for himself or herself.

Note: VDSS does not provide a local budget allocation for this cost code, all expenditures entered in 21704 will be funded using 100% state General Funds.

LDSS should complete page two of the Response to Medicaid Referral form located on the VDSS intranet. Expenses shall be itemized, attached to the form, and retained by the LDSS as documentation for reimbursement.

Localities should submit a BRS to request funds to cover the expenditures. The request will be reviewed and acted on by the APSD Director.

Reimbursable examples

Expenses incurred during a guardianship proceeding for a Medicaid applicant who is unable to apply for himself or herself:

- Evaluation.
- Guardian ad litem legal fees.
- Attorney legal fees.

- Court filing fees.
- Other costs (itemized).

ADULT SERVICES (833)

83301 Adult Services – Home-Based Care -- Chore

Chore services are the performance of non-routine, heavy home maintenance for adults unable to perform such tasks themselves. Chore services are provided only to adults living in an independent situation who are responsible for maintenance of their own home or apartment and have no one available to provide this service without cost. Chore services include yard maintenance, painting, chopping wood, carrying wood and water, snow removal, and minor repair work in the home.

83303 Adult Services – Home-Based Care--Homemaker

Homemaker services are provided by an individual or agency provider who gives instruction in, or where appropriate, performs activities to maintain a household. The activities may include personal care, home management, household maintenance, nutrition, consumer education, and hygiene education.

83302 Adult Day Services

Program funds are used to purchase adult day services from approved/licensed providers for a portion of a 24-hour day. Adult day services assess the needs of participants and offer services to meet those needs. Participants attend on a planned basis. Services include: personal supervision of the adult and activities that promote physical and emotional well-being through socialization.

83304 Adult Services- Home-Based Care--Companion

Companion services are performed by an individual or an agency provider who assists adults unable to care for themselves without assistance and where there is no one available to provide the needed services without cost. Services may include dressing, bathing, toileting, feeding, household and financial management, meal preparation, and shopping. Companion services shall only be provided to an eligible adult who lives in his or her own home.

83305 Guardianship Services

Provides for the purchase of guardianship services from a Virginia guardianship program for adults who have been adjudicated incapacitated by a court and no willing or suitable adult is available to serve as a guardian. Services promote the adult's independence; ensure the adult's physical, emotional, medical, and financial needs are met; and prevent destabilization of the adult's living situation. The need

must be documented in the case record service plan. Payments shall not be made to family members or friends of the adult who volunteer to become the adult's guardian.

83306 Prevention Services

Provides for the purchase of goods or services to prevent disruption of or to stabilize the adult's situation, provided that the need is documented in the case record. These services may include the purchase of short-term support until more permanent arrangements can be made. It may also include items such as clothing, food, utilities, or rent when no other resources are available and the lack of these goods and services become life threatening or may result in institutionalization. These services shall only be provided to adults who may need a temporary intervention to prevent an adult protective services response.

ADULT PROTECTIVE SERVICES (895)

89501 Adult Protective Services

This budget line is used to fund the APS program. This funding may be used for reimbursable expenses of providing protective services at the local level.

Protective services to adults consist of the receipt and thorough investigation of reports of abuse, neglect or exploitation of adults and of reports that adults are at risk of abuse, neglect or exploitation.

The purchase of goods or services is appropriate under the following circumstances:

- An APS report has been taken and the investigation has determined that an adult needs protective services and the service to be purchased is part of the service plan to protect the adult from ongoing abuse, neglect or exploitation; or
- An APS report has been taken and the protective services investigation has found an adult to be at risk of abuse, neglect or exploitation and the service to be purchased is part of the service plan to prevent abuse, neglect or exploitation from occurring.

Guardianship Fees

Section 64.2-2020 of the Code of Virginia requires a guardian to complete and submit an annual report, on the incapacitated adult for whom a guardian has been appointed, to the LDSS in the jurisdiction in which the adult resides. Section 64.2-2020 requires that the annual report, when filed, be accompanied by a filing fee of \$5.00. The \$5.00 filing fee that accompanies annual guardianship report shall be

used in the provision of services to protect vulnerable adults and prevent abuse, neglect or exploitation of vulnerable adults.

To record the receipt of guardianship fees, the LDSS should enter the amount collected as a credit, using Account Code 40895 Receipt of Guardianship Fees.

Admin Adult Protective Services

Administrative costs of operating the APS program are included in Services Staff and Operations or Services Staff and Operations pass-Thru (budget lines 855 and 857). Reimbursable examples include on-call coverage for staff who provide coverage for APS on nights, holidays, weekends, and other times outside of regular office hours; costs of staff travel for investigating, for ongoing service delivery, for training/education purposes, or other travel costs related to the APS program; office supplies and equipment dedicated to the operation of the APS program; and costs of community outreach to increase awareness of adult abuse.

At any point in the budget year, LDSS may request that 895 funding be transferred to BL 855. The two-part request must be entered into the LASER system and approved by the APS Division Director and a DSS budget analyst. **Note:** Though the \$5.00 guardianship fees are entered into BL 895, these fees can't be transferred to 855. The filing fee is considered a credit to the LDSS and credits may not be transferred. The filing fee must remain in BL 895 to support victims of adult abuse, neglect, and exploitation.

REIMBURSEMENT THROUGH RANDOM MOMENT SAMPLING (RMS)

Screenings

Every individual who applies for or requests a *Medicaid LTSS screening shall be screened prior to receiving LTSS*. LDSS are reimbursed for screenings through the RMS process.

Assisted Living Facility (ALF) Assessments

LDSS assess *and reassess* individuals receiving AG in ALFs using the UAI to determine the level of care (residential or assisted living). LDSS are reimbursed for ALF assessments and reassessments via RMS.

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LONG-TERM CARE SERVICES

REPEALED FEBRUARY 2024

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ADULT SERVICES APPROVED PROVIDERS

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ADULT SERVICES APPROVED PROVIDERS

5.1 Legal basis

Legal authority and requirements for Adult Services Providers are based in the Code of Virginia and state regulation (22 VAC 30-120). Throughout this section, text that is indented with a blue vertical line denotes material taken verbatim from the Code or the Department's regulations.

This *chapter* describes policies and procedures for providers of services to adults who are approved by the local department of social services (LDSS) *including*:

- *In-home providers (companion, chore, and homemaker providers).*
- Adult foster care (AFC).

This guidance does not apply to facilities or organizations licensed or regulated by the Virginia Department of Health. (22 VAC 30-120-20).

Approval of a provider for more than one type of care is permitted. The requirements applicable to each specific type of care provided shall be met.

5.2 Definitions

The following words and terms are defined in the Code of Virginia or state regulation (22 VAC 30-120-10) unless otherwise specified. When used in this section, they shall have the following meaning, unless the context clearly indicates otherwise.

<u>Term</u>	<u>Definition</u>
Activities of Daily Living or ADLs	Bathing, dressing, toileting, transferring, bowel control, bladder control, and eating/feeding. A person's degree of independence in performing these activities is part of determining the appropriate level of care and services.
Adult	Any individual 18 years of age or over, <i>or younger than 18 if legally emancipated.</i>
Adult Abuse	The willful infliction of physical pain, injury, or mental anguish or unreasonable confinement of an adult as defined in 63.2-1603 (§ 63.2-100 of the Code of Virginia).
Adult Exploitation	The illegal, unauthorized, improper, or fraudulent use of an adult as defined in § 63.2-1603 or his funds, property, benefits, resources or other assets for another's profit, benefit, or advantage, including a caregiver or person serving in a fiduciary capacity, or that deprives the adult of his rightful use of or access to such funds, property, benefits, resources, or other assets. "Adult exploitation" includes (i) an intentional breach of a fiduciary obligation to an adult to his detriment or an intentional failure to use the financial resources of an adult in a manner that results in neglect of such adult; (ii) the acquisition, possession, or control of an adult's financial resources or property through the use of undue influence, coercion, or duress; and (iii) forcing or coercing an adult to pay for goods or services or perform services against his will for another's profit, benefit, or advantage if the adult did not agree or was tricked, misled, or defrauded into agreeing, to pay for such goods or services or perform such services. (§ 63.2-100 of the Code of Virginia).
Adult Foster Care	Room and board, supervision, and special services to an adult who has a physical or mental condition. Adult foster care may be provided by a single provider for up to three adults.
Adult Foster Care Provider	A provider who gives room and board, supervision, and special services <i>in the provider's own home to an adult with a physical or mental condition. Adult foster care may be provided by a single provider</i> for up to three adults. Care provided for more

<u>Term</u>	<u>Definition</u>
	than three adults requires licensure <i>as an assisted living facility by the Virginia Department of Social Services.</i>
Adult Neglect	An adult as defined in § 63.2-1603 is living under such circumstances that he is not able to provide for himself or is not being provided services 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 a written or oral expression of consent by that adult (§ 63.2-100 of the Code of Virginia).
Assistant	Any individual who is responsible to assist adult services approved provider in caring for adult. Assistants shall meet the <i>same requirements the standards set forth in this chapter.</i>
Chore Provider	A provider who performs non-routine, heavy home maintenance tasks for adults, <i>including</i> minor repair work on furniture and appliances in the adult's home; carrying coal, wood, and water; chopping wood; removing snow; yard maintenance; and painting.
Companion Provider	A provider who assists <i>adults with</i> activities such as light housekeeping, companionship, shopping, meal preparation, transportation, household management, and <i>ADLs.</i>
Department	The Virginia Department for Aging and Rehabilitative Services.
Health Care Professional	<i>A physician or other health care practitioner licensed, accredited, or certified to perform specific health care services consistent with the laws of the Commonwealth.</i>
Homemaker Provider	A provider who gives instruction in or, where appropriate, performs activities such as personal care, home management, household maintenance, and nutrition, consumer, or hygiene education.

<u>Term</u>	<u>Definition</u>
In-Home Provider	An individual who provides care in the home of the adult. In-home providers <i>are</i> companion, chore, and homemaker providers.
Instrumental Activities of Daily Living or IADLs	Meal preparation, <i>light</i> housekeeping, shopping, <i>money management</i> , laundry, using the telephone, <i>and home maintenance</i> . An <i>adult's</i> degree of independence in performing these activities is part of determining an <i>adult's service needs</i> .
Local Department	The local department of social services of any county or city in this Commonwealth.
Local Department-Approved Provider	A provider that is not subject to licensure by <i>the Virginia Department of Health</i> and is approved by to provide services to clients.
Personal Care Services	The provision of non-skilled services <i>to the adult</i> , including ADLs, and may include IADLs, to maintain the adult <i>safely</i> in <i>the adult's</i> home.
Personal Toiletries	<i>Hygiene items provided to the individual by the adult foster care provider, including deodorant, razor, shaving cream, shampoo, soap, toothbrush, and toothpaste.</i>
Responsible Person	An individual who is authorized <i>by state law</i> to make decisions concerning the adult and to receive information about the adult.
Significant Change	<i>A change in an adult's condition that is expected to last longer than 30 calendar days. It does not include short-term changes that resolve with or without intervention, a short-term acute illness or episodic event, or a well-established, predictive, cyclic pattern of clinical signs and symptoms associated with a previously diagnosed condition for which an appropriate course of treatment is in progress.</i>

5.3 Provider applications

(22 VAC 30-12-20). The local department *may* accept provider applications *even* when the local department has a sufficient number of *approved* providers for that service or does not

offer the type of service. *If the local department chooses to contract with an agency or organization licensed or regulated by the Virginia Department of Health to provide in-home providers, the local department shall inform the provider applicant of the local department's choice to contract with a licensed or regulated agency or organization. However, if the local department approves its own providers and the adult identifies an individual to be a provider, the local department shall initiate the approval process for that individual as long as the service is offered by that locality. The individual identified by the adult shall meet the standards set forth in this chapter.*

5.4 Jurisdiction for approval of providers

Prior to approving an *adult foster care* provider that is not approved by the local department where the provider is located, the local department wanting to approve the provider shall seek written permission from the local department in the jurisdiction where the *adult foster care* provider is located.

Local departments may use an approved *in-home or adult foster care* provider from another jurisdiction without initiating the approval process when the local department obtains written permission and a copy of the approval documents from the local department that approved the *in-home or adult foster care* provider.

5.5 Requirements for providers and providers' households

5.5.1 Age

(22 VAC 30-120-30). All local department-approved providers shall be at least 18 years of age.

Any assistant to a local department-approved shall be at least 18 years of age.

5.5.2 Criminal record background checks

(22 VAC 30-120-30). *An individual applying to become an in-home or adult foster care provider shall identify any criminal convictions and consent to a criminal record search. The local department shall obtain criminal history record information from the Central Criminal Records Exchange of any individual the local department is considering approving as an in-home or adult foster care provider. The local department may also obtain a criminal records search on all adult household members residing in the home of*

an individual the local department is considering approving as an adult foster care provider. A new criminal record background check shall be required at the time of provider renewal.

Pursuant to 22 VAC 30-120-30, any individual convicted of any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02 of the Code of Virginia is prohibited from being approved as an LDSS approved provider. Additionally, a conviction of any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02 of the Code of Virginia will result in revocation of the in-home or AFC provider's approval. The LDSS shall terminate the provision of services by an in-home provider or the adult shall be removed from the AFC home immediately if an adult in the home has been convicted of any offense set forth in clause (i) of the definition of barrier crime in 19.2.392.02 of the Code of Virginia.

5.5.2.1 Identifying criminal convictions

The "Application for Department Approved Provider" requires the provider to identify any criminal convictions.

5.5.2.2 Central Criminal Records Exchange – all providers

Virginia State Police maintain criminal history record information for arrests and convictions in Virginia. Section 19.2-389 of the Code of Virginia authorizes the LDSS to request criminal history for all LDSS approved providers directly from the Virginia State Police through the Central Criminal Records Exchange. SP-230 is the State Police form to use when requesting this information on Virginia criminal convictions. Instructions are available on the Virginia State Police website.

SP-230 may be downloaded or an electronic form may be submitted directly from the website. The payment for criminal records checks is made through the Administrative Budget Line (BL) 855.

The LDSS should consider establishing a payment account with the State Police to use the electronic submission form.

5.5.2.2.1 National criminal background check

The Virginia State Police can also conduct a national criminal background check for employees or volunteers providing care to elderly individuals and individuals with a disability using form SP-325 available on the Virginia State Police website. One applicant fingerprint card (FD-258) must be completed and attached to this form. The Virginia State Police or local law enforcement

may be contacted for information about the fingerprint card. Search fees *may be paid through BL 855*.

5.5.2.3 Information received from the Central Criminal Record Exchange

- If no record exists on the individual, the Central Criminal Records Exchange will stamp and return the form to indicate this.
- If a record exists, the information furnished will include identifying information, contributing agency, date of occurrence, charge, and disposition.
- Information on providers and all household members will only include information on convictions.
- The Central Criminal Records Exchange will provide information concerning offenses enumerated in § 19.2-392.02. It does not contain information on certain offenses such as driving a motor vehicle while intoxicated; disorderly conduct; trespassing; and some misdemeanors (such as gambling, slander, etc.).

5.5.2.4 Determining when *other* criminal convictions jeopardize adults

Pursuant to 22 VAC 30-120-30, if the provider or, for AFC, the assistant, spouse of the provider, or other household members who come into contact with adults in care, has been convicted of other felony or misdemeanor that, in the judgement of the LDSS jeopardizes the safety or proper care of adults, the provider is prohibited from being approved as a provider. The LDSS will need to exercise judgment in the approval or denial of providers when convictions of other felonies and misdemeanors not listed in §19.2-392.02 are found. The provider record should document the reasons for the approval or denial. No denial may be based solely on arrest information where no conviction has been made.

5.5.2.5 Confidentiality of criminal record information

Criminal record information can only be used for the purpose intended. It shall not be shared with anyone other than the individual identified in the record. For example, conviction information on a household member cannot be shared with the provider. However, the provider could be told that he or she is being denied because this requirement is not met.

(§ 63.2-1601.1). If approval as an agency approved provider is denied because of information obtained through a Central Criminal Records Exchange search, the local board, upon request, shall provide a copy of the information obtained to the individual who is the subject of the search. Further dissemination of the criminal history record information is prohibited.

5.6 Interviews, references, employment history, and assessment

5.6.1 Interviews – all providers

(22 VAC 30-120-30). The provider shall participate in interviews with the local department.

5.6.1.1 AFC providers

(22 VAC 30-120-30). For adult foster care *providers*, at least one interview shall occur in the home where the care is to be provided. All adult household members shall be interviewed to ensure that they understand the demands and expectations of the care to be provided.

5.6.2 References – all providers

(22 VAC 30-120-30). The provider shall provide at least two references from persons who have knowledge of the provider's ability, skill, or experience in the provision of services and who shall not be related to the provider.

The LDSS may request more than two (2) references.

5.6.2.1 Follow-up

- The LDSS shall check references for the initial approval. References do not need to be rechecked at renewal.
- The LDSS may contact references by telephone, face-to-face interview, or request a reference in writing. References which are not written shall be documented in the provider record by the worker. A sample format for reference questions is *available on the DSS intranet*.

5.6.3 Employment history – all providers

(22 VAC 30-120-30). The provider shall provide information on the provider's employment history.

5.6.3.1 Application

The provider shall list previous employment on the Application for Department Approved Provider.

5.6.3.2 Follow-up

The LDSS shall check employment *history* that is relevant to the type of care to be provided at initial approval. The LDSS may wish to check other employment *history* to assess the prospective provider's knowledge, skills and abilities. The LDSS may check employment *history* by telephone, face-to-face interview, or through written verification.

5.6.3.3 Additional requirements

The LDSS may further evaluate the applicant to ensure that he or she is able to meet the demands of providing the services.

(22 VAC 30-120-30). The provider shall have the capability to ~~fully~~ perform the requirements of the position, have the moral and business integrity and reliability to ensure good faith performance and be determined by the local department to meet the requirements of the position.

5.6.4 Assessment of provider – all providers

(22 VAC 30-120-30). The local department shall use the interviews, references, and employment history to assess that the provider is:

- a. Knowledgeable of and physically and mentally capable of providing the necessary care for adults;
- b. Able to sustain positive and constructive relationships with adults ~~in care~~, and to relate to adults with respect, courtesy, and understanding;
- c. Capable of handling emergencies with dependability and good judgment; and
- d. Able to communicate and follow instructions sufficiently to ensure adequate care, safety, and protection for adults.

5.6.4.1 Additional requirement for AFC providers

(22 VAC 30-120-30). For adult foster care providers, the local department shall further use the interview, references, and employment history to assess that the provider has sufficient financial income or resources to meet the basic needs of the *adult foster care provider's* own family and has the knowledge, skills, and abilities to care for adults, including,

- a. Provision of a furnished room in the home that meets applicable zoning, building, and fire safety codes.
- b. Housekeeping services based on the needs of the adult.
- c. Nutritionally balanced meals and snacks, including extra portions and special diets as necessary.
- d. Provision of clean bed linens and towels at least once a week and as needed by the adult.
- e. Assistance with personal hygiene including bathing, dressing, oral hygiene, hair grooming and shampooing, care of clothing, shaving, care of toenails and fingernails, arranging for haircuts as needed, care of needs associated with menstruation or occasional bladder or bowel incontinence.
- f. Provision of generic personal toiletries.
- g. Assistance with the following: care of personal possessions; care of personal funds if requested by the adult and adult foster care home's policy permits it; use of telephone; arranging transportation; obtaining necessary personal items and clothing; making and keeping appointments; and correspondence.
- h. Securing health care and transportation when needed for medical treatment.
- i. Providing social and recreational activities as required by the local department.
- j. General supervision for safety.

The purpose of this assessment is to determine that the AFC provider is not relying on the AFC payment as income to support his or her family. The payment is to support the adult. It is not taxable income to the provider.

This requirement can be addressed during the interview by determining how the provider is able to pay his or her personal bills.

5.6.4.2 Additional requirements for homemaker providers

(22 VAC 30-120-30). For homemaker providers, the local department shall further use the interview, references, and employment history to assess that the provider has knowledge, skills, and ability, as appropriate, in:

- a. Home management and household maintenance;
- b. The types of personal care of the elderly or adults with a disability permitted by regulation;
- c. Nutrition education and meal planning and preparation, including special diets; and
- d. Personal hygiene and consumer education.

5.7 Training – all providers

(22 VAC 30-120-30). The local department shall provide ~~some~~ basic orientation to any approved provider.

The provider shall attend any orientation and training required by the local department. The provider shall bear the cost of any required training unless the local department subsidizes the cost for all local department-approved providers.

5.8 Medical requirements – all providers

(22 VAC 30-120-30). The provider and assistant shall submit the results of a physical and mental health examination when requested by the local department.

- If the LDSS needs verification to determine if the provider is physically or mentally capable of providing the necessary care for adults, the LDSS should request an examination.
- The physical or mental health examination may be paid by the LDSS as an administrative cost if not covered by any other insurance program.

5.8.1 Tuberculosis *statement*

(22 VAC 30-120-30). The *in-home* provider, *an* assistant, *the adult foster care provider*, and all other adult household members *in the adult foster care home* who come in contact with adults ~~in~~ *receiving* care shall submit a statement from *a health care professional* that *the individual submitting the statement* is believed to be free of tuberculosis in a communicable form.

- The statement shall indicate that the individual is free from tuberculosis in a communicable form. This does not mean that the actual test shall be performed; a risk assessment is permitted. The Request for Tuberculosis Statement form is available on the DSS intranet and may be used to obtain the statement.
- After initial approval, a statement regarding tuberculosis does not need to be obtained again unless the individual has contact with someone who has tuberculosis or develops chronic respiratory symptoms (more than four weeks in duration).
- If the individual was tested for tuberculosis within the past year, a new test does not need to be performed as long as the statement is obtained.
- The cost of any tuberculosis test may be paid by the LDSS as an administrative cost if not covered by any other insurance program.

If the individual is not believed to be free of tuberculosis in a communicable form, the individual may not provide services to adults, assist with the adult's care, or live in the same household.

5.9 Changes in household

(22 VAC 30-120-30). All *adult foster care* providers shall *notify* the local department *within one business day* of changes in the household *composition* that may affect approval of the provider.

5.10 Requirements for care

The following sections describe the requirements for all providers.

5.10.1 Non-discrimination

(22 VAC 30-120-40). The provider shall provide care that does not discriminate on the basis of race, ethnicity, sex, national origin, age, religion, disability, or impairment.

5.10.2 Supervision

(22 VAC 30-120-40). The provider shall have a plan for seeking assistance from police, *the fire department*, and medical professionals in an emergency.

A responsible adult or an approved assistant shall always be available to provide appropriate care for the adult in case of an emergency.

The provider shall ensure that adequate care and supervision is provided to ~~adults in care~~ *each adult* and that the adult's health, safety, and well-being are protected.

The provider shall notify the local department within 24 hours of any significant changes in the adult's mental or physical condition.

5.10.3 Extended absence-AFC

(22 VAC 30-120-40). *The adult foster care provider shall inform the local department prior to an extended absence. An extended absence shall be defined as greater than one calendar day. Each adult foster care provider shall identify to the local department a substitute provider who will provide care during the adult foster care provider's extended absence. Each substitute provider shall also meet the standards set forth in this chapter.*

5.11 Food – AFC

(22 VAC 40-120-40). The following standards apply to food provided to *adults* by adult foster care providers:

1. Adults shall receive nutritionally balanced meals and snacks appropriate to the length of time in care each day, the daily nutritional needs of each adult, *and the time of day care is provided.*
2. Adults in care shall receive special diets if prescribed by a *health care professional* or in accordance with religious or ethnic requirements, the adult's preferences, or other special needs.

3. Adequate drinking water shall be available at all times.

Adults in *AFC* who are receiving an *Auxiliary Grant* shall receive a minimum of three well-balanced meals a day (22 VAC 30-80-30).

5.12 Clothing – AFC

(22 VAC 30-120-40). The adult foster care provider shall ensure that adults in care have adequate, properly fitting, and seasonal clothing and that all clothing is properly laundered or cleaned and altered or repaired as necessary.

5.13 Transportation-all providers

(22 VAC 30-120-40). 1. *As part of the service, only the approved provider or assistant shall provide transportation for the adult and shall have a valid driver's license and automobile liability insurance. When the approved provider or assistant is unable to provide transportation for the adult, the approved provider shall coordinate and assist the adult in obtaining backup transportation.*

2. The vehicle used to transport adults shall have a valid license and inspection sticker.

3. *The vehicle operator shall ensure that all passengers use safety belts in accordance with Virginia law.*

- *If the vehicle is uninsured, the motor vehicle owner is required to pay \$500 uninsured motor vehicle fee in addition to normal registration fees to Department of Motor Vehicles. Payment of the \$500 fee does not provide the motorist with any insurance coverage and does not meet the automobile liability insurance requirement.*
- Transportation costs of any provider are not *separately reimbursable* through *BL 833*.

5.14 Medical care – all providers

(22 VAC 30-120-40). 1. The provider shall have the name, address, and telephone number of each adult's *health care professional* and responsible person easily accessible.

2. The provider shall be able to meet the identified needs of the adult *as assessed by the local department* before *providing services or continuing* to provide services to the adult.

5.14.1 Medical care – AFC provider

(22 VAC 30-120-40). The adult foster care provider *shall not administer medications. The adult foster care provider shall:*

- a. Ensure that the adult receives prescription *medications* only in accordance with the prescription label and with the *adult's* responsible person's written consent, as *applicable*;
- b. Document all medications taken by adults, including over-the-counter medications;
- c. Ensure that the adult receives *over-the-counter medications* only with the adult's or *adult's* responsible person's written consent, as *applicable*;
- d. Keep medications separate from food except those items that *must* be refrigerated;
- e. Report all major injuries *to* and accidents *experienced by the adult to the local department and adult's* responsible person immediately;
- f. Have authorization for emergency medical care for each adult ~~in care~~; and
- g. Have first aid supplies easily accessible in case of accidents.

5.14.2 Additional requirement for AFC providers

(22 VAC 30-120-40). Admission or *continued residence* of adults in an adult foster care home is prohibited when the adult's care needs cannot be met by the provider as determined by the assessment of the *local department* or by the adult's *health care professional*.

5.15 Activities –AFC

(22 VAC 30-120-40). The adult foster care provider shall provide recreational and other planned activities appropriate to the needs, interests, and abilities of the adults.

5.16 Physical accommodations in AFC home

(22 VAC 30-120-50). Physical accommodations requirements include:

1. The home shall have appropriate space and furnishings for each adult receiving care *including*:
 - a. Space to keep clothing and other personal belongings;

- b. Accessible and adequate basin and toilet facilities;
 - c. Comfortable sleeping or napping furnishings;
 - d. For adults unable to use stairs unassisted, sleeping space on the first floor of the home;
 - e. Adequate space for recreational activities; and
 - f. Sufficient space and equipment for food preparation, service, and proper storage.
2. All rooms used by adults shall be heated in winter, dry, and well-ventilated.
 3. All doors and windows used for ventilation shall be appropriately screened.
 4. Rooms used by adults ~~in care~~ shall have adequate lighting for activities and the comfort of adults.
 5. *The home shall have a working telephone that the adult shall be permitted to use.*
 6. The home shall be in compliance with all local ordinances.
 7. Additional standards for adult foster care include:
 - a. No more than two adults shall share a sleeping room unless they request, *or if applicable, each adult's responsible person requests and annually consents in writing, which includes by electronic mail*, to sharing such a sleeping arrangement.
 - b. There shall be space in the household for privacy outside of the sleeping rooms for the adult to entertain visitors and talk privately.
 - c. *There shall be at least one toilet, one basin, and one tub or shower for every five persons residing in the home.*

5.17 AFC home safety

(22 VAC 30-120-50). Home safety requirements include:

1. The home and grounds shall be free from litter and debris and present no *safety* hazards.
2. The provider shall permit a fire inspection of the home by appropriate authorities if conditions indicate a need for approval and the *local department* requests it.

3. The provider shall have a written emergency plan that includes, fire *and* natural disaster. *The provider shall rehearse the plan at least twice a per year and review the plan with each new adult admitted to the home. The written plan shall be provided to the local department upon request.*

4. *The provider shall ensure the adult can be safely evacuated from all living spaces during an emergency. The provider shall include emergency evacuation procedures in the written emergency plan and shall consider the adult's ability to ambulate during an emergency.*

5. Possession of any weapons, including firearms, in the home shall be in compliance with federal, state, and local laws and ordinances. The provider shall store all weapons, firearms, and ammunition *owned by the provider or other household members in a manner that prohibits access by the adult. If the provider permits an adult to possess weapons, firearms, or ammunition in the home, the provider shall have a written policy detailing such permissions, and the provider shall require the adult to safely store all weapons, firearms, or ammunition. The provider may have a written policy prohibiting all weapons, firearms, and ammunition in the home, and the provider may choose not to accept into care an adult if the adult possesses weapons, firearms, or ammunition.*

6. The provider shall protect adults from household pets that may be a health or safety hazard. Household pets shall be inoculated as required by state or local ordinances. Documentation of inoculations shall be made available upon local department request.

7. The provider shall keep cleaning supplies and other toxic substances stored away from food and out of the reach of adults *receiving care*.

8. The provider shall provide and maintain at least one approved, properly installed, and operable battery-operated smoke detector, at a minimum, in each sleeping area and on each additional floor. Existing installations that have been approved by the state or local fire marshal are exempted from this requirement.

5.17.1 Fire and safety inspections

- Each LDSS should determine the appropriate local authority to inspect for safety hazards and may wish to develop an internal guide based on direction from that authority. See *the sample request for fire inspection form on the DSS intranet*.
- The LDSS may wish to do the following prior to requesting a safety inspection:
 - *Observe if there are any overloaded electrical wall outlets.*

- *Observe* if there is any deteriorated insulation on electrical equipment.
- Inquire if the furnace is serviced regularly.
- Observe if any wood stove is on a non-combustible surface and combustibles are at least three feet away.
- Inquire if the chimney flue is lined and cleaned regularly.
- Inquire if a permit was obtained for any liquid propane (LP) gas heater.
- Observe if there is any accumulation of grease around the range or oven.
- Observe if there is excessive trash, old rags, or other combustibles lying around.

5.18 Sanitation – AFC home

(22 VAC 30-120-50). Sanitation requirements include:

1. The provider shall permit an inspection of the home's private water supply and sewage disposal system by the local health department if conditions indicate a need for approval and the local department requests it.
2. The home and grounds shall be free of garbage, debris, insects, and rodents that would present a hazard to the health of *adults*.

5.18.1 Water testing fee

The usual and customary fee for water testing established by the *local health department* applies. This fee may be paid *from BL 855*.

5.19 AFC home capacity

(22 VAC 30-120-50). Capacity standards include:

1. The provider shall not exceed the maximum allowable capacity for the type of care provided and approved by the local department.
2. The adult foster care provider shall not accept more than three adults for the purpose of receiving room, board, supervision, or special services, regardless of relationship of any adult to the provider.

5.19.1 AFC provider providing more than one type of care

The LDSS shall carefully evaluate an AFC provider who requests to provide more than one type of care (e.g. child foster care and AFC) to ensure the provider is able to meet the needs of the individuals receiving care.

5.20 AFC provider record requirements

(22 VAC 30-120-60). A. The provider shall maintain written, legible, *and current* information on each adult ~~in~~ *receiving* care.

B. Information on the adult ~~in care~~ shall include:

1. *The adult's identifying* information;
2. Name, address, and home and work telephone numbers of *the adult's* responsible persons;
3. Name and telephone number of person to be called in an emergency *if the adult's* responsible person cannot be reached;
4. Name, address, and home and work telephone numbers of persons authorized *to transport* ~~pick up~~ the adult;
5. Name of persons not authorized to call or visit the adult;
6. Date of admission and discharge of the adult;
7. *Pertinent medical* information;
8. Correspondence related to the adult as well as other written information *about the adult* provided by the local department; and
9. Placement agreement between the provider and the adult and *the adult's* responsible person, *if applicable*.

C. All records are confidential and shall not be shared without the approval of the adult or *the adult's* responsible person, *except as required under federal or state law*.

D. The local department shall have access to all records.

E. The department shall have access to all records.

5.20.1 Confidentiality

When the adult leaves the home, the LDSS may request that certain information be returned to the LDSS, the adult, or *the adult's responsible person* to accompany the individual to his or her next placement.

5.21 Provider approval – all providers

5.21.1 Approval period

(22 VAC 30-120-70). The approval period for *all providers* may be up to 24 months when the provider meets the standards.

5.21.2 Application

- An Application for Department Approved Provider shall be completed by each applicant provider for the initial approval. It is not necessary for a renewal.
- The application, once received by the LDSS, should be acted upon as quickly as possible.
- A copy of the requirements should be given to each applicant provider.

5.21.3 Compliance form

A Compliance Form for Department Approved Provider (Parts A & B) should be completed for each applicant provider at the initial approval/denial determination and for each provider at each renewal. Part B of this form is only applicable to the *AFC provider*.

5.21.4 Certificate of Approval

The LDSS should *issue* a Certificate of Approval to the provider when the provider is approved.

5.21.5 Expiration of approval period

The expiration date for the approval period should be the last day of the month in which approval is granted *plus two years* unless the approval is emergency, provisional, or suspended.

5.21.6 Notification

The applicant provider or provider shall receive written notification **within 10 working days** regarding *the LDSS's decision* on the *initial* application or at renewal. *The issuance of a Certificate of Approval is adequate written notice for approved providers. See the DSS intranet for a sample denial letter.*

5.22 Allowable variance

(22 VAC 30-120-80). A. *The grant or denial of a variance is within the discretion of the local department. The provider may request a variance on a standard if the variance does not jeopardize the safety and proper care of any adult or prospective adult receiving care or violate federal, state, or local law and the local department approves the request.*

B. *The allowable variance, if granted by the local department, shall be documented in writing with a copy maintained by the local department and the provider.*

C. *The local department and the provider shall develop a plan to meet the applicable standard for which the allowable variance has been granted.*

D. *The allowable variance shall be requested and granted by the local department prior to the approval of the provider or at the time of the provider's renewal.*

5.22.1 Requesting a variance

- *It is the provider's responsibility to initiate the process to request a variance. The LDSS may assist the provider in preparing the written request for a variance request for LDSS review.*
- The *request for a variance* should specify, at a minimum:
 - The type of provider.
 - What specific reasons or circumstances exist in the situation that justify requesting the variance.
 - The requirement(s) for which a variance is requested.
 - What efforts have been/will be made to meet the requirement(s).
 - The length of time for which a variance is requested.

- What precautions are being taken to ensure the safety and protection of the adults in care while the variance is in effect.

5.22.2 Approval or denial of a variance

If the LDSS approves the variance, the decision will indicate the length of time for which the variance is granted. *The approval for a variance shall be signed by the director or the director's designee.*

A copy of the variance request and LDSS' decision will be maintained in the provider's record.

5.23 Emergency approval of a provider

(22 VAC 30-120-90). A. Emergency approval of a provider may be granted under the following conditions:

1. The court orders emergency placement; or
2. The adult or *the adult's* responsible person requests placement or service in an emergency.

B. *For emergency approval of an adult foster care provider*, the local department shall visit the provider's home *prior to the emergency placement* to ensure that minimum safety standards are evident and that the provider is capable of providing care *for the adult*.

C. *For emergency approval of an in-home provider*, the local department shall interview the provider to ensure that the emergency provider is capable of providing the needed services.

D. *Emergency approval of a provider shall not exceed 30 calendar days.*

5.23.1 Criminal history information

The LDSS shall request criminal history information *pursuant to* Section 5.5.2.

5.23.2 Action after 30 days

The provider must meet all applicable standards if services are to be provided beyond the 30-day emergency approval (22 VAC 30-120-90).

5.23.3 Denial of approval

Emergency approval may be denied by the LDSS if the *in-home* provider or the AFC home does not meet minimum standards. The LDSS reviewing the request for

approval shall indicate the reason for the denial of the emergency approval on the Compliance Form.

5.23.4 Notification

The approval or denial of the emergency application shall be in writing and given to the adult and the prospective provider. See *DSS intranet* for an example of an emergency approval or denial letter.

5.24 Provider monitoring

(22 VAC 30-120-100). A. For adult foster care providers, the local department shall visit the home of the provider as often as necessary, but at least semi-annually to monitor the performance of the provider.

B. For *in-home* providers, the local department shall interview the provider face-to-face as often as necessary, but at least semi-annually, to monitor the performance of the provider. *At least one monitoring visit shall occur in the home of the adult who is receiving care.*

C. Provider monitoring shall include interviews with adults receiving care from the provider.

D. The adult or *the adult's* responsible person shall have access to all provider monitoring reports *for that specific adult and that adult's provider* upon request.

- The purpose of the monitoring visits/interviews is to allow the LDSS staff to determine the provider's compliance with applicable standards. If the provider had difficulty meeting a particular standard, this should be checked at the monitoring contact. It is not intended to be a reexamination of all standards.
- *The appropriate LDSS supervisor decides how and by which LDSS staff monitoring visits will be conducted.*
- Monitoring visits shall be documented on the Compliance Form for Department Approved Provider or in a provider narrative maintained in the provider's record.

5.25 Renewal process

(22 VAC 30-120-110). The local department shall reapprove the provider prior to the end of the approval period if the provider continues to meet the standards, *and if the local department continues to offer the service.*

The following areas do not need to be reexamined unless the LDSS feels there is a need:

- Application (no renewal application is necessary).
- Tuberculosis Statement.
- References.
- Employment History.

The Compliance Form for Department Approved Provider shall be completed to document the initial approval and each renewal.

5.26 Provider requirements at renewal

A provider in good standing *at renewal*:

- Has the capability, in all respects, to perform fully the requirements of an LDSS approved provider.
- Has the moral and business integrity and the reliability that will assure good faith performance.
- Has been approved by the LDSS as meeting the requirements for the type of provider the individual applies or is approved to be.
- *Has* a satisfactory record of performance, including providing services in a timely manner, being present to provide care when assigned, and having no legitimate complaints from the adult in care about the care and services received.
- *Complies* with the required performance of job duties.
- *Has* the necessary facilities, organization, experience, technical skills, and financial resources to fulfill the terms of the requirements of the position, as needed.
- *Has* no active allegation(s) of adult abuse, neglect, or exploitation made against him or her. In this case, it is within the purview of the LDSS to find a substitute provider until the allegation(s) has been resolved; a substantiated *Adult Protective Services (APS)* allegation shall be used as a basis for revocation of the approval of the provider or denial of the applicant.
- *Has* satisfactory monitoring assessments completed by the LDSS indicating that quality work is performed according to the vendor agreement with the LDSS.

- Provides documentation to verify that services were provided to the adult as agreed.

The provider who does not meet these requirements shall be considered to no longer be in good standing as a provider. In such case, the LDSS has the authority to grant provisional approval, suspend approval, or revoke approval.

5.27 Inability of the provider to meet requirements

(22 VAC 30-120-120). If the provider cannot meet the standards *set forth in this chapter*, the local department shall grant provisional approval, suspend approval, or revoke approval, depending on the duration and nature of noncompliance.

The provider shall be given the opportunity to correct any non-compliance issues and be reassessed by the LDSS, at which time the provider approval may be reinstated as being in good standing with or without a variance, suspended, or revoked.

5.27.1 Provisional approval

(22 VAC 30-120-120). The local department may grant provisional approval if noncompliance *with the standards set forth in this chapter* does not jeopardize the safety or proper care of the adults. Provisional approval shall not exceed *90 calendar days*.

5.27.2 Suspension of approval

(22 VAC 30-120-120). The local department may suspend approval if noncompliance *with the standards set forth in this chapter* may jeopardize the safety and proper care of ~~the~~ adults ~~in care~~. Suspension shall not exceed *90 calendar days*. During the suspension, the provider *shall not provide care to adults receiving services arranged by the local department*.

5.27.3 Revocation of approval

(22 VAC 30-120-120). If the provider is found to be out of compliance with the standards set forth *in this chapter* and cannot meet standards within *90 calendar days* and a variance is not granted, the approval shall be revoked.

The local department shall immediately revoke its approval if noncompliance *with the standards set forth in this chapter* jeopardizes the health, safety, and proper care of adults. *The local department shall terminate services and find alternative services for all affected adult who are receiving adult foster care no later than five calendar days from the date of the local department's revocation decision. For in-home providers, the local department*

shall find alternative for the adult no later than 30 calendar days from the date of the local department's revocation decision.

5.27.4 Notification of action

(22 VAC 30-120-120). The decision to grant provisional approval, suspend approval or revoke approval shall be in writing with the effective date of the decision noted.

The LDSS shall notify the provider in writing, specify the reasons for provisional approval, suspension, or revocation, and indicate the provider's right of review. See *DSS intranet* for a sample letter.

5.28 Relocation of the AFC provider

The following sections describe *procedures for* when an AFC provider relocates.

5.28.1 Within the approving jurisdiction

(22 VAC 30-120-130). If the *adult foster care provider relocates within the locality*, the local department approving the provider shall determine continued compliance with standards related to the home as soon as possible, but no later than 30 *calendar* days after relocation, to avoid disruption of services to the adult ~~in~~ *receiving* care.

The renewal period does not change unless a full re-approval is done at the same time. A new Certificate of Approval does not need to be issued unless the provider requests one.

5.28.2 Outside of the approving jurisdiction

(22 VAC 30-120-130). *If the adult foster care provider relocates within the Commonwealth to a locality other than the locality that originally approved the adult foster care provider, the local department that originally approved the adult foster care provider (original local department) shall notify the local department in the new locality (new local department) of the relocation. If the new local department offers adult foster care services, the new local department may accept the adult foster care provider approval from the original local department based upon the recommendation of the original local department of the new local department may initiate an approval process. If the new local department does not offer adult foster care services, the original local department shall request written permission from the new local department for the adult foster care provider to continue to provider adult foster care services for the original local department.*

5.29 Right of review

(22 VAC 30-120-140). The provider shall have the right to request that the decision of the *local department* be reviewed by the director of *the local department*.

The provider shall request the review within 10 calendar days from the effective date of the *local department's decision*.

All written findings and actions of the local department or its director, including the decision of the local department director at the conclusion of the review, are final and shall not be (i) appealable to the Commissioner of the Department for Aging and Rehabilitative Services or (ii) considered a final agency action for purposes of judicial review pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

5.29.1 Review process

If a dispute cannot be resolved between an approved provider or applicant provider and an LDSS, the applicant/provider has the right to request a review of the LDSS' decision by the local director of social services. The request to review the LDSS' decision shall be made **within 10 calendar days** from the effective date of the department's written notice. The steps of the review are as follows:

1. The LDSS shall schedule a review conference **within 10 working days** of receipt of the written request by the applicant/provider.
2. Participants in the review conference may include:
 - The applicant/provider(s).
 - The appropriate LDSS staff.
 - The LDSS director or his designee.
 - Up to two (2) other individuals chosen by the applicant/provider.
3. The LDSS shall write a summary of the review conference **within 10 working days** of the conference. The summary of the review will also include the local director's decision. A copy of the summary shall be shared with all participants. The decision of the local director is final.

5.30 Use of provider by more than one LDSS

The initial approving LDSS is responsible for continued approval of providers used by more than one LDSS.

An LDSS may accept the provider approval of another LDSS. The other LDSS shall notify and obtain prior approval of the initial approving LDSS for each adult who is to receive services.

5.31 LDSS record-keeping

The LDSS shall maintain records on each approved provider. Documentation in the file shall be complete, accurate, and legible and signed with LDSS staff person's name and title and dated with month, day, and year. Confidentiality of records shall be ensured.

5.31.1 Contents of the provider file

- Application for Department Approved Provider or earlier version of an application.
- Compliance Form for Department Approved Provider and for out-of-home providers (Parts A and B).
- Purchase of Service Agreements.
 - An Individual Vendor Agreement may be used when services are purchased from the following providers: adult day services, AFC, and chore, companion, and homemaker.
 - Any Purchase of Service Orders and Vendor Invoices (related to the Individual Vendor Agreement) should be maintained in the adult's record, not the provider's file. Copies of these documents may be maintained in the provider file.
 - Other information may include, where applicable, medical statements, criminal record check, fire inspection, water and sanitation inspection, correspondence, and provider narrative.

5.32 Department data system

PeerPlace enables the LDSS to enter provider information into the system so that the provider will be able to be selected on the service plan.

5.33 When the provider is the subject of an APS allegation

If a provider is the subject of an APS allegation against an adult in care, the LDSS may assign another provider to care for the adult until the allegation is resolved.

5.34 The LDSS as the adult's fiscal agent

In an agreement reached between the DSS and the Internal Revenue Service (IRS), it was determined that there is a common-law employer-employee relationship between the adult services home-based provider (companion, chore, and homemaker) and the adult. The DSS/IRS agreement was effective January 1, 1995. Per the agreement, LDSS act as fiscal agents on behalf of the adult by ensuring that necessary taxes are paid. The services performed by the home-based provider constitute "domestic service in a private home of the employer." Therefore, the adult is the employer of the provider. Neither the state nor the LDSS is the provider's employer.

LDSS have to file Form 941-Employer's Quarterly Federal Tax Return and Form 940-Employer's Annual Federal Unemployment (FUTA) Tax Return under the EIN of the filing entity. Each return should report an aggregate of all of the taxable wages paid by the entity on behalf of the individual receiving services.

However, the IRS has confirmed that LDSS are not required to file Schedule R (Form 941) and Schedule R (Form 940) because the LDSS are not in a section 3504 relationship with the client.

5.34.1 Authorization to act on adult's behalf

The LDSS should inform the adult that the LDSS is acting as fiscal agent on his or her behalf in paying and withholding the required taxes. Authorization should be obtained and retained in the individual's record. The signed form should be filed in the adult's record. A copy of the form may also be filed in the provider's record. This form is located on the VDSS intranet.

5.34.2 Purchase of Services Orders

For each Purchase of Services Order written, the LDSS should encumber, as fiscal agent for the adult, the funds required to pay the applicable taxes. A Purchase of Services Order is available on the DSS intranet.

5.34.3 Immigration and Naturalization Service verification

The LDSS, as fiscal agent for the adult, is responsible for completing the I-9 form from the Immigration and Naturalization Service (INS) on behalf of the adult. The I-9 form is available on the INS website.

5.34.4 Contracting with an external organization for home-based services

If an LDSS chooses to contract with an external organization to provide home-based services that contract organization shall assume responsibility for collecting and paying FICA and payment of unemployment taxes, if applicable, and for issuing W-2 or W-4 forms to providers.

5.34.5 SSI benefits received by provider

In cases where a provider is receiving SSI, SSA, or other public assistance benefits, the income received as a provider may have an effect on the provider's amount of or entitlement to SSI. The effects of receiving this additional income shall be discussed with the provider. The provider shall be advised of his responsibility for notifying the Social Security Administration.

5.34.6 Rate of payment for home-based services

Each LDSS shall establish local board policy to specify the maximum number of hours of service and rate of pay for providers. The rate of payment for companion, chore, and homemaker services shall be at least the minimum wage.

5.35 Abuse, neglect, and exploitation reporting – all providers

(22 VAC 30-120-40). All providers shall immediately report any suspected abuse, neglect, or exploitation of any adult in care to the local department or to the 24-hour toll-free hotline (hotline number: 888-83-ADULT). Providers covered by this *chapter* are mandatory reporters in accordance with § 63.2-1606 of the Code of Virginia. Failure to report could result in the imposition of civil penalties.

5.36 Rights of adults receiving care

Adults *receiving care from* LDSS approved providers have rights specified by regulation. Each adult, or his or her representative, shall receive a copy of these rights and acknowledge receipt of these rights by signing another copy which will be maintained in the adult's record. All approved providers shall also receive a copy of the rights of adults in care and acknowledge receipt of the rights by signing another copy which will be placed in the provider's record. *AFC providers* shall make available in an easily accessible place

a copy of these rights and responsibilities. In addition, the *AFC* provider shall include with the rights, the telephone number of the Adult Protective Services Hotline as well as the toll-free telephone number of the Virginia Long-Term Care Ombudsman Program and any local ombudsman program serving the jurisdiction. A copy is also available online on the DSS intranet.

5.37 Responsibilities of adults in *AFC*

- A. The adult *receiving* care shall follow the rules of the provider unless these rules are in violation of *an adult's* rights.
- B. Adults *receiving* care, ~~or~~ the local department, *or the adult's responsible person, if applicable*, shall give *two weeks* written notice of *the* intent to leave the placement.
- C. Adults *receiving* care *or the adult's responsible person, if applicable*, shall notify providers if there are changes in the adult's health status.

5.38 Fraud

(22 VAC 30-120-30). Any provider who causes the local department to make an improper payment by withholding information or providing false information *shall* be required to pay the amount of the improper payment. Failure to repay any improper payment shall result in a referral for criminal or civil prosecution.

Section 63.2-522 deems guilty of larceny any person who obtains, or aids or abets any person in obtaining, by means of a willful false statement or representation, or by impersonation, or other fraudulent device, public assistance or benefits. Recipients deemed guilty of larceny, upon conviction, are subject to penalties as specified in the § 18.2-95. The LDSS shall explain to individuals applying for adult services and providers the importance of providing accurate and thorough information and of notifying the LDSS of changes during service delivery.

5.39 Appendix A: Forms

The following forms may be used for Adult Service Providers. These forms are located on the Adult Services forms page of the DSS intranet.

Application for Department Approved Provider

This form is completed by an individual who wants to become an adult services provider.

Authorization to Act on Adult's Behalf

This form is used to explain to the adult that the LDSS is acting as fiscal agent on his or her behalf in paying and withholding the required taxes.

Certificate of Approval

This form is issued to providers once they have been approved.

Compliance Form

This form is completed on each provider during initial approval process and at renewal.

Purchase of Services Order

This form is used to order services from vendors or to terminate or change existing orders.

Rights of Adults in Care

This form lists the rights of adults who are receiving care from department approved providers.

Tuberculosis Statement

This form is used to certify that an individual who wants to become an adult services provider is free from tuberculosis.

5.40 Appendix B: Code of Virginia – criminal history release

(§ 19.2-389). Dissemination of criminal history record information.

A. Criminal history record information shall be disseminated, whether directly or through an intermediary, only to:

36. Public agencies when and as required by federal or state law to investigate (i) applicants as providers of adult foster care and home-based services or (ii) any individual with whom the agency is considering placing an adult on an emergency, temporary, or permanent basis pursuant to § 63.2-1601.1, subject to the restriction that the data shall not be further disseminated by the agency to any party other than a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination, subject to limitations set out in subsection G; and

45. Other entities as otherwise provided by law.

Upon an ex parte motion of a defendant in a felony case and upon the showing that the records requested may be relevant to such case, the court shall enter an order requiring the Central Criminal Records Exchange to furnish the defendant, as soon as practicable, copies of any records of persons designated in the order on whom a report has been made under the provisions of this chapter.

Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to before an officer authorized to take acknowledgments, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a copy of conviction data covering the person named in the request to the person making the request; however, such person on whom the data is being obtained shall consent in writing, under oath, to the making of such request. A person receiving a copy of his own conviction data may utilize or further disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data subject, the person making the request shall be furnished at his cost a certification to that effect.

B. Use of criminal history record information disseminated to noncriminal justice agencies under this section shall be limited to the purposes for which it was given and may not be disseminated further.

C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal history record information for employment or licensing inquiries except as provided by law.

D. Criminal justice agencies shall establish procedures to query the Central Criminal Records Exchange prior to dissemination of any criminal history record information on offenses required to be reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases where time is of the essence and the normal response time of the Exchange would exceed the necessary time period. A criminal justice agency to whom a request has been made for the dissemination of criminal history record information that is required to be reported to the Central Criminal Records Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination. Dissemination of information regarding offenses not required to be reported to the Exchange shall be made by the criminal justice agency maintaining the record as required by § 15.2-1722.

E. Criminal history information provided to licensed nursing homes, hospitals and to home care organizations pursuant to subdivision 15 of subsection A shall be limited to the convictions on file with the Exchange for any offense specified in §§ 32.1-126.01, 32.1-126.02, and 32.1-162.9:1.

F. Criminal history information provided to licensed assisted living facilities, licensed district homes for adults, and licensed adult day-care centers pursuant to subdivision 16 of subsection A shall be limited to the convictions on file with the Exchange for any offense specified in § 63.1-189.1 or § 63.2-1720.

G. Criminal history information provided to public agencies pursuant to subdivision 36 of subsection A shall be limited to the convictions on file with the Exchange for any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02.

(§ 63.2-1601.1). Criminal history check for agency approved providers of services to adults.

A. Each local board shall obtain, in accordance with regulations adopted by the Board, criminal history record information from the Central Criminal Records Exchange of any individual the local board is considering approving as a provider of home-based services pursuant to § 63.2-1600 or adult foster care pursuant to § 63.2-1601. The local board may also obtain such a criminal records search on all adult household members residing in the home of the individual with whom the adult is to be placed. The local board shall not hire for compensated employment any persons who have been convicted of any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02. If approval as an agency approved provider is denied because of information obtained through a Central Criminal Records Exchange search, the local board, upon request, shall provide a copy of the information obtained to the individual who is the subject of the search. Further dissemination of the criminal history record information is prohibited.

B. In emergency circumstances, each local board may obtain from a criminal justice agency the criminal history record information from the Central Criminal Records Exchange for the criminal records search authorized by this section. The provision of home-based services shall be immediately terminated or the adult shall be removed from the home immediately, if any adult resident has been convicted of any offense set forth in clause (i) of the definition of barrier crime as described in § 19.2-392.02.

5.41 Appendix C: Code of Virginia – barrier crimes

The local board shall not hire for compensated employment any persons who have been convicted of any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02 of the Code of Virginia.

Barrier crime means:

- A felony violation of:
 - § 16.1-253.2 (Felony violation of a protective order)
- Any violation of:
 - § 18.2-31 (*Aggravated murder*)
 - § 18.2-32 (1st & 2nd degree murder)
 - § 18.2-32.1 (Murder of a pregnant woman)
 - 18.2-32.2 (Killing a fetus)
 - § 18.2-33 (Felony homicide)
 - § 18.2-35 (Voluntary manslaughter)
 - § 18.2-36 (Involuntary manslaughter)
 - § 18.2-36.1 (Certain conduct punishable as involuntary manslaughter)
 - § 18.2-36.2 (Involuntary manslaughter; operating a watercraft under the influence)
 - § 18.2-41 (Shooting stabbing, etc., with intent to maim, kill by mob)
 - § 18.2-42 (Assault or battery by mob)
- Any felony violation of:
 - § 18.2-46.2 (Criminal street gang participation)
 - § 18.2-46.3 (Recruitment of persons for criminal street gang)
 - § 18.2-46.3:1 (3rd or subsequent conviction of criminal street gang crimes)

- § 18.2-46.3:3 (Enhanced punishment for gang activity in a gang-free zone)
- Any violation of:
 - § 18.2-46.5 (Committing, conspiring and aiding and abetting acts of terrorism)
 - § 18.2-46.6 (Possession, manufacture, distribution, etc. of weapon of terrorism or hoax device)
 - § 18.2-46.7 (Act of bioterrorism against agricultural crops or animals)
- Any violation of subsection A or B of:
 - § 18.2-47 (Abduction and kidnapping)
- Any violation of:
 - § 18.2-48 (Abduction with intent to extort money or for immoral purpose)
 - § 18.2-49 (Threatening, attempting or assisting in such abduction)
 - § 18.2-50.3 (Enticing another into a dwelling house with intent to commit certain felonies)
- Any violation of:
 - § 18.2-51 (Shooting, stabbing with intent to maim, kill)
 - § 18.2-51.1 (Malicious bodily injury to law-enforcement officers, firefighters, search and rescue, or emergency medical services)
 - § 18.2-51.2 (Aggravated malicious wounding)
 - § 18.2-51.3 (Reckless endangerment of others by throwing objects from places)
 - § 18.2-51.4 (Maiming of another resulting from driving while intoxicated)
 - § 18.2-51.5 (Maiming, etc., of another resulting from operating a watercraft while intoxicated)
 - § 18.2-51.6 (Strangulation of another)
 - § 18.2-52 (Malicious bodily injury by means of any caustic substance or agent or use of any explosive or fire)

- § 18.2-52.1 (Possession of infectious biological substances or radiological agents)
- § 18.2-53 (Shooting, etc., in committing or attempting a felony)
- § 18.2-53.1 (Use or display of firearm in committing felony)
- § 18.2-54.1 (Attempts to poison)
- § 18.2-54.2 (Adulteration of food, drink, drugs, cosmetics)
- § 18.2-55 (Bodily injuries caused by prisoners, state juvenile probationers and state and local adult probationers or adult parolees)
- § 18.2-55.1 (Hazing of youth gang members unlawful; criminal liability)
- § 18.2-56 (Hazing unlawful; civil and criminal liability; duty of school, etc., officials)
- § 18.2-56.1 (Reckless handling of firearms; reckless handling while hunting)
- § 18.2-56.2 (Allowing access to firearms by children)
- § 18.2-57 (Assault and battery)
- § 18.2-57.01 (Pointing a laser at a law-enforcement officer)
- § 18.2-57.02 (Disarming a law-enforcement or correctional officer)
- § 18.2-57.2 (Assault and battery against a family or household member)
- § 18.2-58 (Robbery)
- § 18.2-58.1 (Carjacking)
- § 18.2-59 (Extortion of money, property or pecuniary benefit)
- § 18.2-60 (Threats of death or bodily injury to a person or member of his family; threats of death or bodily injury to persons on school property; threats of death or bodily injury to health care providers)
- § 18.2-60.1 (Threatening the Governor or his immediate family)
- Any felony violation of:

- § 18.2-60.3 (Stalking)
- § 18.2-60.4 (*Violation of protective orders*)
- Any violation of:
 - § 18.2-61 (Rape)
 - § 18.2-63 (Carnal knowledge of a child between thirteen and fifteen *years of age*)
 - § 18.2-64.1 (Carnal knowledge of certain minors)
 - § 18.2-64.2 (Carnal knowledge of a person detained or arrested by a law-enforcement officer or an inmate, parolee, probationer, detainee, or pretrial or post trial offender)
 - § 18.2-67.1 (Forcible sodomy)
 - § 18.2-67.2 (Object sexual penetration)
 - § 18.2-67.3 (Aggravated sexual battery)
 - § 18.2-67.4 (Sexual battery)
 - § 18.2-67.4:1 (Infected sexual battery)
 - § 18.2-67.4:2 (Sexual abuse of a child under 15 years of age)
 - § 18.2-67.5 (Attempted rape, forcible sodomy, object sexual penetration, aggravated sexual battery, and sexual battery)
 - § 18.2-67.5:1 (Conviction of third misdemeanor offense)
 - § 18.2-67.5:2 (Conviction of certain subsequent felony sexual assault)
 - § 18.2-67.5:3 (Conviction of certain subsequent violent felony sexual assault)
 - § 18.2-77 (Burning or destroying a dwelling house)
 - § 18.2-79 (Burning or destroying a meeting house)
 - § 18.2-80 (Burning or destroying any other building or structure)
 - § 18.2-81 (Burning or destroying personal property, standing grain)

- § 18.2-82 (Burning building or structure while in such building or structure with intent to commit felony)
- § 18.2-83 (Threats to bomb or damage buildings or means of transportation, false information as to danger to such buildings, etc.)
- § 18.2-84 (Causing, inciting, etc.)
- § 18.2-85 (Manufacture, possession, use, etc., of fire bombs or explosive materials or devices)
- 18.2-86 (Setting fire to woods, fences, grass, etc.)
- § 18.2-87 (Setting woods, etc., on fire intentionally)
- § 18.2-87.1 (Setting off chemical bombs capable of producing smoke in certain public buildings)
- § 18.2-88 (Carelessly damaging property by fire)
- Any felony violation of:
 - § 18.2-279 (Discharging firearms or missiles within or at building or dwelling house)
 - § 18.2-280 (Willfully discharging firearms in public places)
 - § 18.2-281 (Setting spring gun or other deadly weapon)
 - § 18.2-282 (Pointing, holding, or brandishing firearm, air or gas operated weapon or object similar in appearance)
 - § 18.2-282.1 (Brandishing a machete or other bladed weapon with intent to intimidate)
 - § 18.2-286.1 (Shooting from vehicles so as to endanger persons)
 - § 18.2-287.2 (Wearing of body armor while committing a crime)
- Any violation of:
 - § 18.2-289 (Use of machine gun for crime of violence)
 - § 18.2-290 (Use of machine gun for aggressive purpose)

- § 18.2-300 (Possession or use of "sawed-off" shotgun or rifle)
- § 18.2-308.4 (Possession of firearms while in possession of certain substances)
- § 18.2-314 (Failing to secure medical attention for injured child)
- Any felony violation of:
 - § 18.2-346.01 (Prostitution; solicitation; commercial exploitation of a minor)
 - § 18.2-348 (Aiding prostitution or illicit sexual intercourse)
 - § 18.2-349 (Using vehicles to promote prostitution or unlawful sexual intercourse)
- Any violation of:
 - § 18.2-355 (Taking, detaining, etc., person for prostitution or consenting thereto; human trafficking)
 - § 18.2-356 (Receiving money for procuring person)
 - § 18.2-357 (Receiving money from earnings of male or female prostitute)
 - § 18.2-357.1 (Commercial sex trafficking)
- Any violation of subsection B of § 18.2-361 (Crimes against nature)
- Any violation of:
 - § 18.2-366 (Sexual intercourse by persons forbidden to marry; incest)
 - § 18.2-369 (Abuse and neglect of *vulnerable* adults)
 - § 18.2-370 (Taking indecent liberties with children)
 - § 18.2-370.1 (Taking indecent liberties with child by person in custodial or supervisory relationship)
 - § 18.2-370.2 (Sex offenses prohibiting proximity to children)
 - § 18.2-370.3 (Sex offenses prohibiting residing in proximity to children)
 - § 18.2-370.4 (Sex offenses prohibiting working on school property)

- § 18.2-370.5 (Offenses prohibiting entry onto school or other property)
- § 18.2-370.6 (Penetration of mouth of child with lascivious intent)
- § 18.2-371.1 (Abuse and neglect of children; abandoned infant)
- § 18.2-374.1 (Production, publication, sale, financing, etc., of child pornography)
- § 18.2-374.1:1 (Possession, reproduction, distribution, solicitation, and facilitation of child pornography)
- § 18.2-374.3 (Use of communications systems to facilitate certain offenses involving children)
- § 18.2-374.4 (Display of child pornography or grooming video or materials to a child)
- § 18.2-379 (Employing or permitting minor to assist in offense under article)
- § 18.2-386.1 (Unlawful creation of image of another)
- § 18.2-386.2 (Unlawful dissemination or sale of images of another)
- Any felony violation of:
 - § 18.2-405 (Riot)
 - § 18.2-406 (Unlawful assembly)
- Any violation of:
 - § 18.2-408 (Conspiracy; incitement to riot)
 - § 18.2-413 (Commission of certain offenses in county, city, or town declared by Governor to be in state of riot or insurrection)
 - § 18.2-414 (Injury to property or persons by persons unlawfully or riotously assembled)
 - § 18.2-423 (Burning cross on property of another or public place with intent to intimidate)
 - § 18.2-423.01 (Burning object on property of another or a highway or other public place with intent to intimidate)

- § 18.2-423.1 (Placing swastika on certain property with intent to intimidate; penalty)
- § 18.2-423.2 (Displaying noose on property of another or a highway or other public place with intent to intimidate)
- § 18.2-433.2 (Paramilitary activity)
- § 18.2-472.1 (Providing false information or failing to provide registration information)
- § 18.2-474.1 (Delivery of drugs, firearms, explosives, etc., to prisoners or committed persons)
- § 18.2-477 (Prisoner escaping from jail)
- § 18.2-477.1 (Escapes from juvenile facility)
- § 18.2-477.2 (Punishment for certain offenses committed within a secure juvenile facility or detention home)
- § 18.2-478 (Escape from jail or custody by force or violence without setting fire to jail)
- § 18.2-479 (Escape without force or violence or setting fire to jail)
- § 18.2-480 (Escape, etc., by setting fire to jail)
- § 18.2-481 (Treason)
- § 18.2-484 (Advocacy of change in government by force, violence or other unlawful means)
- § 18.2-485 (Conspiring to incite one race to insurrection against another race)
- § 37.2-917 (Escape of persons committed)
- § 53.1-203 (Felonies by prisoners)

Or any substantiality similar offense under the laws of another jurisdiction; (ii) any violation of §18.2-89, 18.2-90, 18.2-91, 18.2-92, 18.2-93, or 18.2-94 or any substantially similar offense under the laws of another jurisdiction; (iii) any felony violation of §4.1-1101, 18.2-248, 18.2-248.01, 18.2-248.02, 18.2-248.03, 18.2-248.1, 18.2-248.5, 18.2-251.2, 18.2-251.3, 18.2-255, 18.2-255.2, 18.2-258, 18.2-258.02, 18.2-258.1, or 18.2-258.2; or any

substantially similar offense under the laws of another jurisdiction; (iv) any felony violation of §18.2-250 or any substantially similar offense under the laws of another jurisdiction; (v) any offense set forth in § 9.1-902 that results in the person's requirement to register with the Sex Offender and Crimes Against Minors Registry pursuant to §9.1-901, including any finding that the person is not guilty by reason of insanity in accordance with Chapter 11.1 (§19.2-182.2 et seq.) of Title 19.2 of an offense set forth in § 9.1-902 that results in the person's requirement to register with the Sex Offender and Crimes Against Minors Registry pursuant to § 9.1-901; *any substantiality similar offense under the laws of another jurisdiction; or any offense for which registration in a sex offender and crimes against minors registry is required under the laws of the jurisdiction where the offender was convicted; or (vi) any other felony not included in clause (i), (ii), (iii), (iv), (v) unless five years have elapsed from the date of the conviction.*

6

CONFIDENTIALITY

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6

CONFIDENTIALITY

6.1 Introduction

It is the policy of the Commonwealth to promote ready access to records in the custody of public officials and free entry to meetings of public bodies wherein the business of the Commonwealth is being conducted. The purpose for promoting open disclosure of the activities of state government is to foster an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government.

In performing its statutory duties, such as conducting an investigation of a report of adult abuse, neglect or exploitation, LDSS will collect and maintain personal information about an individual. Having recognized that the collection, maintenance, use and dissemination of personal information directly affect an individual's rights concerning privacy, the Code of Virginia authorizes the release of certain information under the Government Data Collection and Dissemination Practices Act. The Virginia Freedom of Information Act provides a person access to records in the custody of public officials.

When the LDSS receives a request for information, the LDSS must determine whether the information requested is confidential and must be protected or whether the information requested should be released under the Virginia Freedom of Information Act, the Government Data Collection and Dissemination Practices Act or Virginia Administrative Code.

For any request, LDSS are encouraged to seek legal advice and counsel prior to responding to a request the release of information.

6.2 Legal basis

The legal basis for this chapter is §§ 63.2-104, 51.5-121, and 51.5-122 of the Code of Virginia, the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia), the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 of the Code of Virginia), and by regulation promulgated the State Board of Social

Services. Throughout this chapter, text that appears indented with a blue, vertical line denotes verbatim material from the Code of Virginia or the Regulations 22 VAC 40-910, General Provisions for Maintaining and Disclosing Confidential Information of Public Assistance, Child Support Enforcement and Social Services Records.

6.3 Definitions

The following words and terms are defined in state regulation 22 VAC 40-910-10. When used in this chapter, they shall have the following meaning, unless the context clearly indicates otherwise:

<u>Term</u>	<u>Definition</u>
Agency	A local department of social services (LDSS).
Client	Any applicant for or recipient of public assistance or social services or any individual about whom the child support enforcement division maintains information.
Client Record or Client Information	Any identifying or nonidentifying information, including information stored in computer data banks or computer files, relating to a client.
Provider	Any person, agency, or organization providing public assistance, child support enforcement services, or social services through a contract or an agreement with the department or agency.
Research	A systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to general knowledge, including research for the development of new knowledge or techniques that would be useful in the administration of public assistance, child support enforcement, or social services programs.
Social Services Program	Foster care, adoption, adoption assistance, adult services, adult protective services, child protective services, domestic violence services, family preservation, or any other services program implemented in accordance with regulations promulgated by the State Board of Social Services.

6.4 Authority of DARS to request and receive information

(§ 51.5-122 of the Code of Virginia). The Department may request and shall receive from all departments, boards, bureaus, or other agencies of the Commonwealth such records and information as is necessary for the purpose of carrying out the provisions and programs of this

chapter, and the same are authorized to provide such information, provided that a written statement from the requesting party stating the reason for seeking such record is submitted and filed with the record sought. The Department may also request and receive records and information necessary for the purpose of carrying out the provisions and programs of this chapter from agencies or political subdivisions of other states. The Department may make such information available to public officials and agencies of the Commonwealth, other states, political subdivisions of the Commonwealth, and political subdivisions of other states in accordance with state and federal law when the request for information relates to administration of the various public assistance or social services programs.

6.5 Confidentiality of records

(§ 51.5-122 of the Code of Virginia) A. The records, information, and statistical registries of the Department and local departments of social services concerning adult services and adult protective services provided to or on behalf of individuals shall be confidential information, provided that the Commissioner and his agents shall have access to such records, information, and statistical registries, and that such records, information, and statistical registries may be disclosed to any person having a legitimate interest in accordance with state and federal law and regulation.

It shall be unlawful for the Commissioner, his agents or employees, any person who has held any such position, or any other person to whom any confidential record or information is disclosed to disclose, directly or indirectly, such confidential record or information, except as herein provided. Every violation of this section shall constitute a Class 1 misdemeanor.

B. If a request for a record or information concerning applicants for and recipients of adult services provided pursuant to Article 4 (§ 51.5-144 et seq.) or adult protective services provided pursuant to Article 5 (§ 51.5-148) is made to the Department or a local department by a person who does not have a legitimate interest, the Commissioner or local director shall not provide the record or information unless permitted by state or federal law or regulation.

6.6 Ownership of client records

(22 VAC 40-910-20). 1. Client records are the property of the department or agency. Employees and agents of the department or agency must protect and preserve such records from dissemination except as provided herein.

2. Only authorized employees and agents may remove client records from the department or agency's premises.

3. The department and agency shall destroy client records pursuant to records retention schedules consistent with federal and state regulations.

6.7 Virginia Freedom of Information Act

The Virginia Freedom of Information Act (FOIA) (§ 2.2-3700 of the Code of Virginia) ensures the people of the Commonwealth ready access to records in the custody of public officials and free entry to meetings of public bodies wherein the business of the people is being conducted. The affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government.

Record requests can be complex and it is recommended that the LDSS work their attorney when responding to FOIA requests. Even though an individual may request information pursuant to Virginia FOIA, the LDSS may not be able to disclose all information requested.

Responses to a FOIA request shall occur within **five working days** of the receipt of the request. Failure to respond timely to a FOIA request is considered a denial of the request and violation of FOIA.

The DSS public website contains information about Virginia FOIA.

6.8 Government Data Collection and Dissemination Practice Act

The Government Data Collection and Dissemination Practices Act ensures safeguards for personal privacy by record keeping agencies. The following principles of information practice have been established to ensure safeguards for personal privacy:

- (§ 2.2-3800 of the Code of Virginia). 1. There shall be no personal information system whose existence is secret.
2. Information shall not be collected unless the need for it has been clearly established in advance.
 3. Information shall be appropriate and relevant to the purpose for which it has been collected.
 4. Information shall not be obtained by fraudulent or unfair means.
 5. Information shall not be used unless it is accurate and current.
 6. There shall be a prescribed procedure for an individual to learn the purpose for which information has been recorded and particulars about its use and dissemination.

7. There shall be a clearly prescribed and uncomplicated procedure for an individual to correct, erase or amend inaccurate, obsolete or irrelevant information.
8. Any agency holding personal information shall assure its reliability and take precautions to prevent its misuse.
9. There shall be a clearly prescribed procedure to prevent personal information collected for one purpose from being used for another purpose.
10. The Commonwealth or any agency or political subdivision thereof shall not collect personal information except as explicitly or implicitly authorized by law.

6.8.1 Exceptions to the Government Data Collection and Dissemination Practices Act

Section 2.2-3802 of the Code of Virginia contains exceptions to disclosing personal information.

Records maintained by *the Department for Aging and Rehabilitative Services (DARS) related to adult services, adult protective services, or auxiliary grants when requests for personal information are made to DARS*. Requests for information from these systems shall be made to the appropriate LDSS that is the custodian of that record.

6.9 Review of records pursuant to the Virginia Administrative Code

(22 VAC 40-910-60). Any client has the right to obtain their client record upon written or verbal request. The client must be permitted to review or obtain a copy of his client record with the following exceptions:

1. Information that the department, agency or provider is required to keep confidential pursuant to federal and state laws or regulations.
2. Information that the department, agency or provider may withhold from the client pursuant to the Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia).
3. Information that would breach another individual's right to confidentiality. When the material requested includes confidential client information about individuals other than the client, the parts of the client record relating to other individuals will be redacted.

6.10 Intra-department disclosures

Information may be exchanged between eligibility and service workers in the LDSS in pursuance of their official duties. Under no circumstances shall a service worker withhold information from the eligibility staff which may affect an individual's eligibility for assistance.

6.11 Inter-department disclosures

The LDSS may furnish information regarding an individual to other LDSS without a release from the individual when the disclosure is for purposes directly related to the administration of the programs.

6.12 Disclosure of information without an individual's consent

The Virginia Administrative Code permits release of information without a client's written permission under the following circumstances.

(22 VAC 40-910-20). a. A court of competent jurisdiction has ordered the production of client records and the department, agency or provider does not have sufficient time to notify the client or legally responsible person before responding to the order.

b. For research purposes as provided in 22 VAC 40-910-50.

6.13 Disclosing information to and obtaining information from outside sources

With certain exceptions found in the APS chapter, an individual or his or her legal authorized representative shall give written permission before the individual's information may be given to a person or LDSS or obtained from other sources.

6.13.1 Consent process

(22 VAC 40-910-20). As part of the application process for public assistance or social services, the client or legally responsible person must be informed of the need to consent to a third-party release of client information necessary for verifying his eligibility or information provided.

The "Consent to Exchange Information" form is recommended for use when several agencies are involved in providing services to the same family or individual. The use of this form does not change any state or federal laws regarding confidentiality or supersede current program policy regarding the type of information that may be released. Under a memorandum of understanding, all human services agencies are mandated to accept a properly completed Consent to Exchange Information form without requiring an individual or his or her representative to complete another release form. The Consent to Exchange Information form and instructions are available on the DARS public site or the DSS internal website.

The service worker shall read and discuss the consent forms with the individual upon initial contact and at subsequent times when appropriate to ensure that an individual understands his or her rights.

6.13.2 Access rules

The individual, the individual's guardian and/or guardian ad litem, and the individual's authorized representative shall be accorded access to all eligibility and service material contained in LDSS files except for mental health records under certain conditions. An individual's representative is anyone designated to act in the individual's interest. The individual or the representative shall be required to furnish proper identification. A proper release of information, including those not required to be notarized, shall be obtained. The service worker shall verify the representative's authorization either by viewing a guardian certification, court order, notarized statement from the individual, or by speaking directly to the individual.

6.13.3 Exceptions

An exception to the individual's right to see his or her own records is in the case of mental health records, including psychiatric and psychological examination reports. These records may not be personally reviewed by the individual when the treating physician has made a written statement that, in his or her opinion, a review of such records by the individual would be injurious to his or her physical or mental health or well-being.

6.14 Judicial proceedings

In the event a subpoena is issued for a case record or for any LDSS representative to testify in connection with an investigation or proceeding not directly related to the administration of a public assistance program, the local director shall immediately notify the LDSS attorney. The LDSS shall follow the advice of the LDSS attorney.

6.15 Appendix A: Forms

The following forms may be used to address confidentiality issues in Adult Services and Adult Protective Services cases. These forms are located on the DARS public website or the of the DSS internal website.

Assurance of Confidentiality

This form is used to document requests for information on an individual and also to document appropriate assurances that the LDSS requesting the information will keep the information confidential.

Consent to Exchange Information

This form can be used to assist the LDSS in obtaining information needed from other agencies to determine an individual's eligibility for services or benefits.

Disclosure Log

This form may be used to list agencies that have received information from an LDSS about an individual.

Interagency Consent to Release Confidential Information for Alcohol or Drug Patients

This form can be used to request information from or send information to a substance abuse program.

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GUARDIANSHIP AND CONSERVATORSHIP

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GUARDIANSHIP AND CONSERVATORSHIP

7.1 Definitions

The following words and terms are defined in §64.2-2000 of the Code of Virginia unless otherwise specified.

Term	Definition
Annual Report	The report required to be filed by a guardian pursuant to § 64.2-2020.
Conservator	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.” "Conservator" includes

Term	Definition
	<p>(i) a local or regional program designated by the Department for Aging and Rehabilitative Services as a public conservator pursuant to Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5 or (ii) any local or regional tax-exempt charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code to provide conservatorial services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person. If a tax-exempt charitable organization has been designated by the Department for Aging and Rehabilitative Services as a public conservator, it may also serve as a conservator for other individuals.</p>
Guardian	<p>A person appointed by the court who is responsible for the personal affairs of an incapacitated person, including responsibility for making decisions regarding the person's support, care, health, safety, habilitation, education, therapeutic treatment, and, if not inconsistent with an order of involuntary admission, residence. Where the context plainly indicates, the term includes a "limited guardian" or a "temporary guardian." The term includes (i) a local or regional program designated by the Department for Aging and Rehabilitative Services as a public guardian pursuant to Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5 or (ii) any local or regional tax-exempt charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code to provide guardian services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person. If a tax-exempt charitable organization has been designated by the Department for Aging and Rehabilitative Services as a public guardian, it may also serve as a guardian for other individuals.</p>
Guardian Ad Litem	<p>An attorney appointed by the court to represent the interests of the respondent and whose duties include evaluation of the petition for guardianship or conservatorship and filing a report with the court pursuant to § 64.2-2003.</p>
Incapacitated Person	<p>An adult who has been found by a court to be incapable of receiving and evaluating information effectively or responding to people, events, or environments to such an extent that the individual lacks the capacity to (i) meet the essential requirements for his health, care, safety, or therapeutic needs without the</p>

Term	Definition
	assistance or protection of a guardian or (ii) manage property or financial affairs or provide for his support or for the support of his legal dependents without the assistance or protection of a conservator. A finding that the individual displays poor judgment alone shall not be considered sufficient evidence that the individual is an incapacitated person within the meaning of this definition.
Limited Guardian	A person appointed by the court who has only those responsibilities for the personal affairs of an incapacitated person as specified in the order of appointment.
Respondent	An allegedly incapacitated person for whom a petition for guardianship or conservatorship has been filed.
Significant-Connection State	A state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available (§ 64.2-2105 of the Code of Virginia).

7.2 Protecting vulnerable adults through guardianship and/or conservatorship

In Virginia, a court may appoint a guardian or conservator *when*:

- The court finds that an adult lacks the capacity to meet the essential requirements for his or her health, safety, or therapeutic needs without the assistance and protection of a guardian.
- The court finds that an adult lacks the capacity to manage property or financial affairs or to provide for his or her support or the support of legal dependents without the assistance and protection of a conservator.

An individual may be appointed to serve as both guardian of the incapacitated adult and conservator of the adult's estate. If this occurs, the individual appointed by the court has authority for both personal and financial decisions and for property management. The court may appoint two individuals to fulfill these duties by naming one as guardian and the other as conservator.

7.2.1 Determining the need for a guardian and/or conservator

The petitioning party has the responsibility to present clear and convincing evidence to substantiate the need for the appointment of a guardian and/or conservator for the respondent *including*:

- Medical and/or psychiatric testimony concerning the adult's illness and his or her inability to handle his or her personal and/or financial affairs.
- Testimony of friends, relatives, service workers, and other professionals concerning self-endangering behavior.
- An evaluation report of the adult that documents the appropriateness and necessity of guardianship and/or conservatorship. This report is required under § 64.2-2005 of the Code of Virginia.

7.2.2 Documenting incapacity

7.2.2.1 The comprehensive evaluation

(§ 64.2-2005 of the Code of Virginia). A report evaluating the condition of the respondent shall be filed with the court in a separate confidential addendum and provided within a reasonable time prior to the hearing on the petition, to the guardian ad litem, the respondent, and any other person or entity that becomes a party to the action. The report shall be prepared by one or more licensed physicians or psychologists or licensed professionals skilled in the assessment and treatment of the physical or mental conditions of the respondent as alleged in the petition.

The LDSS worker may be asked to assist with a portion of the evaluation *if the adult with whom he or she is working is the subject of an Adult Protective Services (APS) investigation and may need a guardian or conservator.*

The purpose of the report is to inform the court about the condition and abilities of the respondent. *The report shall address the following:*

- A description of the nature, type, and extent of the adult's incapacity, including the adult's specific functional impairments.
- A diagnosis or assessment of the adult's mental and physical condition, including a statement as to whether the adult is on any medications that may affect his or her actions or demeanor. Where appropriate and consistent with the scope of the evaluator's license, the report should

include an evaluation of the adult's ability to learn self-care skills, adaptive behavior, and social skills and a prognosis for improvement.

- The date(s) of the examination(s), evaluation(s) and assessment(s) upon which the report is based.
- The signature of the person conducting the evaluation and the nature of the professional license held by the evaluator.

If the evaluation report is not available, the court may hold the hearing without the report for good cause shown if the guardian ad litem does not object. The court, at its discretion, may order a report be prepared and delay the hearing until the report is available. The model form "Physician's Evaluation of Respondent" is posted on the DSS intranet and may be provided to the physician who is conducting the evaluation. The LDSS may modify this form as needed.

The cost of the evaluation may be charged as part of the costs of the proceedings at the discretion of the court. See Section 7.2.5.8 for information on the cost of proceedings.

7.2.2.2 Role of the LDSS worker in petition process

If the LDSS is involved in petitioning, the worker shall obtain and document all available information concerning the alleged incapacitated adult's ability to make decisions, including but not limited to:

- Arranging and/or receiving essential health and/or personal care.
- Providing or arranging for nutritional needs.
- Securing and wearing adequate clothing appropriate to the weather.
- Securing adequate and appropriate housing.
- Arranging and maintaining personal safety including safe shelter.
- Management of financial affairs including the use of funds to provide for one's basic needs.
- Management of his or her estate including both real and personal property.

7.2.3 Who serves as guardian or conservator?

The first person considered for the guardian/conservator should be the adult's spouse unless the spouse is unable or unwilling to serve. *Other people to consider include a family member or close friend.*

The following should be considered when determining the appropriateness of a person to serve as guardian or conservator:

- A relationship with the adult alleged to need a guardian/conservator.
- Geographic accessibility to the alleged incapacitated adult.
- The absence of a conflict of interest.
- A willingness to fulfill the required duties of guardianship or conservatorship.
- Ability to understand the requirements of guardianship or conservatorship, including the submission of required reports.
- Emotional stability.
- Good physical health of the proposed guardian or conservator.

The LDSS may develop its own guidance on whether LDSS employees may serve as guardians or conservators. The Code of Virginia does not prohibit LDSS employees from serving as a guardian or conservator, though the LDSS should carefully evaluate whether it is appropriate for an LDSS employee to be named as a guardian for an incapacitated adult. See Section 7.3.2.7 for procedures regarding the review of the guardian report when an LDSS employee is the guardian.

A person who does not reside in Virginia may be appointed and allowed to qualify as guardian/conservator of an incapacitated adult. The person appointed shall follow court instructions for qualifying. (§ 64.2-1426 of the Code of Virginia).

7.2.4 Eligibility for public guardian or conservator

(§ 64.2-2010 of the Code of Virginia). The circuit court may appoint a local or regional program authorized by the Department for Aging and Rehabilitative Services pursuant to Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5 as the guardian or conservator for any resident of the Commonwealth who is found to be incapacitated if the court finds that (i) the incapacitated person's resources are insufficient to fully compensate a private guardian and pay court costs and fees associated with the appointment proceeding and

(ii) there is no other proper and suitable person willing and able to serve in such capacity or there is no guardian or conservator appointed within one month of adjudication pursuant to § 64.2-2015. The court shall use the guidelines for determining indigency set forth in § 19.2-159 in determining the sufficiency of the respondent's estate. If the respondent would be eligible for the appointment of counsel pursuant to § 19.2-159, he shall be eligible for the appointment of a public guardian or conservator pursuant to this section.

There may be circumstances when an LDSS is named as a guardian or the LDSS contracts with another entity to serve as guardian because there are no other suitable individual to serve in this capacity. When these situations occur and it is determined that the incapacitated adult meets criteria to be served by the public guardianship program, the LDSS shall refer the incapacitated adult to the public guardianship program waiting list for consideration of the next available public guardian slot.

Additional information about the Virginia Public Guardianship Program is available on the Department for Aging and Rehabilitative Services (DARS) website.

7.2.5 Procedures to petition for appointment of a guardian/conservator

7.2.5.1 Circuit court in which petitions are to be filed

The guardianship/conservatorship petition is to be filed in the circuit court of the county or city in which the subject of the petition resides or is located or in which the subject of the petition resided immediately prior to entering a nursing facility, assisted living facility, state mental health facility, or any similar facility. The circuit court in which the proceeding is first commenced may order a transfer to another locality if it would be in the best interest of the incapacitated adult.

If the petition is for the appointment of a conservator for a non-resident with property in the state, the petition is to be filed in the city or county in which the alleged incapacitated adult's property is located (§ 64.2-2001 of the Code of Virginia).

7.2.5.2 Jurisdiction

A court in the Commonwealth has jurisdiction to appoint a guardian for a respondent if:

- The Commonwealth is the respondent's home state;

- On the date the petition is filed, the Commonwealth is a significant-connection state and;
 - The respondent does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because the Commonwealth is a more appropriate forum; or
 - The respondent has a home state, a petition for appointment is not pending in a court of that state or another significant-connection state, and, before the court makes the appointment:
 - A petition for an appointment is not filed in the respondent's home state;
 - An objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and
 - The court in the Commonwealth concludes that it is an appropriate forum (§ 64.2-2107 of the Code of Virginia).

7.2.5.3 Special jurisdiction

A court of the Commonwealth lacking jurisdiction has special jurisdiction to do any of the following:

- Appoint a guardian in an emergency for a term not exceeding 90 days for a respondent who is physically present in the Commonwealth.
- Issue a conservatorship order with respect to real or tangible personal property located in the Commonwealth; or
- Appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued.

If a petition for the appointment of a guardian in an emergency is brought in the Commonwealth and the Commonwealth was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment (§ 64.2-2108 of the Code of Virginia).

7.2.5.4 Appropriate forum

A court of the Commonwealth that has jurisdiction to appoint a guardian or issue a conservatorship order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

In determining whether it is an appropriate forum, the court shall consider all relevant factors, including:

- Any expressed preference of the respondent;
- Whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect or exploitation;
- The length of time the respondent was physically present in or was a legal resident of the Commonwealth or another state;
- The distance of the respondent from the court in each state;
- The financial circumstances of the respondent's estate;
- The nature and location of the evidence;
- The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;
- The familiarity of the court of each state with the facts and issues in the proceeding; and
- If an appointment were made, the court's ability to monitor the conduct of the guardian or conservator (§ 64.2-2110 of the Code of Virginia).

7.2.5.5 Who may file a petition?

Any interested person may petition the circuit court to have a guardian, conservator, or both appointed for an alleged incapacitated adult. The petitioner is the person who presents evidence to the court that the respondent is unable to take care of himself or his financial affairs or both and is, therefore, in need of a guardian, conservator or both to perform certain duties. The petitioner's attorney files a petition with the court and is responsible for notifying relatives of the respondent of the guardianship and/or conservatorship hearing (§ 64.2-2002 of the Code of Virginia).

Petitioners are frequently relatives of the alleged incapacitated adult. It is appropriate for an LDSS to petition as part of an emergency order for APS.

If the LDSS is petitioning for the appointment of a guardian, the “Request for the Appointment of a Guardian” form may be used by the LDSS to gather relevant information about the respondent that needs to be included in the petition. The LDSS may modify this form as needed or when advised to do so by the LDSS attorney. The form is posted on the DSS intranet.

If a guardian/conservator is needed to protect the incapacitated adult from abuse, neglect, or exploitation, the LDSS attorney should be consulted as a first step in planning for petitioning the circuit court for the appointment.

7.2.5.6 Information included in a petition

The filing of a guardianship/conservatorship petition with the clerk of court constitutes the practice of law and shall be performed by an attorney.

The petition for appointment of a guardian, a conservator, or both, shall be filed with a cover sheet on a form prepared by the Office of the Executive Secretary of the Supreme Court of Virginia. (§ 64.2-2002 of the Code of Virginia).

(§ 64.2-2002 of the Code of Virginia). The petition shall state the petitioner’s name, place of residence, post office address, and relationship, if any, to the respondent, and, to the extent known as of the date of filing, shall include the following:

1. The respondent’s name, date of birth, place of residence or location, post office address, and the sealed filing of the social security number;
2. The basis for the court’s jurisdiction under the provisions of Article 2 (§ 64.2-2105 et seq.) of Chapter 21;
3. The names and post office addresses of the respondent’s spouse, adult children, parents and adult siblings or, if no such relatives are known to the petitioner, at least three other known relatives of the respondent, including step-children. If a total of three such persons cannot be identified and located, the petitioner shall certify that fact in the petition, and the court shall set forth such finding in the final order;
4. The name, place of residence or location, and post office address of the individual or facility, if any, that is responsible for or has assumed responsibility for the respondent’s care or custody;

5. The name, place of residence or location, and post office address of any agent designated under a durable power of attorney or an advance directive of which the respondent is the principal, or any guardian, committee or conservator currently acting, whether in this state or elsewhere, and the petitioner shall attach a copy of any such durable power of attorney, advanced directive, or order appointing the guardian, committee, or conservator, if available;
- 5a. The name, location, and post office address of the respondent's primary health care provider, if any;
6. The type of guardianship or conservatorship requested and a brief description of the nature and extent of the respondent's alleged incapacity;
7. When the petition requests appointment of a guardian, a brief description of the services currently being provided for the respondent's health, care, safety, or rehabilitation and, where appropriate, a recommendation as to living arrangements and treatment plan;
8. If the appointment of a limited guardian is requested, the specific areas of protection and assistance to be included in the order of appointment and, if the appointment of a limited conservator is requested, the specific areas of management and assistance to be included in the order of appointment;
9. The name and post office address of any proposed guardian or conservator or any guardian or conservator nominated by the respondent, and that person's relationship to the respondent;
10. The native language of the respondent and any necessary alternative mode of communication;
11. A statement of the financial resources of the respondent, that shall, to the extent known, list the approximate value of the respondent's property and the anticipated annual gross income, other receipts, and debts; contained in a separate confidential addendum, pursuant to § 64.2-2000.1;
12. A statement of whether the petitioner believes the respondent's attendance at the hearing would be detrimental to the respondent's health, care or safety; and
13. A request for appointment of a guardian ad litem.

7.2.5.7 Time frame for hearing

(§ 64.2-2007 of the Code of Virginia). The court or the jury, if a jury is requested, shall hear the petition for the appointment of a guardian or conservator. The hearing may be held at such convenient place as the court directs, including the place where the respondent is located. The hearing shall be conducted within 120 days from the filing of the petition unless the court postpones it for cause.

7.2.5.8 Cost of proceedings waived or borne by the Commonwealth

If it is alleged under oath that the estate of the alleged incapacitated adult is unavailable or insufficient to pay the fees and costs of the proceedings, the court may waive such fees and costs as prescribed by § 64.2-2008 of the Code of Virginia. Those fees include the fees for the respondent's attorney and the guardian ad litem.

When an adult subject of a guardianship and/or conservatorship petition is determined by the circuit court to be indigent, any fees and costs of the proceeding that are fixed by the court or taxed as costs shall be borne by the Commonwealth (§ 64.2-2008 of the Code of Virginia).

The guidelines for determining indigence set forth in § 19.2-159 of the Code of Virginia shall be used by the court in determining the sufficiency of the incapacitated adult's estate. If the incapacitated adult would be eligible for the appointment of counsel pursuant to § 19.2-159, he or she shall be eligible for the appointment of a guardian/conservator pursuant to this section.

7.2.5.9 Reimbursement to petitioner/petitioner required to pay

If a guardian or conservator is appointed and the court finds that the petition is brought in good faith and for the benefit of the respondent, the court shall order that the petitioner be reimbursed from the estate for all reasonable costs and fees if the estate of the incapacitated person is available and sufficient to reimburse the petitioner.

The court may require the petitioner to pay or reimburse all or some of the respondent's reasonable costs and fees and any other costs incurred if the court finds that the petitioner initiated a proceeding that was in bad faith or not for the benefit of the respondent (§ 64.2-2008 of the Code of Virginia).

7.2.6 Compensation to guardian ad litem, attorney, and evaluator appointed by the court

The court may allow reasonable compensation from the estate of the incapacitated adult to any guardian ad litem, attorney, or evaluator appointed by the court. Any compensation allowed shall be taxed as costs of the proceeding (§ 64.2-2012 of the Code of Virginia).

7.2.7 Qualification after appointment

Pursuant to 64.2-2011 of the Code of Virginia, a guardian or conservator appointed in the court order shall qualify before the clerk. Qualification entails taking an oath, posting of bond, and accepting educational materials provided by the court. Upon qualification, the court issues the guardian or conservator a certificate of qualification. A guardian or conservator cannot serve as a guardian or conservator without qualifying first.

7.2.8 Periodic review hearings

(§ 64.2-2009 of the Code of Virginia). A1. Beginning July 1, 2023, the court shall set a schedule in the order of appointment for periodic review hearings, to be held no later than one year after the initial appointment and no later than every three years thereafter, unless the court orders that such hearings are to be waived because they are unnecessary or impracticable or that such hearings shall be held on such other schedule as the court shall determine.

Periodic review hearings are not retroactive to guardianship *appointments* prior to July 1, 2023. A court cannot waive the initial periodic review hearing if the petitioner for guardianship or conservatorship is a hospital, nursing facility, ALF, or other similar institution.

7.2.9 Duties and powers of guardians

The guardian stands in a fiduciary relationship to the incapacitated adult. A guardian may be held personally liable for a breach of trust in his or her performance of duties on behalf of the incapacitated adult. A guardian is not liable for the acts of the incapacitated adult, unless the guardian is personally negligent. A guardian is not required to expend his or her personal funds on behalf of the incapacitated adult.

Pursuant to § 64.2-2019 of the Code of Virginia, the guardian has the following responsibilities:

- Maintaining sufficient contact with the incapacitated adult to know of his or her capability, limitations, needs, and opportunities and as needed to comply with the duties pursuant to the order of appointment and this section and any other provision of law. The guardian shall visit the incapacitated adult as often as necessary and at least three times per year, with at least one visit occurring every 120 days. Except as otherwise provided in subsection C1, of the three required visits, at least two visits shall be conducted by the guardian. The guardian shall conduct at least one of such visits in person; the second such visit may be conducted by the guardian via virtual conference or video call between the guardian and incapacitated person, provided that the technological means by which such conference or call can take place are readily available. The remaining visit may be conducted (i) by the guardian; (ii) by a person other than the guardian, including (a) a family member or friend monitored by the guardian or (b) a skilled professional retained by the guardian to perform guardianship duties on behalf of the guardian and who is experienced in the care of individuals, including older adults or adults with disabilities; or (iii) via virtual conference or video call between either the guardian or such family member or friend monitored by the guardian or skilled professional and the incapacitated person, provided that the technological means by which such conference or call can take place are readily available. The remaining visit may be conducted (i) by the guardian; (ii) by a person other than the guardian, including (a) a family member or friend monitored by the guardian or (b) a skilled professional retained by the guardian to perform guardianship duties on behalf of the guardian and who is experienced in the care of individuals, including older adults or adults with disabilities; or (iii) via virtual conference or video call between either the guardian or such family member or friend monitored by the guardian or skilled professional and the incapacitated person, provided that the technological means by which such conference or call can take place are readily available. The remaining visit may be conducted (i) by the guardian; (ii) by a person other than the guardian, including (a) a family member or friend monitored by the guardian or (b) a skilled professional retained by the guardian to perform guardianship duties on behalf of the guardian and who is experienced in the care of individuals, including older adults or adults with disabilities; or (iii) via virtual conference or video call between either the guardian or such family member or friend monitored by the guardian or skilled professional and the incapacitated person, provided that the technological means by which such conference or call can take place are readily available. If a person other than the guardian conducts any such visit, he shall provide a written report to the

guardian regarding any visit conducted by such person. A telephone call shall meet the requirements of this subsection only if such technological means are not readily available.

Except as otherwise provided in subsection C1, of the three required visits, at least two visits shall be conducted by the guardian. The guardian shall conduct at least one of such visits in person; the second such visit may be conducted by the guardian via virtual conference or video call between the guardian and incapacitated person, provided that the technological means by which such conference or call can take place are readily available. The remaining visit may be conducted (i) by the guardian; (ii) by a person other than the guardian, including (a) a family member or friend monitored by the guardian or (b) a skilled professional retained by the guardian to perform guardianship duties on behalf of the guardian and who is experienced in the care of individuals, including older adults or adults with disabilities; or (iii) via virtual conference or video call between either the guardian or such family member or friend monitored by the guardian or skilled professional and the incapacitated person, provided that the technological means by which such conference or call can take place are readily available. If a person other than the guardian conducts any such visit, he shall provide a written report to the guardian regarding any visit conducted by such person. A telephone call shall meet the requirements of this subsection only if such technological means are not readily available.

C1. If for reasons outside the guardian's control the guardian cannot make an in-person visit to an incapacitated person, then the visit may be conducted in person by an individual designated by the guardian pursuant to subsection C. If either the guardian or such individual designated by the guardian is unable to conduct an in-person visit, then such visit may be conducted virtually through electronic means such as a virtual conference or video call, or, if such technological means are not readily available, by telephone.

C2. In the event of a state of emergency or public health crisis in which a facility in which the incapacitated person resides is not allowing in-person visitation, visitation requirements required pursuant to subsection C may be met via a virtual conference or video call between the guardian and incapacitated person, to the extent feasible for the facility to provide the technological means by which such conference or call can take place. A telephone call shall meet the requirements of this subsection only if such technological means are not readily available.

- Seeking prior court authorization to change the incapacitated adult's residence to another state, to terminate or consent to a termination of the adult's parental rights, or to initiate a change in the adult's marital status.
- To the extent feasible, encouraging the incapacitated adult to participate in decisions, to act on his or her own behalf, and to develop or regain the capacity to manage personal affairs. A guardian, in making decisions, shall consider the expressed desires and personal values of the incapacitated adult to the extent known, and shall otherwise act in the adult's best interest and exercise reasonable care, diligence and prudence. A guardian shall not restrict an incapacitated person's ability to communicate with, visit, or interact with other persons with whom the incapacitated person has an established relationship, unless such restriction is reasonable to prevent physical, mental, or emotional harm to or financial exploitation of such incapacitated person and after consideration of the expressed wishes of the incapacitated person. Such restrictions shall only be imposed pursuant to § 64.2-2019.1
- Having the authority to make arrangements for the funeral and disposition of the adult's remains, if the guardian is not aware of any person that has been otherwise designated to make such arrangements or if the next of kin does not wish to make the arrangements or the next of kin cannot be located.

The guardian also has the responsibility to file an annual report on the incapacitated adult's condition with the LDSS for the jurisdiction in which the incapacitated adult resides (§ 64.2-2020 of the Code of Virginia).

7.2.10 Procedures to restrict communication, visitation, or interaction

(64.2-2019.1 of the Code of Virginia). A. A guardian may restrict the ability of a person with whom the incapacitated person has an established relationship to communicate with, visit, or interact with such incapacitated person only when such restriction is reasonable to prevent physical, mental, or emotional harm to or financial exploitation of such incapacitated person and after consideration of the expressed wishes of such incapacitated person. Any such restriction may include (i) limitations on time, duration, location, or method of visits or communication, (ii) supervised visitation, or (iii) prohibition of in-person visitation, and shall be the least restrictive means possible to prevent any such harm or exploitation.

B. The guardian shall provide written notice to the restricted person, on a form developed by the Office of the Executive Secretary of the Supreme Court of Virginia, stating (i) the nature and terms of the restriction, (ii) the reasons why the guardian believes the restriction is necessary, and (iii) how the restricted person or incapacitated person may

challenge such restriction in court pursuant to §64.2-2012. The guardian shall also inform the incapacitated person of such restriction and provide a copy of such written notice to the incapacitated person, unless the guardian has a good faith belief that such information would be detrimental to the health or safety of such incapacitated person. The guardian shall provide a copy of such written notice to the local department of social services of the jurisdiction where the incapacitated person resides and shall file a copy of such written notice with the circuit court that appointed the guardian. If the incapacitated person is in a hospital, convalescent home, or certified nursing facility licensed by the Department of Health pursuant to § 32.1-123, an assisted living facility as defined in § 63.2-100, or any other similar institution, the guardian shall also inform such hospital, home, facility, or institution of such restriction.

A guardian is required to file notice of a restriction on the form developed by the Office of the Executive Secretary of the Supreme Court of Virginia and send the form to the appropriate LDSS. The court may act in response to a challenge of a restriction imposed by the guardian. Any order issued by the court in response to a challenge of a restriction shall be filed with the appropriate LDSS. Forms or orders received by the LDSS in response to a restriction shall be uploaded to the appropriate guardianship record in PeerPlace. The LDSS is not required to take any action in response to a restriction notice or court order in response to a challenge to a restriction notice, *unless the court order directs the LDSS to act*.

7.2.11 Petition for restoration of capacity, modification, termination of the guardianship/conservatorship or removal of the guardian/conservator

The incapacitated person, the guardian/conservator, or any other person may petition the court to restore the incapacitated adult's capacity, request modification of the guardianship/conservatorship, or to terminate or remove the guardian (§ 64.2-2012 of the Code of Virginia).

If the petition is for modification to expand the scope of the guardianship/conservatorship, notice of the hearing and a copy of the petition shall be personally served on the incapacitated adult and mailed to other persons entitled to notice. The court shall appoint a guardian ad litem for the incapacitated adult and may appoint one or more licensed physicians or psychologists, or licensed professionals skilled in the assessment and treatment of the physical or mental conditions of the incapacitated adult.

Revocation, modification, or termination may be ordered upon a finding that it is in the best interests of the incapacitated adult and that:

- The incapacitated adult is no longer in need of the assistance or protection of a guardian/conservator;
- The extent of protection, management, or assistance previously granted is either excessive or insufficient considering the incapacitated adult's current need;
- The incapacitated adult's understanding or capacity to manage the estate and financial affairs or to provide for his or her health, care or safety has so changed as to warrant the proposed action; or
- Circumstances are such that the guardianship/conservatorship is no longer necessary or is insufficient.

Regardless of whether an individual's capacity has improved, only the Circuit Court that issued the guardianship order can terminate it. Therefore, the order will remain valid and in full effect until the Circuit Court that issued the order terminates it.

If the person subject to the guardianship or conservatorship is not represented by counsel, the person may send informal written communication to the court requesting to be restored to capacity or to have the guardianship modified or terminated. (§ 64.2-2012 of the Code of Virginia).

7.2.12 Reasons for termination of guardianship

A guardianship order shall terminate for any of the following reasons:

- The death of the incapacitated adult.
- The court orders the termination of the guardianship following a hearing on the petition of any interested person.
- The death, resignation, or removal of the guardian.

A guardianship that terminates due to the guardian's death, resignation or removal does not necessarily mean that the adult is no longer in need of guardianship. The LDSS may need to assess the incapacitated adult's needs, if the LDSS receives notice of the termination. The LDSS or another appropriate individual may need to file another petition for guardianship, if the adult still needs a guardian.

7.2.13 Transfer of guardianship or conservatorship

(§ 64.2-2114 of the Code of Virginia). A guardian or conservator appointed in the Commonwealth may petition the court to transfer the guardianship or conservatorship to another state.

Under the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, if the incapacitated adult relocates to another state, the guardian may petition to transfer the guardianship to that state. Notice of a petition to transfer shall be given to the persons that would be entitled to notice of a petition in the Commonwealth for the appointment of a guardian or conservator.

7.2.14 Accepting guardianship or conservatorship transferred to the Commonwealth

A guardian appointed in another state may petition the court in the Commonwealth to accept the guardianship or conservatorship. Notice of a petition for transfer shall be given to those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian in both the transferring state and the Commonwealth (§ 64.2-2115 of the Code of Virginia).

7.2.15 Registration of guardianship orders

(§ 64.2-2116 of the Code of Virginia). If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in the Commonwealth, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in the Commonwealth by filing as a foreign judgment in a court, in any appropriate county or city of the Commonwealth, certified copies of the order and letters of office.

7.3 Review of annual guardian report form

7.3.1 Case registration of guardianship cases

LDSS shall register guardianship report review cases into the Guardianship Program in PeerPlace, including uploading the order of appointment and certificate of qualification.

Workers shall register guardianship cases, in which additional services such as ALF reassessment or APS investigation are being provided into the appropriate PeerPlace program.

A service plan and the Uniform Assessment Instrument (UAI) are not required to be completed in a guardianship case if the only services being provided are receipt and review of the guardianship report. If the LDSS is providing or arranging other services, such as companion or homemaker for an adult under guardianship, a service plan and UAI would be required per guidance. See Chapter 3, for additional information on service planning and UAI requirements.

7.3.2 Guardian reports filed with the LDSS

When a guardian qualifies before the clerk of the circuit court, the clerk is required by § 64.2-2011 of the Code of Virginia to forward a copy of the order of appointment *and the certificate of qualification* to the LDSS in the jurisdiction where the incapacitated adult resides.

The guardian is responsible for filing an annual report on the incapacitated adult's condition with the LDSS in the jurisdiction in which the incapacitated adult resides. The report form "Report of Guardian for an Incapacitated Person" is located on the DARS public site and DSS intranet. **Note:** Temporary or limited guardians are also required to file guardian reports. Instructions for newly appointed guardians are on the DARS public site and DSS intranet.

The guardian shall certify the annual report by signing under oath that the information contained in the annual report is true and correct to the best of his knowledge.

The LDSS may notify the guardian when the initial or annual report is due. See the DSS intranet for a sample letter.

A guardian who was appointed and qualified prior to July 1, 1997 (the date the annual report law took effect) is not required to file an annual report.

7.3.2.1 First (initial) report

Within six months from the date of the guardian's qualification date (not the order of appointment date), the guardian is required to file the first report on the status of the incapacitated adult with the LDSS in the jurisdiction in which the incapacitated adult resides. This first report addresses the status of the incapacitated adult during the first four months, beginning on the date of qualification of the guardian. PeerPlace automatically computes the due date for the initial report.

When the incapacitated adult lives outside the Commonwealth of Virginia, the court that appointed the guardian retains jurisdiction and reports shall be made to the LDSS in the jurisdiction in which the guardian was appointed. See

Section 7.2.13 for information regarding transfer of guardianship to another state.

Pursuant to § 64.2-2020 of the Code of Virginia, the guardian shall submit a \$5.00 filing fee with the first report. If the filing fee is in the form of a check, it should be made payable to the LDSS. If the filing fee is in the form of cash, the LDSS shall issue a receipt to the guardian.

7.3.2.2 Subsequent guardian reports

Subsequent guardian reports will be for a period of 12 months. Reports will be due within four months from the last day of the previous 12-month reporting period. Each report shall be accompanied by a \$5.00 filing fee. PeerPlace automatically computes the due dates for subsequent annual reports.

7.3.2.3 Co-guardian reports

When co-guardians are appointed, each co-guardian is required to sign the “Annual Report of Guardian for an Incapacitated Person” form if filing jointly. One filing fee of \$5.00 shall accompany the report signed by co-guardians. Each co-guardian may file a separate report. Separate co-guardian reports shall each be accompanied by the \$5.00 filing fee.

7.3.2.4 Exception to filing guardian report

In rare instances, the guardianship order may state that the guardian is excused from the requirement to file any guardian reports. The LDSS shall follow the guardianship order. As appropriate, the LDSS may ask their attorney to review an order that contains this exception.

7.3.2.5 Processing the guardian report filing fees

Guardianship filing fees received by the LDSS shall be used in the provision of services to adults in need of protection. The LDSS should report all guardian report filing fees as a receipt to APS, Budget Line 895, Cost Code 89501. To record the receipt of Guardianship Fees, the LDSS should enter the amount collected as a credit, using Account Code 40895 Receipt of Guardianship Fees.

7.3.2.6 When the filing fee is not sent

Some guardians may submit the report without including the \$5.00 filing fee. The LDSS may develop their own guidance on how to address the issue of guardians who do not submit the \$5.00 filing fee.

The worker is still responsible for reviewing the report even if the \$5.00 was not submitted with the report.

7.3.2.7 When the LDSS or LDSS employee is the guardian

When the LDSS or an employee of the LDSS in the jurisdiction in which the incapacitated adult resides is the guardian, the order of appointment and certificate of qualification shall be forwarded to a neighboring LDSS, and the annual reports shall be made by the guardian to the neighboring LDSS. The LDSS may contact an Adult Services Specialist for assistance in assigning responsibility to another LDSS.

7.3.2.8 Review of guardian report by the LDSS

The date the LDSS received the guardian report should be stamped or noted on the report form. **Within 10 calendar days** of the receipt of a guardian report, the LDSS worker should review the report. The review should assess:

- Whether the report has been properly completed in its entirety.
- Whether the contents of the report provide reason to suspect that the subject of the report is being abused, neglected, or exploited or is at risk of abuse, neglect, or exploitation. See *Guardian Report Review guidelines on the DSS intranet*.

7.3.2.9 Visitation by a guardian

Section 64.2-2019 of the Code of Virginia does not address sanctions, penalties, or actions if the guardian does not visit the incapacitated person at the frequency (e.g., every 120 days) or contact *method* (e.g., in-person, telephonic) outlined by law. The worker may circle or highlight the guardian's response to visitation section on the annual report form to call the court's attention to the guardian's response, if the worker believes that the guardian did not *visit* according to the law.

7.3.2.10 Worker's response to review of the guardian report

If the review of the guardian report finds the report is incomplete, the guardian should be requested to submit the missing information.

If the LDSS worker has a concern that the guardian has made a false entry or statement on the annual report, the worker should notify the supervisor of this concern. The concerns should be discussed with the agency attorney.

If a guardian makes a false entry or statement in the annual report, he shall be subject to a civil penalty of not more than \$500. This penalty shall be collected by the attorney for the Commonwealth or the county or city attorney (§ 64.2-2020 of the Code of Virginia).

If it is the judgment of the worker that there is reason to suspect that the subject of the annual report is abused, neglected, or exploited or is at risk of abuse, neglect, or exploitation, an APS report shall be made.

If the incapacitated adult lives outside the Commonwealth and there is reason to suspect that the subject of the report is abused, neglected, or exploited, or is at risk of abuse, neglect, or exploitation, the service worker shall make an APS report to the appropriate state, county, or city where the incapacitated adult resides.

If an APS case is opened, a copy of the guardian's report shall be uploaded to the attachments in the APS program registration.

The LDSS worker is still responsible for signing and dating the review of the form in the appropriate area on the annual report form, even if an APS report has been made.

If it is the judgment of the worker that there is no reason to suspect that the subject of the annual report is abused, neglected, or exploited, or is at risk of abuse, neglect, or exploitation, the date of review and the name of the worker should be noted, and the report uploaded in PeerPlace.

Documentation of the review shall be entered in PeerPlace guardianship program registration notes. The LDSS may send a letter confirming receipt of the report and the date the next report is due. See sample letter on the DSS intranet.

(§ 64.2-2020 of the Code of Virginia). Within 60 days of the receipt of the annual report, the local department shall file a copy of the annual report with the clerk of the circuit court that appointed the guardian, to be placed with the court papers pertaining to the guardianship case.

7.3.2.11 When a guardian fails to file a required report

If the guardian fails to file a required report within thirty days of its due date, the worker may send a letter to the guardian to notify him that the report is overdue. See DSS intranet for sample overdue letters.

The LDSS may also:

- Ask the court whether the guardianship was transferred to another state.
- Send a second letter by certified mail, return receipt requested, stating the report is overdue.
- Contact the guardian by phone or other means.
- Notify the court earlier than required by § 64.2-2020 of the Code of Virginia if the guardian is delinquent in submitting the report and does not respond to letters sent by the LDSS.
- Visit the home of the guardian and/or incapacitated adult.

All efforts to contact the guardian shall be documented in PeerPlace guardianship program registration notes.

If, the guardian continues to fail to submit the report within four months from the last day of the reporting period and the well-being of the incapacitated adult is unknown or is in question, then the LDSS worker shall make an APS report.

However, if the incapacitated adult has relocated outside of Virginia, the guardian fails to file the report, and the LDSS worker is concerned that the incapacitated adult may be at risk for abuse, neglect or exploitation, the LDSS worker shall make a report to APS in the appropriate state. The LDSS may consult the LDSS attorney for additional guidance, as appropriate.

Twice each year the LDSS shall file with the appropriate circuit court a list of all guardians who are more than ninety days delinquent in filing an annual report (§ 64.2-2020 of the Code of Virginia).

LDSS are recommended to submit the list of delinquent guardians on agency letterhead and include the following information in the letter to court:

- Court case number.
- Name of incapacitated person.
- Name of guardian.
- Date annual report was due.

- Information about actions that the LDSS may have taken to contact the guardian and request the annual report.
- Contact information for the appropriate LDSS worker who can answer questions about the situation.

A sample letter is available on the DSS intranet.

If the LDSS *notifies the court* that the annual report has not been filed timely the court may issue a summons or rule to show cause why the guardian has failed to file such annual report (§ 64.2-2020 of the Code of Virginia).

7.3.2.12 Transferring the guardianship case when the incapacitated adult relocates to another jurisdiction

When the incapacitated adult relocates to another jurisdiction the guardian is required to submit the annual report with the LDSS in that jurisdiction.

When the LDSS becomes aware that the incapacitated adult has relocated, the LDSS shall notify the appropriate LDSS of the relocation, document the transfer in the guardianship registration notes, and close the registration in PeerPlace.

If an LDSS receives a guardian report on an adult with whom they are not familiar, it is recommended that the LDSS search PeerPlace to locate the LDSS that managed the guardianship report previously. The LDSS should confirm that the adult has relocated to the new jurisdiction and the new LDSS should request that the previous LDSS close the registration.

7.3.2.13 Maintenance of the guardian report

When the guardian report has been reviewed by the worker, and no further action is needed, the completed report form shall be uploaded to the attachments tab in the client registration. Once a guardian report becomes part of a case record, the report is considered a confidential social service record pursuant to §§ 63.2-104 and 2.2 3705.5 of the Code of Virginia.

7.3.2.14 Purging of the guardian report

Guardian report forms filed with the LDSS in compliance with § 64.2-2020 of the Code of Virginia shall be purged in PeerPlace following the schedule (GS-15) established by the Library of Virginia. Guardian report forms that have not been uploaded to the PeerPlace record shall be purged by the LDSS according to GS-15. GS-15 is located on the Library of Virginia's website.

7.4 Conservators

7.4.1 General duties and liabilities of conservators

A conservator stands in a fiduciary relationship to the incapacitated adult for whom he or she was appointed conservator and may be held personally liable for a breach of fiduciary duty to the incapacitated adult.

The powers of a conservator shall terminate upon the death of the incapacitated adult or upon the death, resignation, or removal of the conservator or upon the termination of the conservatorship.

The conservator's responsibilities to the incapacitated adult include:

- Acting in the best interest of the incapacitated adult and, to the extent known, considering the incapacitated adult's expressed desires and personal values.
- Caring for and preserving the estate of the incapacitated adult and managing it to the best advantage; applying the income from the estate to the payment of the incapacitated adult's debts including reasonable compensation to the conservator and to any guardian appointed and to the incapacitated adult's legal dependents.
- Encouraging the incapacitated adult to participate in decisions, to act on his or her own behalf, and to develop or regain capacity to manage the estate and his or her financial affairs (§ 64.2-2021 of the Code of Virginia).

7.4.2 Management powers and duties of the conservator

A conservator, in managing the estate of an incapacitated adult, has the following management powers and duties (§ 64.2-2022 of the Code of Virginia):

- To ratify or reject a contract entered into by the incapacitated adult;
- To pay bills for the benefit of the incapacitated adult;
- To maintain life, health, casualty and liability insurance for the benefit of the incapacitated adult or his or her legal dependents;
- To manage the estate following termination of the conservatorship until it is delivered to the incapacitated adult or his or her successors;

- To execute and deliver all documents and to take all other actions that will serve the best interest of the incapacitated adult;
- To initiate a proceeding:
 - To revoke a power of attorney under the provisions of the Uniform Power of Attorney Act (§ 64.2-1600 et seq. of the Code of Virginia);
 - To claim a share of the estate of a deceased spouse under § 64.2-302 of the Code of Virginia; or
 - To make an election to take a family allowance, exempt, property, or a homestead allowance under § 64.2-313; and
- To borrow money as seems advisable and/or to mortgage portions of the incapacitated adult's estate to secure loan(s) or renew existing loan(s).

7.4.3 Accounting responsibilities of the conservator

The conservator accounts to the Commissioner of Accounts. At the time of qualification, the clerk of the circuit court will provide the conservator with the name and address of the Commissioner of Accounts.

(§ 64.2-2021 of the Code of Virginia). A conservator shall comply with and be subject to the requirements imposed upon fiduciaries generally under Part A (§ 64.2-1200 et seq.) of this subtitle, specifically including the duty to account set forth in § 64.2-1305.

An accounting is a record of all money, property, and other assets for which the conservator is responsible. The accounting includes a record of money spent, a record of any investments, and a statement of available cash.

The first accounting covers the first four months of the conservatorship and shall be filed with the Commissioner of Accounts within six months of qualification. After the initial accounting, other accounts are due annually. Any account filed with the commissioner shall be signed under oath by the fiduciary who is filing.

7.4.4 APS reports involving conservators

When the LDSS receives an APS report that the incapacitated adult's funds are being misused by the conservator, and the report is valid an APS investigation shall be initiated.

7.5 Appendix A: Forms

The following forms are used in guardianship cases. These forms are located on the Adult Services forms page of the DSS intranet.

Guidelines for Review of Guardian's Report

This document provides guidelines for LDSS review of annual guardian report.

Notice of Restriction

This form is used by guardian to notify the incapacitated adult, the restricted person, the circuit court and the LDSS of a restriction.

Physician's Evaluation of Respondent

This form may be provided to the physician who is conducting an evaluation.

Report of Guardian for an Incapacitated Person

This form is used by the guardian to complete the initial report and subsequent annual guardianship report.

Request for the Appointment a Guardian/Conservator

This form may be used by the LDSS to gather information about the respondent for inclusion in the petition.

8

Right to Review for Alleged Perpetrators

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8

RIGHT TO REVIEW

8.1 Right to Review

8.1.1 Basis and purpose

There are particular instances in which individuals identified as alleged perpetrators in substantiated Adult Protective Services (APS) cases are entitled to a right to review. This due process protection is pursuant to the 14th Amendment of the United States Constitution and Article 1, Section 11 of the Constitution of Virginia which prohibit a state from depriving any person of life, liberty, or property, without due process of law. APS regulations, 22 VAC 30-100, establish the right to review process and outline the steps for a right to review hearing.

Individuals identified as an alleged perpetrator who are required to be notified by the local department of social services (LDSS) shall be afforded the opportunity to request a review by the local director or his designee. The local director or his designee shall have the authority to sustain, amend, or reverse the findings of the investigation or the disposition.

8.1.2 Alleged perpetrators of adult abuse, neglect or exploitation

An alleged perpetrator of adult abuse, neglect or exploitation may be a family member, neighbor, caregiver, or any other individual whose maltreatment of an adult meets the definitions of abuse, neglect or exploitation in §63.2-100 of the Code of Virginia and state regulations.

A facility such as a nursing home or group home or an organization such as a non-profit agency or home care business is not a perpetrator and shall not be identified as such in the case record.

8.1.3 Circumstances requiring notification

(22VAC 30-100-40.) The local department shall provide written notification to the alleged perpetrator within 30 calendar days of the conclusion of the investigation when:

- a. The disposition (i) is needs protective services and accepts, (ii) needs protective services and refuses, or (iii) need for protective services no longer exists; and
- b. The local department notified a licensing, regulatory, or legal authority of the disposition pursuant to § 63.3-1605 D of the Code of Virginia.

(§ 63.2-1605 of the Code of Virginia). D. 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.

A substantiated APS case is one in which the APS investigation has been completed and the investigation disposition is one of the following:

- needs protective services and accepts
- needs protective services and refuses; or
- need for protective services no longer exists

The disposition is the determination that there is a preponderance of evidence that abuse, neglect or exploitation has occurred or that adult is at risk of abuse, neglect or exploitation and that the adult is in need of protective services (22 VAC 30-100-40).

Residents in facility investigations who are identified as an alleged perpetrator in a substantiated case where the referral for investigation was sent to a licensing, regulatory, or legal entity are entitled to notification of right to review.

Chapter 2, Section 2.36.1 contains a list of licensing, regulatory, and legal authorities to whom LDSS often refer matters for administrative action or criminal investigation.

8.1.4 Notification at the discretion of the LDSS

(22 VAC 30-100-40). It is optional for the LDSS to provide right to review notification to an adult whom the LDSS determines to be self-neglecting and is therefore considered to be the alleged perpetrator.

Additionally, when the circumstances of the investigation do not require a referral pursuant to § 63.2-1605 D of the Code of Virginia, the LDSS may provide notification to the alleged perpetrator at its discretion. If an LDSS provides notification in optional circumstances, see Section 8.1.8 regarding consultation with law enforcement prior to notification.

8.1.5 Notification error

If the APS worker notified a licensing, regulatory or legal authority but later determines such notification was not required, the APS worker shall send a clarification to the appropriate entity. If no other licensing, regulatory, or legal authority needed to be notified, then the right to review does not occur.

8.1.6 Entering dispositions at the conclusion of an investigation

The investigation shall be completed and a disposition shall be determined no later than 45 days from the date the report was received. Any delay in completing the investigation or making a disposition within the 45-day period shall be documented in PeerPlace.

When a disposition of needs and accepts, needs and refuses, or need no longer exists is entered and certified, and a right to review hearing is required the local department will:

- Click reopen APS investigation on the certification tab in PeerPlace
- Document the right to review process in the APS investigation notes

8.1.6.1 Unfounded or invalid dispositions

APS cases in which the disposition is either unfounded or invalid are not subject to the right to review process.

A case with an unfounded disposition means a review of the facts does not show a preponderance of evidence that the abuse, neglect or exploitation occurred or that the adult is at risk of abuse, neglect or exploitation.

A case with an invalid disposition means that after the investigation was initiated, the worker determined the report did not meet the criteria of a valid report.

8.1.6.2 When the alleged perpetrator cannot be identified

There may be instances where at the conclusion of an investigation a preponderance of evidence indicates that abuse, neglect or exploitation has occurred or is occurring or the adult is at risk of abuse, neglect or exploitation but the APS worker is unable to determine who the alleged perpetrator is. If the identity of the alleged perpetrator cannot be determined, the LDSS shall ensure that the case record reflects that there was no identified perpetrator.

If the APS report listed an alleged perpetrator but the investigation determined that the individual was not the alleged perpetrator, the case record shall reflect this information. If at the conclusion of the investigation, the APS worker cannot determine the alleged perpetrator, notification will not be sent and a review hearing will not be held.

If the alleged perpetrator's name is known but his address or contact information is not locatable, notification cannot be provided and a hearing cannot be held.

8.1.7 Required contents in the right to review notification

The notification to the alleged perpetrator shall contain the following information:

(22VAC 30-100-40) A summary of the evidence and information used by the local department to support the findings for the investigation; inform the alleged perpetrator about his right to review; and if applicable, identify all licensing, regulatory, or legal authorities and the date these authorities were notified.

The written notification shall also state that if the alleged perpetrator disagrees with being identified as the alleged perpetrator, he has the right to request a review by the local director or his designee.

The written notification shall include a summary of information used by the LDSS to support the identification of the individual as the alleged perpetrator. The entire case record is not provided with the right to review notification.

The LDSS may provide written notices by mail, email, or fax. However, as the notice may contain sensitive information, the LDSS should send the notice in the most secure method. The APS worker should discuss the LDSS's preferred method of written notification to the alleged perpetrator with the director, the supervisor, and agency attorney, as appropriate.

Pursuant to 22 VAC-30-100-50, 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 a court.

The notification letter to the alleged perpetrator may be obtained from PeerPlace using the notification letters tab then selecting “LDSS notification to alleged perpetrator,” document sending the letter in the APS investigation notes and uploaded the letter using the attachments tab in the client registration.

See Appendix A for sample notification letter to an alleged perpetrator.

8.1.7.1 Notification when the alleged perpetrator is a minor

When the alleged perpetrator is a minor, the notification shall be sent to the minor’s parent or legal guardian. It is the responsibility of the parent or legal guardian to make the written request for a review hearing.

8.1.7.2 Notification when the alleged perpetrator is an incapacitated adult

When the alleged perpetrator is an incapacitated adult who may not understand the notification letter or have the ability to make a written request for a review hearing, the notification shall be sent to adult’s legal representative (i.e. guardian or power of attorney). The adult’s legal representative may make the written request for a review hearing.

The notification letter shall not be sent to a caregiver, family member or other individual unless that person has the legal authority to act on behalf of the incapacitated adult. If no individual has the legal authority to act on behalf of the adult, the notification letter shall be sent to the incapacitated adult.

8.1.8 Consultation with law enforcement prior to notification of alleged perpetrator

When the LDSS has referred information to law enforcement at any point during the investigation, the LDSS shall consult with law enforcement prior to providing the notification to the alleged perpetrator.

Prior consultation with law enforcement will make law enforcement aware of:

- safety concerns or protection needs of the adult; and
- whether notification to the alleged perpetrator may affect an ongoing criminal investigation

(22VAC 30-100-40) The local department may delay notification to the alleged perpetrator by an additional 30 calendar days at the request of a law-enforcement agency.

If law enforcement requests that the LDSS delay notifying the alleged perpetrator because notification will impede or jeopardize the criminal investigation, the LDSS shall delay notification an additional 30 days (total of 60 days from the date of the disposition). Specific reasons for the delay shall be documented in the APS investigation notes tab (i.e. an arrest warrant for the alleged perpetrator is being issued imminently, the alleged perpetrator is under surveillance, etc.) and shall include the name of the law enforcement official who requested the delay. The revised date of notification to the alleged perpetrator shall also be discussed with law enforcement (e.g. “the new date a letter will be sent to the alleged perpetrator is October 15, 2021”).

Law enforcement and the LDSS shall consult prior to the revised notification date (e.g. October 15, 2021) and discuss the impending notification to the alleged perpetrator.

Law enforcement can only request a single 30-day delay of notification to the alleged perpetrator. State regulations do not permit further delays.

8.1.9 APS investigation and registration shall remain open

The APS investigation and registration shall remain open until the alleged perpetrator submits a timely written request for a review hearing or until the time frame for the alleged perpetrator to request a review has passed. The alleged perpetrator’s written request must be received by the LDSS 30 calendar days from the date on the LDSS letter to the alleged perpetrator notifying him of his right to request a review.

If the alleged perpetrator requests a right to review, the APS investigation and registration shall remain open until the local director or his designee issues his review decision.

8.1.10 Provision of services to adult

If the disposition is needs protective services and accepts, services shall be provided to the adult. See Chapter 2, Adult Protective Services for additional information regarding opening a case to adult protective services. Service delivery shall not be delayed until after the hearing is conducted.

8.1.11 Responsibilities of the alleged perpetrator if review is requested

(22VAC 30-100-45) A written request for an informal hearing with the local department must be received by the local department within 30 calendar days of the date of the local department's written notification that meets the requirements of 22 VAC 30-100-40 F to be deemed timely.

Within 30 calendar days of the being notified by the LDSS, the alleged perpetrator may submit a written request to the LDSS requesting a review hearing.

When the LDSS receives a written request for a review, the LDSS shall stamp the written request with the date it was received, document receipt in the APS investigation notes, and upload the letter under the attachments tab in the client registration.

If the alleged perpetrator fails to submit a timely written request, the alleged perpetrator has waived his right to review. Document in the APS investigation notes, reclose the investigation, and if the adult is not receiving ongoing APS services, close the registration.

8.1.12 Acknowledgement of request

LDSS shall acknowledge the alleged perpetrator's timely or untimely request for a hearing. See Appendix B for a timely request sample letter and Appendix C for an untimely request sample letter.

The LDSS shall document sending the acknowledgement of request in the APS investigation notes, and upload the letter under the attachments tab in the client registration.

When the right to review is timely requested, the acknowledgement letter shall include the following information:

- The date, time and location of the hearing including if the hearing will be held virtually;
- A summary of the evidence and how and where the evidence can be examined;
- A statement that the LDSS has the burden of proving that the individual is the perpetrator of the alleged abuse, neglect or exploitation;

- A warning that if the individual fails to appear at the hearing the requested review will be deemed to be withdrawn; and
- A statement that if the individual fails to appear at the hearing, he will have 14 days from the date of the hearing decision letter to present good cause for his failure to appear in order receive a new hearing.

8.1.13 Time frame to conduct the review hearing

If the alleged perpetrator submits a timely written request for review, the LDSS shall conduct an informal review hearing within 30 calendar days of the date that timely notice was received. The LDSS may accommodate an alleged perpetrator's reasonable request to conduct the hearing outside of the 30-day timeframe.

8.1.14 Location of the right to review hearing

Hearings may be conducted in person, by phone, or virtually. The right to review hearing shall be held in a location designated by the LDSS unless it is being held virtually or by phone. The LDSS may hold the hearing at another location if the alleged perpetrator provides a legitimate reason explaining why he is unable to attend the hearing in the location designated by the LDSS.

Example: The alleged perpetrator is incarcerated and unable to attend the hearing at the LDSS. The LDSS would coordinate with the jail authority or Department of Corrections to provide the alleged perpetrator virtual or telephone access for the right to review hearing.

8.1.15 Pre-review hearing preparation

LDSS are encouraged to review the APS case with the LDSS attorney and discuss what role the LDSS attorney will take in the hearing.

8.1.15.1 The APS case record

The APS record may include the following:

- All PeerPlace documentation related to the individual's identification as the alleged perpetrator.
- The hard copy documents such as photos, etc.

If the alleged perpetrator requests to review the APS case record prior to the hearing he or she shall have the opportunity to do so. Only information that is directly related to the APS investigation and the disposition may be released.

Case information that the alleged perpetrator is not entitled to review shall be redacted or shall not be provided. See Section 8.1.16 regarding what type of information is permitted and prohibited from being provided to the alleged perpetrator. If certain documentation is withheld, the LDSS shall inform the alleged perpetrator why the information was not provided.

The alleged perpetrator may request to review the case record at the LDSS or pick up the record from the LDSS, or request that the record be mailed to him.

LDSS staff participating in the review hearing shall also review the APS record prior to the hearing.

8.1.16 When information is requested by the alleged perpetrator

The LDSS shall provide information to the alleged perpetrator if he or she requests information prior to the hearing. Any mitigating information or documentation that would indicate another individual could be the alleged perpetrator shall be provided. An example of mitigating information would be the neighbor's statement such as "her adult son has been very helpful to her since he moved in and he made sure she attended all of her medical appointments."

However, some information in the case record may be prohibited from being released.

- Information prohibited from being disclosed by state or federal law or regulation shall not be released to the alleged perpetrator.
- Any identifying information about the adult victim (i.e. name, date of birth, address) shall be redacted.
- In accordance with § 32.1-127.1:03 of the Code of Virginia, medical records from healthcare professionals that the APS worker obtained during the investigation shall not be provided to the alleged perpetrator, unless the victim gives specific authorization for the release of the health records.
- Pursuant to § 63.2-1606 of the Code of Virginia LDSS shall not disseminate criminal investigative reports received from law enforcement agencies.
- The identity of the reporter shall not be released unless the reporter gives permission for the release or a court has ordered the disclosure.
- Information related to the provision of services to the adult shall not be released or shall be redacted from the case record.

LDSS are advised to consult with the LDSS attorney for advice and guidance on the releasing of information to alleged perpetrators.

The LDSS shall document the alleged perpetrator's request to review the record and the means by which the alleged perpetrator reviewed the record in the APS investigation notes.

8.1.17 If the alleged perpetrator fails to appear for a scheduled hearing

If the hearing has been scheduled for a certain time but the alleged perpetrator fails to arrive on time for the hearing, the local director or his designee may wait a reasonable amount of time for the alleged perpetrator to arrive for the hearing.

If the alleged perpetrator fails to appear for the hearing, the local director or his designee shall convene the review hearing, document the alleged perpetrator's failure to appear, and base the review decision upon a review of the investigative record. After the hearing, the local director or his designee shall send a letter to the perpetrator notifying him of his failure to appear and that the alleged perpetrator may request the hearing be rescheduled if he can demonstrate good cause for his failure to appear. Good cause is an emergency or other event beyond the control of the alleged perpetrator that prevents him from attending the hearing. See Appendix D for a sample letter to alleged perpetrator regarding failure to appear.

The alleged perpetrator's failure to appear shall be documented in the APS investigation notes.

8.1.18 Conducting the right to review hearing

(22VAC 30-100-45) The director shall preside over the informal hearing. Except for the director, no person whose regular duties include substantial involvement with the local department's adult abuse, neglect, or exploitation investigations shall preside over the hearing.

8.1.19 Introduction and summary of the review hearing process

At the beginning of the hearing the local director or his designee will discuss the purpose of the hearing, outline the use of witnesses, establish the order of presentations, and other issues related to the structure of the hearing. The hearing may be recorded by either party.

The LDSS may wish to consult the agency attorney to determine how to handle an alleged perpetrator's request to record the hearing or establishing an LDSS protocol, including a consent process, when recording right to review hearings.

8.1.20 Right to review hearing participants

Hearing participants include the alleged perpetrator, and if the alleged perpetrator chooses, a legal representative and/or counsel, the APS worker who issued the disposition, and the APS worker's supervisor.

Notification of the right to review hearing is not provided to the adult who is the subject of the APS report, however the adult may attend the hearing.

8.1.21 Role of alleged perpetrator during hearing

(22VAC 30-100-45) The alleged perpetrator may be represented by counsel. The alleged perpetrator shall be entitled to present the testimony of witnesses, documents, factual data, arguments, or other submissions of proof.

The alleged perpetrator presents information in order to establish why he or should not be identified as the alleged perpetrator in the APS record and/or why other information in the record may be incorrect.

It is the responsibility of the alleged perpetrator to make his or her arrangements for legal representation. However, counsel is prohibited from testifying on behalf of the alleged perpetrator.

8.1.22 Role of the APS worker during the hearing

The LDSS has the burden of proof at the hearing. The APS worker shall present a summary of the case. The summary shall include all factors that contributed to identifying a specific individual as the alleged perpetrator as well as why the particular disposition was made.

If the alleged perpetrator or his representative makes a statement during the review hearing that the APS worker believes is inaccurate, the APS worker shall state the reason why he or she believes the statement is inaccurate. Information or statements not raised during the hearing shall not be considered by the local director or his designee when issuing his decision.

The APS worker shall not introduce new information during the hearing that was not obtained during the investigation and included in the APS record.

8.1.23 Role of witnesses during the hearing

The local director or his designee will determine at the beginning of the conference how many witnesses will testify and the type of information to which they will testify. If several witnesses will be providing similar testimony (i.e. the alleged perpetrator is

an excellent personal care provider) the local director or his designee may request that only a designated number of witnesses testify in order to avoid repetitive testimony.

Witnesses shall follow certain rules. Any witness who plans to testify shall wait outside the hearing room until called to testify. Witnesses will be entitled to remain in the room following testimony at the discretion of both parties and the local director or his designee.

8.1.24 Responsibility of the local director or his designee

(22VAC 30-100-45) The director shall have the authority to sustain, amend, or reverse the findings of the investigation or the disposition.

The local director or his designee shall consider all information presented by both parties during the hearing. The local director or his designee shall have the authority to sustain, amend, or reverse the LDSS's findings regarding the identification of the alleged perpetrator. The local director or his designee shall have the authority to sustain, amend, or reverse the disposition of the case.

If the results from the hearing are requested in any legal proceedings, the LDSS should consult with the agency attorney on the request to release records.

8.1.25 Time frame to notify alleged perpetrator of hearing results

(22VAC 30-100-45) The director shall notify the alleged perpetrator, in writing, of the results of the informal hearing within 30 calendar days of the date of the hearing. The decision of the director shall be final. The results of the informal hearing shall be mailed, certified with return receipt, to the alleged perpetrator. A copy of the final decision shall be mailed to the appropriate licensing, regulatory, or legal authority.

The LDSS shall document the results of the right to review hearing, including the notification to the alleged perpetrator and licensing, regulatory, or legal authorities in the APS investigation notes. The notification letter to the alleged perpetrator will be uploaded to the attachments tab in the client registration.

See Appendix E through I for sample letters to notify the alleged perpetrator of the hearing results.

8.1.26 Hearing decision is final

(22VAC 30-100-45) All written findings and actions of the local department or its director, including the decision of the director at the conclusion of the review, are final and shall not be (i) appealable to the Commissioner for Aging and Rehabilitative Services or (ii) considered a final agency action for purposes of judicial review pursuant to the provisions of the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

8.1.27 Additional documentation requirements after hearing

8.1.27.1 Identification of alleged perpetrator is reversed

If the local director or his designee determines that the alleged perpetrator was incorrectly identified, the corresponding investigation in PeerPlace shall reflect this. The LDSS will select the alleged perpetrator from the list on the alleged perpetrator tab and uncheck the box identifying him as the alleged perpetrator. The LDSS shall document the reversal of the alleged perpetrator in the APS investigation notes.

(22VAC 30-100-45) If the director reverses the identification of the alleged perpetrator, the local department shall continue to offer services to the adult if the disposition remains needs protective services and accepts.

8.1.27.2 Identification of alleged perpetrator is sustained

If the local director or his designee determines that the identity of the alleged perpetrator is sustained, the results of the hearing shall be documented in the APS investigation notes. The LDSS will reclose the APS investigation on the certification tab once all right to review documentation is complete. When APS ongoing services resolve the APS case registration will be closed.

8.1.27.3 Amend or reverse disposition or findings

If the local director or his designee determines the investigation disposition or investigation findings were incorrect, the disposition will be reversed or amended to reflect the correct disposition.

- The LDSS will document the reason the disposition is being amended or reversed on the investigative findings tab using the investigative findings text box.

- An entry will be made using “Addendum” to reflect the reason the disposition is being amended or reversed as a result of the right to review hearing. The original investigative findings will not be edited and remain a part of the case record.
- The LDSS will ensure all right to review hearing, results, and notifications are documented in the APS investigation notes.
- The LDSS will reclose the APS investigation on the certification tab.
- The APS registration will be closed.

If the adult is receiving services and the disposition is changed from needs protective services to unfounded or invalid the LDSS will notify the adult of the termination of services.

If the adult is receiving home based services, the adult is entitled to appeal the termination of services and must be notified using the NOA. The LDSS must continue to offer services through the appeal process.

Documentation of the home based service appeal will be documented in the client registration notes. Once the appeal has concluded and is documented the APS registration shall be closed.

The LDSS may offer the adult a referral to Adult Services if there are unmet service needs and the adult can be served by the Adult Services program.

8.1.27.4 Sustain disposition or findings

If the local director or his designee determines that the disposition or findings are sustained, the results of the hearing shall be documented in the APS investigation notes. Once all right to review documentation is complete, the LDSS will reclose the APS investigation on the certification tab. When APS ongoing services resolve, the APS case registration will be closed.

8.1.28 Notifying the APS Division Regional Consultants

LDSS shall email the APS Division Regional Consultant after the hearing is conducted to provide the results of the hearing.

The email shall identify the PeerPlace ID in the subject line of the email.

8.1.29 Other amendments to the record

If the alleged perpetrator requests amendments to the record (e.g. the alleged perpetrator's date of birth was incorrect, the alleged perpetrator's employer's name was misspelled) he may make this request pursuant to the Government Data Collection and Dissemination Practice Act. See Chapter 6, Confidentiality for additional information.

If other amendments to the record are made, the LDSS shall document the amendments made in the APS investigation notes.

The purpose of the right to review hearing is not to make minor or technical changes to the APS case record but rather to provide the alleged perpetrator with the opportunity to challenge the LDSS designation that he is the alleged perpetrator in a substantiated APS case.

8.2 Appendix A: LDSS notification to alleged perpetrator

Date

Alleged Perpetrator's name
Alleged Perpetrator's address

Dear **(alleged perpetrator's name)**:

This is to notify you that you have been identified as an alleged perpetrator in an Adult Protective Services (APS) case that has been substantiated based on the following/enclosed information. (Provide summary of reason(s) that disposition was issued in body of letter or as an enclosure).

Unlike Child Protective Services, Virginia APS does not maintain a central registry or database of alleged perpetrators of adult abuse, neglect or exploitation.

APS does not have the authority to revoke a license or provider agreement issued by another licensing, regulatory or legal authority. However, in accordance with state law (§ 63.2-1605 of the Code of Virginia and Virginia Administrative Code 22 VAC 30-100-50), your name has been provided to the following licensing, regulatory, or legal authority:

(List name of agency(s) and date information was shared with agency(s))

You may contact the agency listed above if you have questions about your (enter applicable term: license or provider agreement).

If you do not agree with being named as an alleged perpetrator of abuse, neglect or exploitation of an adult, you have the right to request a review by the Director of (name of LDSS). The Director has the authority to sustain, amend, or reverse your identification in the case record as an alleged perpetrator as well as sustain, amend, or reverse the investigation disposition. The decision of the local director or his designee is final pursuant to 22 VAC 30-100-45 I and 63.2-1605 J of the Code of Virginia.

If you want to request a review, you must notify (name of LDSS) in writing no later than 30 calendar days from the date of this letter. In your request you must refer to the following code number (enter PeerPlace ID *and* APS Report number in which perpetrator was identified). Your request must be addressed as follows:

Name of LDSS
Attention: (LDSS to designate staff person)
LDSS Address

Sincerely,

Name of APS worker

PeerPlace ID XXXXX
APS Report Number XXXX

8.3 Appendix B: Acknowledgement of a timely request for review

Date

Alleged Perpetrator's name
Alleged Perpetrator's address

Dear (**alleged perpetrator's name**):

Your request for a review dated (add date of request) was received by (Name of LDSS) on (Date). We are required to schedule and conduct your review hearing by (Date). Please inform the worker identified below prior to the review if an attorney will be representing you.

The review hearing is scheduled for (Date) and (Time) at (Location/Address). If the hearing is not being conducted virtually, please sign in at the front desk and the worker will escort you to (room location of hearing). If you fail to appear at the scheduled hearing, you will be deemed to have withdrawn your request for review. If you fail to appear, you shall have 14 days from the date of the hearing decision letter to present good cause for your failure to appear in order to receive a new hearing. Good cause is an emergency or other event beyond your control (such as your hospitalization) that prevents you from attending the hearing.

The Adult Protective Services (APS) case was substantiated based on the following/enclosed information (Provide brief summary of reason(s) that the disposition was issued in the body of the letter or as enclosure).

(Name of LDSS) has the burden of proving that you are the perpetrator of the abuse, neglect or exploitation.

Please be advised that if you fail to appear the decision will be based solely on information provided by the APS worker.

If you would like to review information related to your identification as an alleged perpetrator, or have any additional questions please contact (Name) at (phone number). The information may be mailed to you, you may request to review the record at (name of LDSS) or you may pick up the information directly from (name of LDSS).

Sincerely,

Local Director

Cc: APS worker and APS supervisor
PeerPlace ID XXXXX
APS Report Number XXXX

8.4 Appendix C: Acknowledgement of an untimely request for review

Date

Alleged Perpetrator's name
Alleged Perpetrator's address

Dear (**alleged perpetrator's name**):

Your written request for a review (Date of letter) was received by (Name of LDSS) on (Date). As your request for review was not received by (last date letter could have been received), we are denying your request for a review hearing.

Should you have any questions regarding this letter, please contact (Name) at (phone number).

Sincerely,

Local Director

Cc: APS worker and APS supervisor

PeerPlace ID XXXXX
APS Report Number XXXX

8.5 Appendix D: Failure to appear for hearing

Date

Alleged Perpetrator's name
Alleged Perpetrator's address

Dear (**alleged perpetrator's name**):

Your right to review hearing was scheduled for (date of hearing). However, you did not appear for the hearing. We proceeded in your absence and after careful review of the Adult Protective Services (APS); I have decided to sustain the disposition of the APS investigation and your identification as the perpetrator.

If you had good cause for failing to appear, you may make a written request that my decision be set aside and the hearing be rescheduled. Examples of good cause may include your hospitalization, your illness, or an accident. You are required to present proof of good cause with your written request to reschedule the hearing.

Other reasons for failure to appear may be accepted depending on the information you provide.

If you do not respond in writing within 14 calendar days from the date of this letter, this decision will be final pursuant to 22 VAC 30-100-45 I and § 63.2-1605 J of the Code of Virginia.

Should you have any questions regarding this letter, please contact (Name) at (phone number).

Sincerely,

Local Director

Cc: APS worker and APS supervisor

PeerPlace ID XXXXX
APS Report Number XXXX

8.6 Appendix E: Sustain LDSS investigation disposition (needs protective services) and identification of perpetrator

Date

Alleged Perpetrator's name

Alleged Perpetrator's address

Dear (**alleged perpetrator's name**):

After careful review of the Adult Protective Services (APS) record and the information presented at the review hearing on (Date), I have decided to sustain the LDSS investigation disposition of needs protective services because information in the case record demonstrated that there is a preponderance of evidence that abuse, neglect or exploitation has occurred or is occurring. I have also decided to sustain your identification as the alleged perpetrator.

This decision is final pursuant to 22 VAC 30-100-45 I and § 63.2-1605 J of the Code of Virginia.

Should you have any questions regarding this letter, please feel free to contact me at (phone number).

Sincerely,

Local Director

Cc: APS worker, APS supervisor and regulatory/licensing agency (if originally notified)

Certified Mail No: XXXXXXX

PeerPlace ID XXXX

APS Report Number XXXX

8.7 Appendix F: Sustain LDSS investigation disposition (needs protective services-Version 2) and identification of perpetrator

Date

Alleged Perpetrator's name
Alleged Perpetrator's address

Dear (**alleged perpetrator's name**):

After careful review of the Adult Protective Services (APS) record and the information presented at the review hearing on (Date), I have decided to sustain the LDSS investigation disposition of needs protective services because information in the case record demonstrated that there is a preponderance of evidence that the adult is at risk of abuse, neglect or exploitation. I have also decided to sustain your identification as the alleged perpetrator.

This decision is final pursuant to 22 VAC 30-100-45 I and § 63.2-1605 J of the Code of Virginia.

Should you have any questions regarding this letter, please feel free to contact me at (phone number).

Sincerely,

Local Director

Cc: APS worker, APS supervisor and regulatory/licensing agency (if originally notified)

Certified Mail No: XXXXXXXX

PeerPlace ID XXXX
APS Report Number XXXX

8.8 Appendix G: Sustain LDSS investigation disposition (needs protective services) and reverse identification of perpetrator

Date

Alleged Perpetrator's name
Alleged Perpetrator's address

Dear (**alleged perpetrator's name**):

After careful review of the Adult Protective Services (APS) record and the information presented at the review hearing on (Date), I have decided to sustain the LDSS investigation disposition of needs protective services because information in the case record demonstrated that there is a preponderance of evidence that abuse, neglect or exploitation has occurred or is occurring.

However, I have decided to reverse your identification as the alleged perpetrator. Your name will be removed from the APS record as the alleged perpetrator.

This decision is final pursuant to 22 VAC 30-100-45 I and § 63.2-1605 J of the Code of Virginia.

Should you have any questions regarding this letter, please feel free to contact me at (phone number).

Sincerely,

Local Director

Cc: APS worker, APS supervisor and regulatory/licensing agency (if originally notified)

Certified Mail No: XXXXXXXX

PeerPlace ID XXXXX
APS Report Number XXXX

8.9 Appendix H: Sustain LDSS investigation disposition (needs protective services-Version 2) and reverse identification of perpetrator

Date

Alleged Perpetrator's name
Alleged Perpetrator's address

Dear (**alleged perpetrator's name**):

After careful review of the Adult Protective Services (APS) record and the information presented at the review hearing on (Date), I have decided to sustain the LDSS investigation disposition of needs protective services because information in the case record demonstrated that there is a preponderance of evidence that the adult is at risk of abuse, neglect or exploitation.

However, I have decided to reverse your identification as the alleged perpetrator. Your name will be removed from the APS record as the alleged perpetrator.

This decision is final pursuant to 22 VAC 30-100-45 I and § 63.2-1605 J of the Code of Virginia.

Should you have any questions regarding this letter, please feel free to contact me at (phone number).

Sincerely,

Local Director

Cc: APS worker, APS supervisor and regulatory/licensing agency (if originally notified)

Certified Mail No: XXXXXXXX

PeerPlace ID XXXXX
APS Report Number XXXX

8.10 Appendix I: Reverse LDSS investigation disposition and identification of perpetrator

Date

Alleged Perpetrator's name
Alleged Perpetrator's address

Dear **(alleged perpetrator's name)**:

After careful review of the Adult Protective Services (APS) record and the information presented at the review hearing on (Date), I have decided to reverse the LDSS investigation disposition and reverse your identification as the alleged perpetrator. Your name will be removed from the APS record as the alleged perpetrator.

This decision is final pursuant to 22 VAC 30-100-45 I and § 63.2-1605 J of the Code of Virginia.

Should you have any questions regarding this letter, please feel free to contact me at (phone number).

Sincerely,

Local Director

Cc: APS worker, APS supervisor and regulatory/licensing agency (if originally notified)

Certified Mail No: XXXXXXXX

PeerPlace ID XXXXX
APS Report Number XXXX

9

Appeals

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9

Home-Based Services and Adult Foster Care Appeals

9.1 Legal basis

(§ 51.5-147 of the Code of Virginia). Any applicant for or recipient of home-based and adult foster care services aggrieved by any decision of a local board in granting, denying, changing, or discontinuing services may, within 30 days after receiving written notice of such decision, appeal therefrom to the Commissioner. Any applicant or recipient aggrieved by the failure of the local board to make a decision within a reasonable time may ask for review by the Commissioner. The Commissioner may delegate the duty and authority to duly qualified hearing officers to consider and make determinations on any appeal or review. The Commissioner shall provide an opportunity for a hearing, reasonable notice of which shall be given in writing to the applicant or recipient and to the proper local board in such manner and form as the Commissioner may prescribe. The Commissioner may make or cause to be made an investigation of the facts. The Commissioner shall give fair and impartial consideration to the testimony of witnesses, or other evidence produced at the hearing, reports of investigation of the local board and local director or of investigations made or caused to be made by the Commissioner, or any facts which the Commissioner may deem proper to enable him to decide fairly the appeal or review. The decision of the Commissioner shall be binding and considered a final agency action for purposes of judicial review of such action pursuant to the provisions of the Administrative Process Act (§ 2.2.-4000 et seq.).

Home-based care services include homemaker, companion or chore services (§§ 63.2-1600 and 51.5-146 of the Code of Virginia).

Adult foster care is defined as room and board, supervision, and special services to an adult who has a physical or mental condition (§ 63.2-100 of the Code of Virginia).

9.2 Right to appeal

An applicant or recipient of a home-based care services or adult foster care services may appeal a local department of social services (LDSS) action that:

- The application was denied;
- The application was granted;
- The services were changed or reduced;
- The services were discontinued or terminated; or
- The LDSS failed to make a decision on the application within specified time standards.

The Department of Social Services (DSS) retained the authority to hear benefit program appeals including appeals related to Auxiliary Grant eligibility. If an individual is denied Auxiliary Grant benefits or his Auxiliary Grant benefits are terminated or changed and he wishes to appeal the decision, the client must send the appeal request to the DSS Appeals and Fair Hearings Unit.

9.3 Request for a fair hearing

The request for a fair hearing may be made by the applicant or recipient or by a person acting on behalf of the applicant or recipient; hereinafter called the claimant. A relative, friend or an attorney may act as the claimant's authorized representative.

A claimant's request for an appeal shall be made:

- In writing; and
- Submitted not more than thirty (30) calendar days following receipt by claimant of the LDSS's written notice of the action which is the basis for the appeal. The appeal is considered timely if it is postmarked by the 31st day following the date of the LDSS's notice. If the claimant can show that he had less than 30 days to appeal, the appeal request may be considered timely.

The appeal may be submitted on the form "Appeal to Department for Aging and Rehabilitative Services" available at on the DARS and DSS public sites or by letter.

The LDSS shall not prejudice or limit the claimant's right to appeal.

The LDSS shall assist the claimant in submitting an appeal or preparing the claimant's case, if necessary. If a claimant sends an email to the LDSS worker requesting an appeal,

the email shall be treated like any other written request for an appeal. The worker or other LDSS representative shall complete the Appeal to the Department for Aging and Rehabilitative Services form. The date of the appeal is the date the email request was received at the LDSS. The LDSS shall mail the form with a copy of the email to DARS.

LDSS have an affirmative duty to provide information and referral service to help the claimant make use of any legal services available in the community.

9.4 Validation of an appeal

All appeal requests shall be submitted to the Department for Aging and Rehabilitative Services, Attn: Control, 9960 Mayland Drive, Richmond VA 23233. If the claimant chooses to submit a written letter and the LDSS is assisting the claimant in drafting the letter, ensure the "Case 35" and "Case Type APA" appear at the top or bottom of the letter.

Once a request for an appeal is received, the case is assigned to a designated hearing officer.

The hearing officer's first duty is to validate the appeal by submitting a validation form to the appropriate LDSS.

On the validation form the LDSS must specify:

- The action taken by the LDSS;
- The date of the Notice of Action (NOA); and
- Whether or not services have continued during the appeal process.

The LDSS must return the validation form with the NOA, to the hearing officer within five **(5)** working days. If the validation form is not returned within five working days, the hearing officer instructs the LDSS to complete and return the validation form.

To determine if the appeal is valid, the hearing officer reviews the NOA, the date sent to the claimant, the appeal postmark date, the date the appeal was received by the DARS Appeal Unit, and the action being appealed.

If the appeal is determined to be valid a hearing is scheduled. The LDSS and claimant are notified in writing of the hearing date. The hearing officer will order continuation of service, if the LDSS has not already done so, when required. See Section 9.5 for additional information on continuation of services.

If the appeal is determined to be invalid, the hearing officer issues written notification to the LDSS and the claimant with an explanation of the reason for the determination, and advising that an appeal hearing cannot be granted.

9.5 Continuation of services

Services must be continued through the appeal process, if the appeal request occurred within ten (10) days of the effective date of the NOA.

The claimant does not have to request the continuation of services. The claimant is automatically entitled if the appeal request was filed during the 10-day timeframe.

The LDSS shall be instructed to continue services if the appeal request was received within the 10-day timeframe.

If services are continued, they shall be continued at the level authorized prior to the proposed termination or reduction regardless of the reason for the termination or reduction. The LDSS shall send notification to the claimant that services have been continued during the appeal process.

However, if there are changes to the claimant's circumstances during the appeal process which require adjustments to his or her eligibility, the LDSS shall make the adjustment and send a NOA. If the claimant fails to appeal that NOA, the LDSS shall make the adjustment.

9.6 Withdrawals

A claimant may withdraw the appeal at any time during the appeal process.

A claimant's request to withdraw the appeal shall be in writing and shall include:

- The claimant's name;
- Date of the withdraw request; and
- Reason for the withdraw request.

9.7 Scheduling the appeal hearing

The hearing officer provides written notification of the hearing date to the claimant, the claimant's representative, if any, and the LDSS at least 10 calendar days prior to the hearing. The notice will include information about the claimant's appeal rights.

The hearing must be conducted at a time, date, and place convenient to the claimant, usually at the LDSS.

The hearing is usually conducted by teleconference and the notice will advise the claimant of this. A face-to-face hearing is granted only upon request and when required by the circumstances of the case.

Either party may request the initial hearing be rescheduled. The time limit for action on the decision may be extended for as many days as the hearing is postponed. The hearing officer has the authority to set a date beyond which the hearing will not be delayed.

9.8 Hearing procedures

9.8.1 Summary of facts

Upon receiving notification of the scheduled hearing, the LDSS must prepare a Summary of Facts (SOF) of the case, including:

- All relevant information about the action being appealed.
- Logical, chronological sequences of the events, specific dates including the LDSS's requests for verification. The individual who completes the SOF should assume the reader is not familiar with the facts of the case or the program guidance.
- If the action taken involves a calculation a description should be included explaining how specific figures (i.e. income, expenses, etc.) and guidance were applied to determine eligibility. If the client disputed the calculation, the reasons underlying the dispute must be addressed.
- Applicable manual provision or law. Both the language and correct citation must be included.

If more than one worker was involved in the action taken, each worker may prepare a separate SOF or joint SOF.

Copies of all relevant documents must be attached and submitted with the SOF. This includes documents submitted by the claimant, notices, checklists, letters, verifications, evaluation forms, worksheets, database system printouts and any other material relating to the action being appealed.

The SOF, (with attachments), must be signed and mailed to the claimant, the claimant's representative, if any, and the hearing officer in sufficient time to guarantee its receipt at least **5** calendar days prior to the hearing.

If the claimant, the claimant's representative, if any, does not receive the SOF at least **5** calendar days prior to the hearing, the hearing officer has the discretion to reschedule the hearing to allow the claimant an opportunity to review the SOF.

9.8.2 Travel

The LDSS is responsible for assuring that the claimant has transportation to the hearing if he is unable to make his/her own travel arrangements. The claimant must contact the LDSS in advance concerning any transportation needs.

9.8.3 Rights of the claimant

Claimant or the claimant's representative must be given the opportunity to:

- Examine all documents and records which are used at the hearing;
- Present the case;
- Bring witnesses;
- Establish pertinent facts and advance arguments; and
- Question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses.

9.8.4 Rights of the LDSS

The LDSS must be given the opportunity to:

- Clarify or modify its statements in the SOF;
- Question claimant and claimant's witness on the salient issues; and
- Examine all documents submitted by claimant or the claimant's representative.

9.8.5 Admissible evidence

The strict rules of evidence do not apply in the hearing. Only relevant evidence, however, is admissible. Relevant evidence is related to the issues being appealed. The only issues considered at the hearing are those enumerated by the claimant in the appeal request or those raised by the LDSS as a basis for its action or inaction. The hearing officer does not consider any other evidence or issues.

9.8.6 Standard of proof

There is a legal presumption that the LDSS acted in accordance with law and guidance and the burden of proof is on the claimant to demonstrate any LDSS error.

9.9 Responsibilities and duties of the hearing officer

The hearing officer has the following responsibilities:

- Identify those present on record
- Provide an opening statement to explain the purpose of the hearing and the procedures that will be utilized throughout the hearing
- Ensure that all relevant issues are considered
- Request, receive, and make part of the record all evidence determined necessary to decide the issues being raised
- Regulate the conduct of the hearing consistent with due process to ensure an orderly hearing
- Explain right of further review
- Order, where relevant and useful, an independent medical assessment or professional evaluation from a source mutually satisfactory to claimant and LDSS
- Hear and weigh the evidence

9.10 Failure to appear

If the claimant does not appear at the scheduled hearing time, the claimant shall be given a 15 minute grace period. If the claimant does not arrive within the next 15 minutes, the LDSS shall notify the hearing officer that the claimant failed to appear.

The hearing officer shall issue a failure to appear letter, providing the claimant with the opportunity to explain a good cause reason for the failure to appear. The claimant must respond to the hearing officer by the date listed in the letter.

The hearing officer has the discretion to determine if good cause exists to reschedule the hearing or to dismiss the hearing due to the failure to show good cause for not appearing.

9.11 Hearing decision

An official report containing the substance of the hearing, together with findings, and conclusions of the hearing officer, and all papers filed in the proceeding, constitutes the record for decision.

The decision of the hearing officer shall be based exclusively on the evidence, documentary or testimonial, introduced at the hearing, and on all applicable guidance, regulations and laws.

The decision of the hearing officer shall be rendered with **60** days following the date the appeal request is received, except where a postponement has been requested or granted. In that instance, the time limit will be extended for as many days as the hearing has postponed.

The decision of the hearing officer shall be final and binding when mailed to the claimant and the LDSS.

Pursuant to § 51.5-147 of the Code of Virginia, a person aggrieved by the decision of the hearing officer may seek further review of the decision, by the appropriate Circuit Court, pursuant to the provisions of the Administrative Process Act.

The claimant and/or the claimants' representative and the LDSS must be given written notice of the claimant's right to request a review of the decision of the hearing officer. The LDSS cannot request a judicial review. See Appendix A for standard notice language that is included in the decision letter.

9.12 LDSS implementation of hearing decision

The LDSS must ensure that administrative action to implement the hearing officer's decision is taken within **10** working days of the date of the decision, regardless of whether court review of the decision has been requested. After corrective action is taken, the LDSS must notify the claimant and the hearing officer in writing that the LDSS has complied with the decision.

Exception: The LDSS is not required to implement the hearing officer's decision within **10** working days if the claimant was required to provide additional information in order to determine the amount of any restoration.

If written notification of compliance is not received by the hearing officer within **10** working days, the hearing officer contacts the LDSS and instructs the LDSS to submit a written statement confirming compliance with the decision.

9.13 Continuation of services after final decision

If the claimant loses the appeal, services do not continue even if the claimant requests a circuit court appeal.

9.14 Record retention

Appeal case records shall be retained for three years from the date of the hearing officer's decision.

9.15 Appendix A: Standard notice language

As provided by rules 2A:2 and 2A:4 of the Supreme Court of Virginia, you have thirty (30) days from the date of the service (the date you actually received this decision or the date it was mailed to you which ever occurred first) within which to provide notice of your intent to appeal this decision to the circuit court. Notice of your intent to file an appeal with the circuit court must be made in writing and sent to:

Attn: Control

Department for Aging and Rehabilitative Services

9960 Mayland Drive, Suite 200

Richmond, VA 23233

Please be aware that although your notice to the Department for Aging and Rehabilitative Services of your intent to appeal is required, you must file a petition in circuit court in order to perfect your appeal. You will not receive correspondence nor will your services continue as a result of sending notice of appeal as this decision is the final administrative action.

In the event the decision is served on you by mail, three (3) days are added to that period. Please note that the notice will not be considered timely filed unless it is received by the Commissioner within the applicable time period.

Within thirty (30) days after filing the notice of appeal with the Commissioner, you must file a petition, for appeal with the appropriate Circuit Court for your jurisdiction. You must make sure that the petition for appeal is served on the Commissioner before the appeal can proceed in Circuit Court.