

1

INTRODUCTION TO ADULT SERVICES

TABLE OF CONTENTS

- 1.1 Definitions**
- 1.2 Organization of the department**
- 1.3 Adult Services programs**
- 1.4 Mission of Adult Services programs**
- 1.5 Purpose of Adult Services**
- 1.6 Purpose of Adult Protective Services**
- 1.7 Distinction between Adult Services and APS**
- 1.8 Philosophy of Adult Services**
- 1.9 Philosophy of Adult Protective Services**
- 1.10 Target populations for Adult Services**
 - 1.10.1 *Required* to be served
 - 1.10.2 Encouraged to be served
 - 1.10.3 Served at the option of LDSS
- 1.11 *Target populations for APS***
- 1.12 Service workers as mandated reporters**
- 1.13 Confidentiality**
- 1.14 Documentation and record retention**
- 1.15 Legal basis – Code of Virginia**
 - 1.15.1 Homemaker, companion, or chore services (§ 63.2-1600 of the Code of Virginia)
 - 1.15.2 Authority to provide adult foster care services (§ 63.2-1601 of the Code of Virginia)
 - 1.15.3 Criminal history check for agency approved providers of services to adults (§ 63.2-1601.1 of the Code of Virginia)

- 1.15.4 Other adult services (§ 63.2-1602 of the Code of Virginia)
- 1.15.5 Appeal to Commissioner regarding home-based and adult foster care services (§ 63.2-1602.1 of the Code of Virginia)
- 1.15.6 Adult Protective Services (§§ 63.2-1603 through 1610 of the Code of Virginia)
- 1.15.7 Auxiliary Grants Program (§ 63.2-800 of the Code of Virginia)
- 1.15.8 Community services boards; local government departments; powers and duties (§ 37.2-504 of the Code of Virginia); and behavioral health authorities; powers and duties (§ 37.2-605 of the Code of Virginia)
- 1.16 Legal basis – department regulations**
- 1.17 Adult Services Program report**
- 1.18 Appendix A: Forms, brochures, and manuals**
 - 1.18.1 Adult Services manuals, documents, and forms available on the web
 - 1.18.2 VDSS forms available on the web
 - 1.18.3 ASAPS Robo Help
 - 1.18.4 Adult Services Programs brochures and educational materials
 - 1.18.5 Medicaid provider manuals and forms
- 1.19 Appendix B: Adult Services/Adult Protective Services Program staff**
- 1.20 Appendix C: Adult Services area assignments**

1

INTRODUCTION TO ADULT SERVICES

1.1 Definitions

The following words and terms are defined in state regulation as identified below. When used in this chapter, they shall have the following meaning, unless the context clearly indicates otherwise:

Term	Definition
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).
Adult Abuse	The willful infliction of physical pain, injury, or mental anguish or unreasonable confinement of an adult (§ 63.2-100 of the Code of Virginia).
Adult Exploitation	The illegal use of an incapacitated adult or his resources for another’s profit or advantage (§ 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 (§ 63.2-100 of the Code of Virginia).

Term	Definition
Adult Neglect	Adult neglect means that an adult 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).
Auxiliary Grants	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 (§ 63.2-100 of the Code of Virginia).
Department	The State Department of Social Services (VDSS) (§ 63.2-100 of the Code of Virginia).
Domestic Violence	A pattern of behavior in which one person uses violence to control others in the context of an intimate relationship. The pattern of violence may include physical violence, sexual violence, and/or emotional violence such as threats, intimidation, or isolation.
Family	Any individual adult or adults or children related by blood, marriage, adoption, or an expression of kinship who function as a family unit (22 VAC 40-800-10). (See Chapter 3, Adult Services Case Management, for additional information on case composition.)
Family-Based	An approach to social service delivery where the focus of service is on the family unit, not just individual members viewed in isolation (22 VAC 40-800-10).
Family Services	Social services which provide assessment and delivery of a broad range of services which include intake services, adult services, prevention and support services for families, adult protective services, child protective services, permanency services, and child care services.

Term	Definition
Incapacitated Person	Any adult who is impaired by reason of mental illness, mental retardation, physical illness or disability, dementia, 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. This definition is for the purpose of establishing an adult's eligibility for adult protective services and such adult may or may not have been found incapacitated through court procedures (22 VAC 40-740-10).
Impaired	Any person whose physical or mental capacity is diminished to the extent that he needs counseling or supervisory assistance or assistance with activities of daily living such as feeding, bathing and walking, or instrumental activities of daily living such as shopping and money management (22 VAC 40-800-10).
Local Department	The local department of social services (LDSS) of any county or city in this Commonwealth (§ 63.2-100 of the Code of Virginia).
“Virginia Uniform Assessment Instrument (UAI)”	The standardized multi-dimensional questionnaire that assesses an adult's social, physical health, mental health, and functional abilities. The UAI is used to gather information for the determination of an adult's care needs and service eligibility, and for planning and monitoring the adult's care across various agencies and long-term care services. The UAI is composed of 12 pages. There is a shorter, 2-page version of the UAI for private pay individuals applying to reside in or living in assisted living facilities (ALF).

1.2 Organization of the department

The VDSS designs programs to address those who are most in need, balance the role of providing effective intervention when necessary, and ensure the safety, stability, and well-being for the most vulnerable of our population.

LDSS are an integral part of the social services delivery system and serve as the focal point within all local communities for the delivery of family-focused and family-based preventive and protective services. LDSS use federal, state, and local funds to deliver services.

The State Board of Social Services was created by the state legislature in July 1974. The members are appointed by the Governor and include representatives from various

regions of the state. Terms are for four years; no more than two successive terms are permitted. The State Board has responsibility for the adoption of rules and regulations consistent with federal and state law.

The Commissioner of Social Services, who is appointed by the Governor, directs VDSS at the state level. The Home Office, located in Richmond, develops policies, procedures, regulations, training, and standards for social service programs. It is responsible for the monitoring and evaluation of these programs, and it allocates and manages funding to the local agencies. The Adult Services Programs are state supervised and locally administered.

Adult Services/Adult Protective Services (AS/APS) Regional Program Consultants 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.

VDSS supervises the administration of programs by the LDSS. The LDSS is the setting for direct contact with individuals requesting services. The components through which the LDSS can assist individuals fall into two major divisions: benefits and family services programs. The latter are administered by service workers, while eligibility workers handle benefit programs.

LDSS staff determine eligibility for participation in service and benefits programs, authorize payments to individuals and vendors for services, and provide direct services to individuals.

1.3 Adult Services programs

VDSS administers the following programs through the Adult Services Programs Unit:

- Adult Services
- Adult Protective Services
- Auxiliary Grants (AG) Program

1.4 Mission of Adult Services programs

The mission of the Adult Services Programs is to serve adults through programs that:

- 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.

1.5 Purpose of Adult Services

Adult Services (AS) are designed to allow 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.

Adult Services are provided to impaired adults age 18 or older, and to their families when appropriate. Adult Services may include the provision of case management, home-based care, transportation, adult day services, nutrition services, placement services, and other activities to aid the adult.

1.6 Purpose of Adult Protective Services

Adult protective services (APS) are designed to establish and/or strengthen appropriate family and social support systems in order 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 complaints and reports of adult abuse, neglect or exploitation (or the risk thereof) as related to adults 60 years or older and incapacitated adults age 18 or older. This service also includes the provision of case management to alleviate the risk of abuse, neglect or exploitation. 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.

1.7 Distinction between Adult Services and APS

- Provision of Adult Services 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.

1.8 Philosophy of Adult Services

The following principles are inherent to the provision of Adult Services:

- 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.

1.9 Philosophy of Adult Protective Services

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 primarily social problems and their resolution, for the most part, should be sought through the provision of social services and medical services rather than through the legal system. (**Note:** This does not include incidences of domestic violence which is an issue for the legal system, nor does it include felony abuse and neglect as defined in [§ 18.2-369](#) of the Code of Virginia).

- 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.

1.10 Target populations for Adult Services

According to [22 VAC 40-800-40](#), target populations served by the LDSS fall into three categories:

- Those *required* to be served.
- Those encouraged to be served to the extent that funds are available.
- Those served at the option of the LDSS).

1.10.1 **Required to be served**

The target population **required** to be served includes the following:

- Any impaired adult who is in need of nursing facility preadmission screening for nursing facility placement, Medicaid home- and community-based waiver services, or assisted living facility assessment.
- Any impaired adult with low income who is in need of home-based services, to the extent that funds are available.
 - Each local board shall provide for the delivery of home-based services that include homemaker, companion, or chore services that will allow individuals to attain or maintain self-care and are likely to prevent or reduce dependency, to the extent the funds are made available to each locality.

1.10.2 **Encouraged to be served**

The target population **encouraged** to be served to the extent that funds are available include the following:

- Any impaired adult who, upon emancipation from custody of the LDSS, is in need of services.
- Any impaired adult who is in need of alternative living arrangements to avoid institutionalization and who requests services.

- Any adult who is in need of community-based care to avoid institutionalization and who requests services.

1.10.3 Served at the option of LDSS

- The target population to be served at the **option** of the LDSS includes any family with no minor children in the home that requests services.

1.11 Target populations for APS

Each LDSS, to the extent that funds are available, shall provide adult protective services for adults who are found to be abused, neglected, or exploited and who are:

- 60 years of age or older; or
- 18 years of age or older and 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](#). (§ [63.2-1605](#) of the Code of Virginia).

1.12 Service workers as mandated reporters

Service workers in an LDSS are mandated reporters pursuant to § [63.2-1606](#) of the Code of Virginia. Even if the adult is currently receiving services, if the worker believes that an adult is abused, neglected or exploited, or at risk thereof, he shall report this to the appropriate staff in the LDSS.

1.13 Confidentiality

Section [63.2-104](#) of the Code of Virginia requires that an adult's information be kept confidential. With certain exceptions, an individual shall give written permission before information may be obtained from other sources or given to an individual or an agency. See Chapter 6 for additional information regarding confidentiality of an individual's information. Also see the Government Data Collection and Dissemination Practices Act (§ [2.2-3800 et seq.](#) of the Code of Virginia), and the Freedom of Information Act (§ [2.2-3700 et seq.](#) of the Code of Virginia).

See Chapter 2, Adult Protective Services, regarding confidentiality in Adult Protective Services cases.

1.14 Documentation and record retention

The Adult Services and Adult Protective Services Programs use a computerized web-based case management system called ASAPS to record and maintain case management forms and functions needed to document the activities of the service

worker. ASAPS is in continuous development and future enhancements to ASAPS will gradually diminish the need for the LDSS to maintain paper documents in a case file. VDSS has designated ASAPS as the case management system of record for all AS and all APS cases. Service workers are required to use all of the ASAPS screens to document APS reports and investigations and the provision of services. All other required forms and documents should be maintained in the adult's case record. The combination of ASAPS and the adult's case record provide the required documentation of the activities of the service worker, the services provided to the adult and that the worker has met the requirements concerning frequency of case contact and other policy requirements.

The LDSS shall maintain an adult's case records in accordance with accepted professional standards and practices. All records shall be complete, accurate, accessible, and systematically organized according to requirements. All record entries, including forms, purchase of services orders, provider/vendor agreements, etc., 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.

- Adult Services cases that do not contain an APS report, an ALF assessment, or a PAS screening shall be retained for three years after the last case action.
- Adult Services cases and APS cases with an APS report shall be retained five years after case closure.
- Cases that contain ALF assessments or nursing facility PAS shall be retained five years after the date of assessment.
- Approved Adult Services Providers Records shall be retained 3 years after last action.
- Records or cases that have been retained for the appropriate time frame shall be destroyed according to number 8 on the first page of the GS-15.

1.15 Legal basis – Code of Virginia

The following serve as the legal basis for the Adult Services/Adult Protective Services Program from the Code of Virginia. Full text of each of the Code sections is available by accessing the [Virginia General Assembly Legislative Information System website](#).

1.15.1 Homemaker, companion, or chore services (§ [63.2-1600](#) of 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.

1.15.2 Authority to provide adult foster care services (§ [63.2-1601](#) of the Code of Virginia)

Authorizes each local board of social services to provide adult foster care services that may include recruitment, approval, placement in, and supervision of adult foster care homes.

1.15.3 Criminal history check for agency approved providers of services to adults (§ [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.

1.15.4 Other adult services (§ [63.2-1602](#) of the Code of Virginia)

Requires each local board of social services to participate in Pre-Admission Screening for admissions to nursing homes, assessment for assisted living facilities; long-term care service coordination with other local agencies; provide 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](#), "Preadmission Screening," all individuals who will be eligible for community or institutional long-term care services as defined in the state plan for medical assistance services shall be evaluated to determine their need for nursing facility services as defined in the plan. The Department of Medical Assistance Services (DMAS) requires a preadmission screening of all individuals who, at the time of application for admission to a nursing facility, are eligible for medical assistance or will become eligible within six months following admission. This includes screening for both nursing facility and Medicaid home- and community-based waiver services (with the exception of the Mental Retardation/Intellectual Disability (MR/ID) Waiver). The community-based screening team shall consist of a nurse, service worker, and physician who are employees of the Department of Health or the LDSS.

Pursuant to § [63.2-1804](#), "Uniform Assessment Instrument," 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 uniform assessment instrument 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 as determined by State Board regulation.

Pursuant to [§ 37.2-837](#), “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 as determined by policy approved by the State Board of Social Services. The social services will be a component of the required discharge plan prepared by the prescription team pursuant to [§ 37.2-505](#).

Pursuant to [§ 37.2-505](#), “Coordination of Services for Preadmission Screening and Discharge Planning,” local social services agencies 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.

1.15.5 Appeal to Commissioner regarding home-based and adult foster care services ([§ 63.2-1602.1](#) of the Code of Virginia)

Provides individuals receiving home-based care and adult foster care services appeal rights concerning decisions affecting service delivery by the LDSS.

1.15.6 Adult Protective Services ([§§ 63.2-1603 through 1610](#) of the Code of Virginia)

Authorizes 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.

1.15.7 Auxiliary Grants Program ([§ 63.2-800](#) of the Code of Virginia)

In order to receive an AG 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.

1.15.8 Community services boards; local government departments; powers and duties ([§ 37.2-504](#) of the Code of Virginia); and behavioral health authorities; powers and duties ([§ 37.2-605](#) of the Code of Virginia)

Requires 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.

1.16 Legal basis – department regulations

The following serve as the regulatory legal basis for the Adult Services/Adult Protective Services Program. Departmental regulations are reviewed at least every four years. Full text of each of the Department's regulations (beginning with "VAC") can be accessed via the [Virginia General Assembly Legislative Information System website](#).

22 VAC40-25	Auxiliary Grants Program
22 VAC 40-740	Adult Protective Services
22 VAC 40-745	Assessment in Assisted Living Facilities
22 VAC 40-771	Adult Services Approved Providers
22 VAC 40-780	<i>Elimination of Financial Eligibility Criteria for Direct Social Services</i>
22 VAC 40-800	Family Based Social Services
22 VAC 40-910	General Provisions for Maintaining and Disclosing Confidential Information of Public Assistance, Child Support Enforcement and Social Services Record

1.17 Adult Services Program report

Each year the Adult Services Program compiles an annual report of statistical data on each of its programs. This report also includes AS/APS contacts in each locality, as well as specific Code of Virginia citations. The report is located on the VDSS [internal website](#) or the VDSS [public website](#).

1.18 Appendix A: Forms, brochures, and manuals

VDSS maintains an intranet system, called SPARK, which is accessible only by state staff and LDSS staff. The SPARK [home page](#) provides information on VDSS divisions and programs.

Information about Adult Services and Adult Protective Services can be accessed from the home page by clicking on “Division and Initiatives,” then “Family Services,” then “Adult Services” or by using the [direct link](#).

VDSS also maintains a [Public website](#).

1.18.1 Adult Services manuals, documents, and forms available on the web

AS manuals and other informational documents are available on [SPARK](#) under the links “AS Documents” and “AS Manuals.”

AS forms are posted on [SPARK](#) and on the VDSS [public website](#). Forms are usually available in PDF and Word format. The worker can download these forms, as the Adult Services Program cannot provide copies of forms.

1.18.2 VDSS forms available on the web

Other [VDSS forms](#) are also located on SPARK.

1.18.3 ASAPS Robo Help

The ASAPS user’s manual (ASAPS-Robo Help), is found under the “Help” icon at the top of each screen in ASAPS. *ASAPS-Robo Help is also located on SPARK on the “ASAPS” [webpage](#).* ASAPS-Robo Help may be downloaded from that site.

1.18.4 Adult Services Programs brochures and educational materials

Brochures and educational materials are available on the [Adult Services website](#) or on the VDSS [public website](#).

Additional educational [information for mandated reporters](#) is available on the VDSS public website.

1.18.5 Medicaid provider manuals and forms

The [Department of Medical Assistance Services \(DMAS\) website](#) has downloadable copies of all its program manuals and forms. The website also has information concerning the various Medicaid Waiver programs and other services offered by DMAS. The [manuals](#) may be downloaded from the DMAS web site; use the drop-down box to select the manual to download.

Hard copies of Medicaid manuals are available for purchase. Contact [Commonwealth Martin](#) to order a copy of a DMAS manual.

1.19 Appendix B: Adult Services/Adult Protective Services Program staff

Home Office:

Gail Nardi, Program Manager, 804-726-7537

Paige McCleary, Program Consultant, 804-726-7536

Tishaun Harris-Ugworji, Program Consultant, 804-726-7560

Venus Bryant, Administrative Assistant, 804-726-7533

Home Office Address:

Virginia Department of Social Services
Adult Services Program
801 East Main Street
Richmond, VA 23219

AS/APS Regional Program Consultants:

Carey *Kalvig*, Eastern Regional Office, 757-491-3983

Marjorie Marker, Central Regional Office, 804-662-9783

Carol McCray, Western Regional Office, 276-676-5636

Vacant (contact another regional consultant), Piedmont Regional Office, 540-204-9638

Andrea Jones, Northern Regional Office, 540-347-6313

1.20 Appendix C: Adult Services area assignments

Eastern	Central	Northern	Piedmont	Western
Carey Kalvig Pembroke Four, Suite 300 Virginia Beach, VA 23462 ☎ 757-491-3983 FAX: 757-552-1832	Marjorie Marker 1604 Santa Rosa Road Suite 130 Richmond, VA 23229 ☎ 804-662-9783 FAX: 804-662-7023	Andrea Jones 170 West Shirley Avenue Suite 200 Warrenton, VA 22186 ☎ 540-347-6313 FAX: 540-347-6331	Vacant 1351 Hershberger Rd Suite 210 Roanoke, VA 24012 ☎ 540-204-9638 FAX: 540-561-7536	Carol McCray 190 Patton Street Abingdon, VA 24210 ☎ 276-676-5636 FAX: 276-676-5621
Agencies	Agencies	Agencies	Agencies	Agencies
Accomack (001) 22 Brunswick (025) 13 Chesapeake (550) 23 Dinwiddie (053) 19 Franklin City (620) 23 Gloucester (073) 18 Greensville (081)/Emporia (595) 19 Hampton (650) 23 Isle of Wight (093) 23 James City (095) 23 Matthews (115) 18 Newport News (700) 23 Norfolk (710) 23 Northampton (131) 22 Portsmouth (740) 23 Prince George (149) 19 Southampton (175) 23 Suffolk (800) 23 Surry (181) 19 Sussex (183) 19 Virginia Beach (810) 23 Williamsburg (830) 23 York (199)/Poquoson (735) 23	Amelia (007) 14 Buckingham (029) 14 Caroline (033) 16 Charles City (036) 15 Chesterfield (041)/ Colonial Heights (570) 15 Cumberland (049) 14 Essex (057) 18 Fluvanna (065) 10 Goochland (075) 15 Hanover (085) 15 Henrico (087) 15 Hopewell (670) 19 King and Queen (097) 18 King William (101) 18 Lancaster (103) 17 Lunenburg (111) 14 Middlesex (119) 18 New Kent (127) 15 Northumberland (133) 17 Nottoway (135) 14 Petersburg (730) 19 Powhatan (145) 15 Prince Edward (147) 14 Richmond City (760) 15 Richmond County (159) 17 Westmoreland (193) 17	Alexandria (510) 8 Arlington (013) 8 Clarke (043) 7 Culpeper (047) 9 Fairfax (059)/Fairfax City (600)/Falls Church (610) 8 Fauquier (061) 9 Frederick (069) 7 Fredericksburg (630) 16 Greene (079) 10 Harrisonburg (660) 6/ Rockingham (165 King George (099) 16 Loudoun (107) 8 Louisa (109) 10 Madison (113) 9 Manassas City (683) 8 Manassas Park (685) 8 Orange (137) 9 Page (139) 7 Prince William (153) 8 Rappahannock (157) 9 Shenandoah (171) 7 Spotsylvania (177) 16 Stafford (179) 16 Warren (187) 7 Winchester (840) 7	Albemarle (003) 10 Alleghany(005)/Covington (580) 5/ Clifton Forge (560) 5 Amherst (009) 11 Appomattox (011) 11 Bath (017) 6 Bedford (019)/Bedford City (515) 11 Botetourt (023) 5 Campbell (031) 11 Charlotte (037) 14 Charlottesville (540) 10 Craig (045) 5 Danville (590) 12 Franklin County (067) 12 Halifax (083)/South Boston (780) 13 Henry (089)/ Martinsville (690) 12 Highland (091) 6 Lynchburg (680) 11 Mecklenburg (117) 13 Nelson (125) 10 Pittsylvania (143) 12 Roanoke (770) 5 Roanoke Co. (161)/Salem (775) 5 Rockbridge (163)/Buena Vista (530)/ Lexington (678) 6 Shenandoah Valley (Staunton (790)Augusta (015)/ Waynesboro (820)6)	Bland (021) 3 Bristol (520) 3 Buchanan (027) 2 Carroll (035) 3 Dickenson (051) 2 Floyd (063) 4 Galax (640) 3 Giles (071) 4 Grayson (077) 3 Lee (105) 1 Montgomery (121) 4 Norton (720) 1 Patrick (141) 12 Pulaski (155) 4 Radford (750) 4 Russell (167) 2 Scott (169) 1 Smyth (173) 3 Tazewell (185) 2 Washington (191) 3 Wise (195) 1 Wythe (197) 3

The number in parentheses following locality name is the FIPS code; the number following the FIPS code is for the Planning District in which the locality is located. There are 120 LDSS.

2

ADULT PROTECTIVE SERVICES

TABLE OF CONTENTS

2.1	Introduction
2.2	Legal basis
2.3	Charge to LDSS
2.4	Definitions
2.5	Adult Protective Services intake
2.5.1	Accepting reports
2.5.2	Adult Protective Service reports
2.5.3	Source of reports
2.5.3.1	Mandated reporters
2.5.3.2	Requirements of employers of mandated reporters
2.5.3.3	Training for mandated reporters
2.5.3.4	Duplicate reports from mandated reporters
2.5.3.5	Exceptions to immediate reporting requirement for mandated reporters
2.5.3.6	Reports of deaths that are results of abuse and neglect
2.5.3.7	Failure to report
2.5.3.8	Types of reports
2.5.3.8.1	Reports of sexual abuse, criminal abuse and neglect, other criminal activity
2.5.3.8.2	Financial institution staff reports
2.5.3.8.3	Voluntary reports
2.5.3.8.4	Anonymous reports
2.5.3.8.5	Self-reports
2.5.3.8.6	Domestic violence reports
2.5.3.8.7	LDSS worker generated reports
2.5.3.8.8	Reports of ongoing cases

- 2.5.3.8.9 Reports that the adult is incapable of making and signing an application for Medicaid
 - 2.5.3.8.10 APS hotline reports
 - 2.5.3.8.11 When an annual report is not filed or is filed and creates reason to suspect
 - 2.5.3.8.12 Reports involving resignation of agent
 - 2.5.4 Rights of persons who report
 - 2.5.4.1 Immunity
 - 2.5.4.2 Malicious reports
 - 2.5.4.3 Protecting the identity of the reporter
 - 2.5.4.4 Information to be given to the reporter
 - 2.5.4.5 Additional information to be given to mandated reporters
 - 2.5.5 Confidentiality
 - 2.6 Intake interview**
 - 2.7 Determining validity of reports**
 - 2.7.1 Characteristics of a valid report of adult abuse, neglect, or exploitation
 - 2.7.1.1 Age or incapacity
 - 2.7.1.1.1 Age
 - 2.7.1.1.2 Incapacity
 - 2.7.1.2 Identifiable adult
 - 2.7.1.3 Circumstances of abuse, neglect, and exploitation
 - 2.7.1.4 LDSS of jurisdiction
 - 2.7.2 Determining jurisdiction
 - 2.7.2.1 Place of residence
 - 2.7.2.2 Outside of the place of residence
 - 2.7.2.3 Where abuse, neglect, or exploitation was discovered
 - 2.7.2.4 Nonresident in the Commonwealth
 - 2.7.2.5 When the alleged victim is incarcerated in a state corrections facility
- 2.8 Validity**
 - 2.8.1 When the report is not valid
- 2.9 Documenting the APS Report in ASAPS**
 - 2.9.1 When there is no service case in ASAPS
 - 2.9.1.1 APS Report screen in ASAPS
 - 2.9.1.2 Case Info screen in ASAPS
 - 2.9.2 When there is a closed service case in ASAPS
 - 2.9.2.1 Case Info screen in ASAPS

- 2.9.2.2 APS Report screen in ASAPS
- 2.9.3 When there is an open service case in ASAPS
 - 2.9.3.1 APS Report screen in ASAPS
 - 2.9.3.2 Case Info screen in ASAPS
- 2.9.4 Invalid reports
- 2.10 Time frame for initiating an APS investigation**
- 2.11 Hotline reports**
- 2.12 Preparing for the investigation**
 - 2.12.1 Coordinating with other investigators
 - 2.12.2 Where the investigation extends across city or county lines
 - 2.12.3 Conflict of interest
- 2.13 Conducting the investigation**
 - 2.13.1 Authority to initiate and conduct investigations
 - 2.13.2 Consultation with other investigators
 - 2.13.3 Authority to Gain Access
 - 2.13.4 Required visit and private interview
 - 2.13.5 When the required visit and private interview cannot be completed
 - 2.13.6 Separate interviews with alleged victim and alleged perpetrator
 - 2.13.7 Taking and using photographs, video, or audio recording or appropriate medical imaging of an adult
 - 2.13.8 The alleged perpetrator
 - 2.13.8.1 Identity of perpetrators
 - 2.13.8.2 Timing of interview with the alleged perpetrator
 - 2.13.8.3 Setting for the interview with the alleged perpetrator
 - 2.13.8.4 Interview with the alleged perpetrator who is a minor
 - 2.13.8.5 The interview with the alleged perpetrator is not completed
 - 2.13.9 Consultation with collaterals
 - 2.13.10 Requirement to release information by mandated reporters
 - 2.13.11 Authority to access information and records regarding action taken by attorneys-in-fact or other agents
 - 2.13.12 Requests to include other individuals in interviews with collaterals
 - 2.13.13 Collaterals in facilities
- 2.14 APS assessment**
 - 2.14.1 Components of the assessment
 - 2.14.1.1 The APS assessment narrative

- 2.14.1.2 The assessment of the adult's circumstances presented in sub-headed titles
 - 2.14.1.2.1 Environment
 - 2.14.1.2.2 Functional ability
 - 2.14.1.2.3 Physical health
 - 2.14.1.2.4 Mental/psychosocial health
 - 2.14.1.2.5 Support system
 - 2.14.1.2.6 Income and resources

2.15 Decision making, disposition, and application

- 2.15.1 Decision making
- 2.15.2 Eligible adults
- 2.15.3 Dispositions
 - 2.15.3.1 Time frame for making dispositions
 - 2.15.3.2 "Needs protective services and accepts"
 - 2.15.3.3 "Needs protective services and refuses"
 - 2.15.3.4 "Need for protective services no longer exists"
 - 2.15.3.5 "Unfounded"
 - 2.15.3.6 "Invalid"
- 2.15.4 APS Report Form

2.16 Notification/time frames

- 2.16.1 Notification of the adult or his or her legal guardian and/or conservator or responsible person
- 2.16.2 Referrals to law enforcement, medical examiners, Commonwealth Attorneys, and the Adult Fatality Review Team
- 2.16.3 Agencies or programs with a legitimate interest

2.17 Opening a case to Adult Protective Services

2.18 Service planning and service delivery

- 2.18.1 The service plan
- 2.18.2 Assessment
- 2.18.3 Service plan requirements
- 2.18.4 Participation of the adult
- 2.18.5 Participation of the adult's representative
- 2.18.6 Incapacitated adult with no representative
- 2.18.7 Review of available resources
- 2.18.8 Community-based services

- 2.18.9 Alternative living arrangements
 - 2.18.9.1 When the adult consents to an alternative living arrangement
 - 2.18.9.2 Voluntary admission to a state facility
 - 2.18.9.3 Placement when the adult lacks capacity to consent
- 2.18.10 Protective services ordered by the court
- 2.18.11 Purchased services
- 2.18.12 The least restrictive level of intervention
- 2.18.13 Components of the service plan
 - 2.18.13.1 Goals
 - 2.18.13.2 Unmet needs
 - 2.18.13.3 Objectives
 - 2.18.13.4 Tasks
 - 2.18.13.5 Target dates

2.19 Implementaton of the service plan

2.20 Judicial proceedings

- 2.20.1 Access to provide protective services
- 2.20.2 Order to enjoin interference
- 2.20.3 Emergency order for Adult Protective Services (§ 63.2-1609 of the Code of Virginia)
- 2.20.4 Judicial authorization of treatment and detention of certain persons
- 2.20.5 Filing petition for appointment of a guardian and/or conservator (§ 37.2-1001 of the Code Virginia)
- 2.20.6 Appointment of a guardian
- 2.20.7 Appointment of a conservator
- 2.20.8 Procedure in absence of an advance directive (§ 54.1-2986 of the Code of Virginia)
- 2.20.9 Admission of incapacitated persons to a mental health facility pursuant to advance directives or by guardians
 - 2.20.9.1 Additional requirements
- 2.20.10 Involuntary admission
- 2.20.11 Mental health Emergency Custody and involuntary Temporary Detention Orders
- 2.20.12 Preliminary protective order in cases of family abuse
- 2.20.13 Emergency protective orders authorized in certain cases
- 2.20.14 Arrest without a warrant in cases of assault and battery against a family or household member

2.20.15 Criminal abuse and neglect of incapacitated adults

2.21 Reimbursement for legal services

2.21.1 Payment for emergency order proceedings

2.21.1.1 When cost is borne by the subject of the petition

2.21.1.2 When cost is borne by the Commonwealth

2.21.2 Payment for guardianship proceedings

2.21.2.1 When cost is borne by the petitioner

2.21.2.2 When cost is borne by the Commonwealth

2.21.3 Payment for guardians ad litem and other attorney fees

2.21.3.1 When cost is borne by the petitioner

2.21.3.2 When cost is borne by the Commonwealth

2.21.3.3 Payment for guardianship proceeding for medicaid referrals

2.21.4 Payment for psychological and physical examination

2.21.5 Reimbursement for cost of providing protective services

2.21.5.1 Involuntary adult protective services

2.21.5.2 Voluntary adult protective services

2.22 Evaluation/reassessment

2.22.1 Evaluation

2.22.2 Reassessment

2.22.2.1 Continue Adult Protective Services

2.22.2.2 Transfer to Adult Services

2.22.3 Close the case

2.22.3.1 Procedure for closure

2.23 Investigations in long-term care facilities, acute-care facilities, and other group care facilities

2.24 Accepting facility reports

2.24.1 Person-specific reports

2.24.2 Resident-to-resident reports

2.24.3 When the perpetrator resident continues to reside in the facility

2.24.4 Incident reports

2.24.5 Injuries of unknown origin

2.24.6 Sexual abuse and sexual assault in long-term care facilities, acute-care facilities, and other group care facilities

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

2.24.8 Facility reports that do not meet validity criteria

2.24.9 Reports that address the general conditions of a facility

2.25 Responsibility of the APS worker in facility investigations

2.26 Coordination with investigators with related responsibilities

2.27 Investigators with regulatory or statutory authority

2.27.1 The Department of Social Services, Division of Licensing Programs

2.27.2 The Department of Health, Office of Licensure and Certification

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

2.27.4 The Office of the State Long-Term Care Ombudsman

2.27.5 The Virginia Office for Protection and Advocacy

2.27.6 The Department of Health Professions

2.27.7 Office of the Attorney General, Medicaid Fraud Control Unit

2.27.8 Local law enforcement

2.28 Information sharing

2.28.1 Information sharing for the purposes of coordinating a joint investigation

2.28.2 Disclosure of the identity of the reporter

2.28.3 Information sharing when a joint investigation is not planned

2.28.4 Assurances that information will be held confidential

2.28.5 Confidential information collected by the investigatory team

2.28.6 Confidential information not collected by the investigatory team

2.29 Preparing for the facility investigation

2.29.1 Availability of records

2.29.2 Sources of information available within a facility

2.29.3 DBHDS incident reports

2.30 Persons to inform when a facility report will be investigated

2.30.1 Facility administrator/director/superintendent/person in charge

2.30.2 When the person in charge cannot be located

2.30.3 Notification when no person is in charge

2.30.4 Legally appointed guardians/conservators

2.30.5 Responsible person

2.31 Facility Investigation

2.32 Conclusion of a facility investigation

2.33 Notifications and Reports

2.33.1 Notifications

- 2.33.2 Reports
- 2.34 Identification of service needs and service planning**
- 2.35 Monitoring and follow-up**
- 2.36 Confidentiality**
- 2.37 Release of information**
 - 2.37.1 Agencies with a legitimate interest in confidential information
 - 2.37.2 Persons/agencies with legitimate interest
 - 2.37.3 Circumstances mandating disclosure of confidential information
 - 2.37.3.1 When disclosure is ordered by the court
 - 2.37.3.2 Notification to reporter
 - 2.37.4 Request for private information
 - 2.37.4.1 Specific confidential information that may be disclosed
 - 2.37.4.2 Assurances to the LDSS
 - 2.37.4.3 Methods of obtaining assurances
 - 2.37.4.4 Notification that information has been disclosed
- 2.38 Appendix A: APS forms**
- 2.39 Appendix B: Preponderance of evidence**
- 2.40 Appendix C: Sample notice of hearing (to consider ordering emergency services)**
- 2.41 Appendix D: Sample petition for emergency protective services and appointment of a temporary guardian**
- 2.42 Appendix E: Sample order of emergency protective services**
- 2.43 Appendix F: Protecting vulnerable adults through guardianship and/or conservatorship**
 - 2.43.1 Basis and purpose
 - 2.43.2 Types of protection and responsibilities
 - 2.43.2.1 Guardian
 - 2.43.2.2 Conservator
 - 2.43.2.3 Guardians and conservators
 - 2.43.3 Situations that indicate need for a guardian or conservator
 - 2.43.4 Determining the need for a guardian/conservator
 - 2.43.5 Documenting incapacity
 - 2.43.5.1 Indicators of incapacity
 - 2.43.5.2 The nature and extent of the adult's alleged incapacity
 - 2.43.5.3 Documenting the alleged incapacitated adult's decision-making difficulties

- 2.43.6 Who serves as guardian/conservator
 - 2.43.6.1 Guardians/conservators who are Virginia residents
 - 2.43.6.2 Guardians/conservators who are non-residents
- 2.43.7 Eligibility for public guardian or conservator
- 2.43.8 When the incapacitated subject of the petition is indigent
- 2.43.9 Procedures to petition for appointment of a guardian/conservator
 - 2.43.9.1 Circuit court in which petitions are to be filed
 - 2.43.9.2 *Jurisdiction*
 - 2.43.9.3 *Special Jurisdiction*
 - 2.43.9.4 *Appropriate Forum*
 - 2.43.9.5 Who may file a petition?
 - 2.43.9.6 Information to include in a petition
 - 2.43.9.7 Cost of proceedings waived or borne by the Commonwealth
- 2.43.10 Petition for restoration of capacity, modification, termination of the guardianship/conservatorship or removal of the guardian/conservator
- 2.43.11 Compensation to guardian ad litem, attorney, evaluator appointed by the court
- 2.43.12 Duties and powers of guardians
- 2.43.13 Reasons for termination of guardianship
- 2.43.14 *Transfer of guardianship or conservatorship*
- 2.43.15 *Accepting guardianship or conservatorship transferred to the Commonwealth*
- 2.43.16 *Registration of guardianship orders*
- 2.43.17 Guardian reports filed with the LDSS
 - 2.43.17.1 First report
 - 2.43.17.2 Subsequent guardian reports
 - 2.43.17.3 Co-guardian reports
 - 2.43.17.4 Processing the guardian report filing fees
 - 2.43.17.5 When the LDSS or LDSS employee is the guardian
 - 2.43.17.6 Referral of guardian reports to another LDSS
 - 2.43.17.7 Review of guardian reports by the LDSS
 - 2.43.17.8 Follow-up on the review of guardian reports
 - 2.43.17.9 When a guardian fails to file a required report
 - 2.43.17.10 Death of the incapacitated adult; final report
 - 2.43.17.11 Maintenance of the guardian report form
 - 2.43.17.12 Purging of the guardian report form

- 2.43.18 General duties and liabilities of conservators
- 2.43.19 Accounting responsibilities of the conservator
- 2.43.20 Management powers and duties of conservators
- 2.44 Appendix G: Sample petition for appointment of a guardian or conservator (for information purposes only)**
- 2.45 Appendix H: Instructions to newly appointed guardians**
- 2.46 Appendix I: Guidelines for review of guardian's report**
- 2.47 Appendix J: Draft letter to guardian when the initial report is overdue**
- 2.48 Appendix K: Draft letter to guardian when the first or subsequent or annual report is overdue**
- 2.49 Appendix L: AS/APS Regional Program Consultants service areas**
- 2.50 Appendix M: Directory of agencies/programs**
- 2.51 Appendix N: Letter of understanding**
- 2.52 Appendix O: Indicators of abuse, neglect, and exploitation**
- 2.53 Appendix P: Code of ethics**
- 2.55 Appendix R: Sample letter to mandated reporter (intent to impose civil penalty)**
- 2.56 Appendix S: Chapter 16 (§§ 63.2-1603 through 63.2-1610) of Title 63.2 of the Code of Virginia**
- 2.57 Appendix T: Code of Virginia, criminal abuse or neglect of incapacitated adults**
- 2.58 Appendix U: APS investigation photography guidelines**
 - 2.58.1 Photographs taken during investigations
 - 2.58.2 Cases going to court
 - 2.58.3 Equipment

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. 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, are provided under Adult Services.

2.2 Legal basis

The mandate for providing protective services to adults is placed with local departments of social services (LDSS) by the Code of Virginia (§§ [63.2-1603](#) through [63.2-1610](#)) and by the State Board of Social Services. Throughout this chapter, indented text marked with a blue, vertical line denotes verbatim content from the Code of Virginia and/or the Department's Adult Protective Services (APS) Regulations ([22 VAC 40-740](#)).

(§ [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, subject to supervision of the Commissioner and in accordance with regulations adopted by the Board, 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](#).

2.3 Charge to LDSS

(§ [63.2-1605 F](#) of the Code of Virginia). Local departments shall foster the development, implementation, and coordination of adult protective services to prevent adult abuse, neglect, and exploitation.

2.4 Definitions

The following words and terms are defined in the Code of Virginia and state regulations. When used in this chapter, they shall have the following meaning, unless the context clearly indicates otherwise:

<u>Term</u>	<u>Definition</u>
Abuse	(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 incapacitated person (§ 18.2-369 of the Code of Virginia). Note: <i>this definition appears in the criminal section of the Code of Virginia.</i>
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. 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).
Adult Abuse	The willful infliction of physical pain, injury, mental anguish, or unreasonable confinement of an adult (§ 63.2-100 of the Code of Virginia).

<u>Term</u>	<u>Definition</u>
Adult at Risk	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.
Adult Neglect	A condition in which an adult 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 Protective Services	<p>Services provided by the LDSS that are necessary to protect an adult from abuse, neglect, or exploitation (§ 63.2-100 of the Code of Virginia).</p> <p>APS also includes the receipt, investigation, and disposition of complaints and reports of adult abuse, neglect, and exploitation of adults 18 years of age and older who are incapacitated and adults 60 years of age and over by the LDSS. Adult protective services also include the provision of casework and care management by the LDSS in order to stabilize the situation or to prevent further abuse, neglect, and exploitation of an adult at risk of abuse, neglect, and exploitation. If appropriate and available, adult protective services may include the direct provision of services by the LDSS or arranging for home-based care, transportation, adult day services, meal service, legal proceedings, alternative placements, and other activities to protect the adult (22 VAC 40-740-10).</p>
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 causes serious bodily or mental injury to the complaining witness, or the accused uses or threatens to use a

<u>Term</u>	<u>Definition</u>
	dangerous weapon (§ 18.2-67.3 of the Code of Virginia).
Annual Report of Guardian	An annual report on the personal status of a person who is incapacitated for whom a guardian was appointed. The court-appointed guardian is to file the Annual Report of Guardian with the LDSS in the jurisdiction in which the guardian was appointed. The form to be used for the “Annual Report of Guardian for an Incapacitated Person” is available on the DSS internal website.
ASAPS	The automated state system used to collect case and client information and provide case management for the Adult Service and Adult Protective Services Programs.
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 (22 VAC 40-740-10).
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” (§ 37.2-1000 of the Code of Virginia).
Department	The state department of social services (§ 63.2-100 of the Code of Virginia).
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 of whether or not adult abuse, neglect, or exploitation has occurred (22 VAC 40-740-10).
Documentation	Information and materials, written or otherwise, concerning allegations facts and evidence (22 VAC 40-740-10).
Emergency	Circumstances in which an adult is living in conditions that present a clear and substantial risk of death or immediate and

<u>Term</u>	<u>Definition</u>
	serious physical harm to himself or others (§ 63.2-1603 of the Code of Virginia).
Exploitation	<p>The illegal use of an incapacitated adult or his resources for another's profit or advantage (§ 63.2-100 of the Code of Virginia).</p> <p>This includes acquiring an adult's resources through the use of the adult's mental or physical incapacity; the disposition of the incapacitated adult's property by a second party to the advantage of the second party and to the detriment of the incapacitated adult; misuse of funds; acquiring an advantage through threats to withhold needed support or care unless certain conditions are met; persuading an incapacitated adult to perform services including sexual acts to which the adult lacks the capacity to consent (22 VAC 40-740-10).</p>
Family Abuse	<p>Any act involving violence, force, or threat <i>that</i> results in bodily injury or places one in reasonable apprehension of <i>death, sexual assault</i> or bodily injury and <i>that</i> is committed by a person against such person's family or household member. <i>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</i> (§16.1-228 of the Code of Virginia).</p>
Family or Household Member	<ul style="list-style-type: none">• 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

<u>Term</u>	<u>Definition</u>
	person, whether or not the person and that individual have been married or have resided together at any time; or
	<ul style="list-style-type: none">• 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 of a bank, savings institution, credit union, securities firm, accounting firm, or insurance company (§ 63.2-1606 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 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" (§ 37.2-1000 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. on the hearing of the petition for appointment of a guardian or conservator, the guardian ad litem advocates for the adult who is the subject of the hearing, and his duties are usually concluded when the case is decided (22 VAC 40-740-10).
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, mental retardation, 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. This definition is for the purpose of establishing an adult's eligibility for adult

<u>Term</u>	<u>Definition</u>
	<p>protective services and such adult may or may not have been found incapacitated through court procedures (22 VAC 40-740-10).</p> <p>An incapacitated person also means 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 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 (§ 37.2-1000 of the Code of Virginia). Note: This definition is used by the court to determine need for the appointment of a guardian or a conservator.</p>
Intimate Parts	The genitalia, groin, breast, or buttocks of any person (§ 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 (22 VAC 40-740-10).
Lacks Capacity to Consent	A preliminary judgment of an LDSS service worker that an adult is unable to consent to receive needed services for reasons that relate to emotional or psychiatric problems, mental retardation, developmental delay, or other reasons which impair the adult's ability to recognize a substantial risk of death or immediate and serious harm to himself. The lack of capacity to consent may be either permanent or temporary. The worker 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 (22 VAC-40-740-10).
Legally Incapacitated	A condition describing a person who has been adjudicated incapacitated by a circuit court because of a mental or physical condition which renders him, either wholly or partially, incapable

<u>Term</u>	<u>Definition</u>
	of taking care of himself or his estate (22 VAC 40-740-10).
Legitimate Interest	A lawful, demonstrated privilege to access the information as defined in § 63.2-104 of the Code of Virginia (22 VAC 40-740-10).
Local Department	The local department of social services (LDSS) of any county or city in this Commonwealth (§ 63.2-100 of the Code of Virginia).
Local Director	The director or his designated representative of the LDSS of the city or county (§ 63.2-100 of the Code of Virginia).
Mental Anguish	A state of emotional pain or distress resulting from activity (verbal or behavioral) of a perpetrator. The intent of the activity is to threaten or intimidate, to cause sorrow or fear, to humiliate, change behavior or ridicule. There must be evidence that it is the perpetrator's activity that has caused the adult's feelings of pain or distress (22 VAC 40-740-10).
Neglect	<p>Neglect includes the failure of a caregiver or another responsible person to provide for basic needs to maintain the adult's physical and mental health and well-being, and it includes the adult's neglect of self. Neglect includes, but is not limited to:</p> <ul style="list-style-type: none">• The lack of clothing considered necessary to protect a person's health. <p>It is generally expected that an adult needs clothing to provide protection from excessive cold. Inadequate clothing would be clothing that is insufficient or inappropriate for the weather.</p> <ul style="list-style-type: none">• 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.• Shelter that is not structurally safe; has rodents or other infestations which may result in serious health problems; or does not have a safe and accessible water supply, safe heat source or sewage disposal. Adequate shelter for an adult will depend on the impairments of an adult; however, the adult must be protected from the elements that would seriously endanger his health (e.g., rain, cold or heat) and could result in serious illness or debilitating

<u>Term</u>	<u>Definition</u>
	conditions.
	<ul style="list-style-type: none">• Inadequate supervision by a caregiver (paid or unpaid) who has been designated to provide the supervision necessary to protect the safety and well-being of an adult in his care.• The failure of persons who are responsible for caregiving to seek needed medical care or to follow medically prescribed treatment for an adult, or the adult has failed to obtain such care for himself. The needed medical care is believed to be of such a nature as to result in physical and/or mental injury or illness if it is not provided.• Medical neglect includes, but is not limited to, the withholding of medication or aids needed by the adult such as dentures, eye glasses, hearing aids, walker, etc. it also includes the unauthorized administration of prescription drugs, over- or under-medicating, and the administration of drugs for other than bona fide medical reasons, as determined by a licensed health care professional.• 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 (22 VAC 40-740-10).
Neglect	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 an incapacitated adult (§ 18.2-369 of the Code of Virginia). Note: <i>this definition appears in the criminal section of the Code of Virginia.</i>
Notification	Informing designated and appropriate individuals of the local LDSS's actions and the individual's rights (22 VAC 40-740-10).
Person Interested in the Welfare of a Principal	For purpose of this guidance, unless otherwise provided in the power of attorney, this means a person who may make a reasonable request that the agent disclose the extent to which he has chosen to act and the actions taken on behalf of the principal.

Term

Definition

These persons identified in [§ 26-85](#) of the Code of Virginia are:

- A person authorized to make health care decisions for the principal.
- The principal's spouse, parent, or descendant.
- An adult who is a brother, sister, niece, or nephew of the principal.
- A person named as a beneficiary to receive any property, benefit, or contractual right on the principal's death or as a beneficiary of a trust created by or for the principal that has a financial interest in the principal's estate.
- The adult protective services unit of the LDSS for the county or city where the principal resides or is located.
- The principal's caregiver or another person who demonstrates sufficient interest in the principal's welfare.
- A person asked to accept the power of attorney.

A person interested in the welfare of a principal may also include a person who may petition a court to construe a power of attorney or review the agent's conduct, and grant appropriate relief. These persons are:

- The principal or the agent.
- A guardian, conservator, personal representative of the estate of a deceased principal, or other fiduciary acting for the principal.
- A person authorized to make health care decisions for the principal.
- The principal's spouse, parent, or descendant.
- An adult who is a brother, sister, niece, or nephew of the principal.
- A person named as a beneficiary to receive any property, benefit, or contractual right on the principal's death or as

<u>Term</u>	<u>Definition</u>
	<p>a beneficiary of a trust created by or for the principal that has a financial interest in the principal's estate.</p> <ul style="list-style-type: none">• The adult protective services unit of the LDSS for the county or city where the principal resides or is located.• The principal's caregiver or another person who demonstrates sufficient interest in the principal's welfare.• A person asked to accept the power of attorney (§ 26-87 of the Code of Virginia).
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 (22 VAC 40-740-10).
Principal	An individual who grants authority to an agent in a power of attorney (§ 26-73 of the Code of Virginia).
Public Conservator	A conservator who is provided through (i) a local or regional program designated by the Department for the Aging as a public conservator pursuant to Article 2 (§ 2.2-711 et seq.) of Chapter 7 of Title 2.2 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 (§ 37.2-1000 of the Code of Virginia).
Public Guardian	A guardian provided through (i) local or regional program designated by the department for the aging as a public guardian pursuant to Article 2 (§ 2.2-711 et seq.) of chapter 7 of title 2.2 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. tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person (§ 37.2-1000 of the Code of Virginia).
Report	An allegation by any person that an adult is in need of protective services. The term "report" shall refer to both reports and complaints of abuse, neglect, and exploitation of adults. The report may be made orally or in writing to the LDSS or to the

<u>Term</u>	<u>Definition</u>
	Adult Protective Services hotline (22 VAC 40-740-10).
Respondent	An allegedly incapacitated person for whom a petition for guardianship or conservatorship has been filed (§ 37.2-1000 of the Code of Virginia).
Responsible Person	<p>A person who has responsibility for the care, custody, or control of an incapacitated person by operation of law or who has assumed such responsibility voluntarily, by contract or in fact (§ 18.2-369 of the Code of Virginia).</p> <p>The term “operation of law” refers to care, custody, or control through some legal means such as guardianship or conservatorship.</p>
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 internal injuries or conditions, whether or not caused by trauma (§ 18.2-369 of the Code of Virginia).
Sexual Abuse	<p>An act committed with the intent to sexually molest, arouse, or gratify any person, where:</p> <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).

<u>Term</u>	<u>Definition</u>
Uniform Assessment Instrument (UAI)	The department's designated assessment form (22 VAC 40-745-10).
Unreasonable Confinement	The use of restraints (physical or chemical), isolation, or any other means of confinement without medical orders, when there is no emergency and for reasons other than the adult's safety or well-being or the safety of others (22 VAC 40-740-10).
Voluntary Protective Services	Those services provided to an adult who, after investigation by the LDSS, is determined to be in need of protective services and consents to receiving the services so as to prevent further abuse, neglect, and exploitation of an adult at risk of abuse, neglect and exploitation (22 VAC 40-740-10).

2.5 Adult Protective Services intake

2.5.1 Accepting reports

Adult Protective Services (APS) intake includes those activities whereby reports concerning the abuse, neglect, or exploitation of adults are received by local agencies, evaluated for appropriateness against the criteria for a valid report, and either accepted for investigation or determined invalid and not appropriate for an APS investigation.

(§ [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 whether or not the individual needs protective services and, if so, what services are needed.

(§ [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 Adult Protective Service reports

The LDSS shall accept and investigate all valid reports that allege abuse, neglect, or exploitation of adults and adults at risk of alleged abuse, neglect, or exploitation. The report shall be reduced to writing **within 72 hours** by completing the appropriate screens in ASAPS. See [ASAPS-Robo Help](#).

An example of an [APS report](#) form is available on the VDSS internal website.

2.5.3 Source of reports

2.5.3.1 Mandated reporters

(§ [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.

Virginia law requires that certain persons having reason to suspect that an adult is abused, neglected, or exploited, report the matter immediately to the LDSS. Persons required to make reports of suspected abuse, neglect, or exploitation include:

(§ [63.2-1606](#) of the Code of Virginia). 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 Drugs; 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.

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

1. Any emergency medical services personnel certified by the board of health pursuant § [32.1-111.5](#), unless such personnel immediately reports the suspected abuse, neglect or exploitation directly to the attending physician at the hospital to which the adult is transported, who shall make such report forthwith;
2. Any guardian or conservator of an adult;
3. 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;
4. Any person providing fully, intermittent, or occasional care to an adult for compensation, including but not limited to companion, chore, homemaker, and personal care workers; and

- 5. Any law-enforcement officer.

2.5.3.2 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. Use of the Acknowledgment of Mandated Reporter Status form is optional.

2.5.3.3 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, online course **ADS5055: Mandated Reporters: Recognizing and Reporting Abuse, Neglect and Exploitation of Adults** available via the [Virginia Institute for Social Services Training Activities \(VISSTA\) website](#). The self-paced, interactive, online course offers an overview of the signs of adult abuse, neglect, and exploitation and guidance on making an APS report.

2.5.3.4 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 or to the toll-free, 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).

2.5.3.5 Exceptions to immediate reporting requirement for mandated reporters

(§ [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.

(§ [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 made known to APS after the exit interview with the facility. Based on the information, the APS worker will decide on a case-by-case basis if additional follow-up services are needed for individuals residing in the facility who may be at risk of further abuse, neglect, or exploitation.

2.5.3.6 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.

2.5.3.7 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 or his designee.

[22 VAC 40-740-80](#) addresses the procedures for imposition of a civil penalty for failure to report.

([22 VAC 40-740-80](#)) 1. Based on a decision by the local department director or his designee that a mandated reporter failed to report as required by § [63.2-1606](#) of the Code of Virginia, the local director shall prepare a written statement of fact concerning the mandated reporter's failure to report and submit the statement of fact to the commissioner.

The local director may request that the Commissioner 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 40-740-80](#)) 2. The local director or his designee shall notify the mandated reporter in writing within 15 calendar days from the date of the determination of the intent to recommend that a civil penalty be imposed. The notification will include a copy of the local director's statement of fact concerning the mandated reporter's failure to report. The notification shall state the mandated reporter's right to submit a written statement to the commissioner concerning the mandated reporter's failure to report. The date of the notification is the postage date.

Within 15 days of deciding to request that the Commissioner impose a civil penalty, 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. An example of a letter to the mandated reporter is found in [Appendix R](#). The director's statement of fact shall accompany the written notification to the mandated reporter. It is recommended that the director's letter to the mandated reporter be mailed certified mail, return receipt requested.

Any information 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 mandated reporter, shall be redacted.

[\(22 VAC 40-740-80\)](#) 3. The mandated reporter's statement concerning his failure to report must be received by the commissioner within 45 days from the date of the local director's notification of intent to recommend the imposition of a civil penalty. A mandated reporter's statement received after the 45 days shall not be considered by the commissioner.

The mandated reporter's written statement concerning his failure to report shall be received by the Commissioner with 45 days of the postmark of the director's letter to the mandated reporter. The Commissioner shall not consider a statement received after 45 days.

[\(22 VAC 40-740-80\)](#) 1. The commissioner or his designee shall review the local director's written statement of fact concerning the mandated reporter's failure to report and the mandated reporter's written statement in determining whether to impose a civil penalty.

[\(22 VAC 40-740-80\)](#) 2. In the case of law-enforcement officers who are alleged to have not reported as required, the commissioner or his designee shall forward the recommendation to a court of competent jurisdiction.

The Commissioner shall review the local director's statement of fact (and additional information, if provided) and the mandated reporter's statement in determining whether to impose a civil penalty.

If the mandated report is a law-enforcement officer, the Commissioner shall forward a recommendation to a court of competent jurisdiction.

The Commissioner shall notify the mandated reporter whether a civil penalty will be imposed and, if so, the amount of the penalty. If a civil penalty is imposed, a copy of a copy of the notice to the mandated reporter shall be sent

to the appropriate licensing, regulatory, or administrative agency and to the local director who recommended the imposition of the penalty.

2.5.3.8 Types of reports

2.5.3.8.1 Reports of sexual abuse, criminal abuse and neglect, other criminal activity

(§ [63.2-1605](#) of the Code of Virginia). Local departments or the adult protective services hotline, upon receiving the initial report pursuant to § [63.2-1606](#) shall immediately notify 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, then where the alleged abuse, neglect or exploitation was discovered, when in receipt of a report describing any of the following:

1. Sexual abuse as defined in § [18.2-67.10](#);
2. Death, serious bodily injury or disease as defined in § [18.2-369](#) that is believed to be the result of abuse or neglect; or
3. Any other criminal activity involving abuse or neglect that places the adult in imminent danger of death or serious bodily harm.

The APS worker shall contact the local law-enforcement agency and coordinate the investigation. If the law-enforcement agency declines to participate in the investigation, the APS worker shall continue the investigation without the participation of the law-enforcement agency.

2.5.3.8.2 Financial institution staff reports

(§ [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 exploitation 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. For purposes of this section, financial institution staff means any employee of a bank, savings institution, credit union, securities firm, accounting firm, or insurance company.

2.5.3.8.3 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.

2.5.3.8.4 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.

2.5.3.8.5 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.

2.5.3.8.6 Domestic violence reports

When the alleged abuser is reported to be a family or household member (as defined in [§ 16.1-228](#) of the Code of Virginia), of the adult who is suspected to be abused, neglected, or exploited, an APS report shall be taken if the alleged victim is 60 years of age or older or is 18 years of age or older and incapacitated and the other criteria for a valid report are met. (See [Section 2.7](#) for information on valid reports.)

A 24-hour “Family Violence and Sexual Assault Hotline” for Virginia is **1-800-838-8238**. All domestic violence (DV) survivors and their families should be provided this number to assist them in obtaining appropriate DV services. DV services in the community may include temporary emergency housing, crisis intervention, crisis counseling, emergency transportation, information and referral, and legal aid. In a valid report, the APS worker should coordinate with DV professionals.

2.5.3.8.7 LDSS worker generated reports

When an APS worker recognizes that the circumstances in an open case meet the criteria for a valid APS report, the APS worker completes the appropriate screens in ASAPS and follows procedures for investigating a report that an adult is suspected of being abused, neglected, or exploited, or at risk of abuse, neglect, or exploitation.

2.5.3.8.8 Reports of ongoing cases

When a valid report is received on the adult who is receiving services in an ongoing case, the APS worker completes the appropriate screens in ASAPS and follows procedures for investigating a report that an adult is suspected to be abused, neglected, or exploited or at risk of abuse, neglect, or exploitation.

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

Medicaid policy states that eligibility workers will 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 *Section 3, Case Management, Appendix C for additional information on Cost Code 21704, Guardianship Petitions.*

2.5.3.8.10 APS hotline reports

All APS reports that are phoned to the 24-hour hotline are forwarded to the LDSS of jurisdiction on-call worker or to another person or agency designated by the department. If the APS report indicates that sexual abuse, criminal abuse and neglect, and/or other criminal activity involving abuse, neglect, or exploitation that places the adult in imminent danger of death or serious bodily harm has occurred, as those terms are defined in the criminal section [§ 18.2-369](#), the APS hotline will immediately report the case to local law enforcement. The LDSS has responsibility for determining if the report received through the hotline is a valid report.

The date/time that the report is received by the LDSS from the hotline should be used to determine the timeframe for initiating an investigation.

Statewide APS Hotline **1- 888- 832- 3858** (toll-free)

Richmond Area and Out-of-State **1- 804- 371- 0896**

2.5.3.8.11 When an annual 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 all guardianships adjudicated in its jurisdiction or transferred into its jurisdiction. The appropriate ASAPS screens shall be completed and all APS procedures followed, if:

- The contents of the report provide reason to suspect that the subject of the annual report is abused, neglected, or exploited;
- The individual who is the subject of the annual report is determined to be at risk of abuse, neglect, or exploitation; or
- After a good faith effort by the LDSS to obtain the guardian’s report, the guardian continues to fail to submit the report within four months from the last day of the reporting period.

(See [Appendix F](#), sections [2.43.17.7](#) through [2.43.17.9](#).)

2.5.3.8.12 Reports involving resignation of agent

(§ [26-89](#) 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 coagent 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 (or she) knows to be false shall be guilty of a class 4 misdemeanor. Any subsequent conviction of this provision shall be 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 40-740-50](#)). 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 to appropriate regulatory agencies if needed during the investigation. The oral or written consent should be noted in the APS assessment narrative. Written consent should be obtained, if possible. If the reporter refuses to grant such release, the APS worker shall respect his or her decision and shall not release the information.

(§ [63.2-1606](#) of the Code of Virginia). 3. 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](#) and if reviewed by the team, shall be subject to all of the team's confidentiality requirements.

2.5.4.4 Information to be given to the reporter

The service worker receiving the report should explain the following to the person making the report:

- 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). **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 cannot be disclosed by DMAS or the LDSS that possesses the information.*

(§ [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.

Federal regulations at § 164.512 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.”

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).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 [2.36](#) of this chapter also provides information on confidentiality in APS cases and should be used in conjunction with Chapter 6.

2.6 Intake interview

The primary purpose of the intake interview is to explore with the reporter the allegations being made in order 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 and whether an emergency exists. Sufficient information shall be gathered to evaluate the concerns of the person making the report and to judge whether the report is valid. In taking a report, the APS worker should make every effort to enable the reporter to make as factual a report as possible.

The intake interviewer shall obtain as much of the following information as is known by the person making the report:

- Name and location of the adult and directions to the adult’s place of residence.
- 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.
- Whether an emergency exists.
- 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.

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 (see definition of “Adult” in [Section 2.4](#)), (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 report of adult abuse, neglect, or exploitation

The following characteristics shall exist simultaneously to meet criteria for a valid APS report:

- Adult is at least 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.

2.7.1.1 Age or incapacity

(§ [63.2-1603](#) of the Code of Virginia). 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).

Adults 18 years of age or older who are incapacitated and who are suspected of being abused, neglected, or exploited or at risk of abuse, neglect, or exploitation are eligible for protective services.

The definition for incapacity includes adults 18 years of age or older with mental or physical impairments. Mental impairment 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. Mental impairments may include mental illness, mental retardation/intellectual disability, emotional disturbance, developmental delays, and dementia.

Physical impairment 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 are 18 years of age or older and who have some physical disability that renders them unable to take care of themselves and/or their affairs.

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 is individual-specific inasmuch as there is an identifiable, living adult who is alleged to need protective services. The reporter may not know the adult's name but must be able to provide enough information to enable the APS worker to locate the subject of the report.

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 as those terms 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. If the receiving LDSS is not the LDSS of jurisdiction, the receiving LDSS has a responsibility to refer the report to the appropriate LDSS.

2.7.2 Determining jurisdiction

The following order determines which LDSS has jurisdiction.

2.7.2.1 Place of residence

([22 VAC 40-740-21](#)). 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.

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 need for protective services is made, 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 DBHDS 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.

2.7.2.2 Outside of the place of residence

([22 VAC 40-740-21](#)). 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.

2.7.2.3 Where abuse, neglect, or exploitation was discovered

([22 VAC 40-740-21](#)). 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.

2.7.2.4 Nonresident in the Commonwealth

([22 VAC 40-740-21](#)). 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.

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 Correction's State Ombudsman (telephone 1-804-674-3014).

2.8 Validity

Any report that meets the criteria specified in [Section 2.7](#) of this chapter is a valid report regardless of the referral source, the method by which the report is received, and without regard to the adult's income, assets, or living arrangement. Each report received shall be reduced to writing **within 72 hours** by completing the appropriate screens in ASAPS (See [ASAPS-Robo Help](#)).

2.8.1 When the report is not valid

If a report is determined to be not valid (i.e., does not meet criteria for a valid report), the LDSS should:

- Inform the person who has reported, if the person's identity is known, of the reasons why the case is not being accepted for an APS investigation. The reporter should be informed that the case may be referred to another agency for administrative or criminal investigation if appropriate.
- Document the receipt of the report in ASAPS following ASAPS procedures (See ASAPS-Robo Help)
- When appropriate, contact the individual who is the subject of the APS report to offer adult services, 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). The "Notifications" under APS tab in ASAPS provides the means of documenting these referrals (See ASAPS-Robo Help). The form "[Referral for Investigation from Adult Protective Services](#)" is available on the VDSS internal website.
- 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. Appropriate information should also be provided to the Adult Fatality Review Team. A report of abuse, neglect, or exploitation of an adult who has died is not an appropriate situation for an

- APS investigation. The purpose of an APS investigation is to determine whether the living adult is in need of protective services and what services are needed.
- Refer the adult to the local DV program when the report alleges domestic violence. When alleged DV reports meet criteria for an APS investigation, an APS report should be taken and an investigation initiated.
 - Refer endangering situations to regulatory authorities where appropriate (See [Section 2.23](#) to [Section 2.36](#) of this chapter). 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 or has been permanently relocated 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. The “Notifications” under APS tab in ASAPS provides the means of documenting these referrals (See ASAPS-Robo Help). The form “[Referral for Investigation from Adult Protective Services](#)” is available on the VDSS internal website. The “Notifications” under APS tab in ASAPS provides the means of documenting the notification/letter to the reporter (See ASAPS-Robo Help).
 - 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 investigation will not be conducted. However, the situation should be reported to other entities as appropriate. The “Notifications” under APS tab in ASAPS provides the means of documenting these referrals (See ASAPS-Robo Help). The form “[Referral for Investigation from Adult Protective Services](#)” is available on the VDSS internal website. **Note:** If the facility staff person who is alleged to be the perpetrator of abuse, neglect, or exploitation has been suspended or reassigned the 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, no investigation will be conducted. For situations alleging resident-to-resident abuse, see [Section 2.24.2](#) 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 Center for Elder Abuse website](#). Click the link to “Help Hotline” or use the [direct link](#).

2.9 Documenting the APS Report in ASAPS

ASAPS is the official system to document the receipt and investigation of valid APS Reports. Prior to entering APS report information, the worker should conduct an ASAPS external search to determine if the adult is known to ASAPS.

2.9.1 When there is no service case in ASAPS

From the My Caseload screen, the worker should select “New APS Case.”

2.9.1.1 APS Report screen in ASAPS

Complete the APS Report Screen (See ASAPS-Robo Help).

2.9.1.2 Case Info screen in ASAPS

Complete the Case Info Screen (See ASAPS-Robo Help).

2.9.2 When there is a closed service case in ASAPS

“Open closed case” in ASAPS (See ASAPS-Robo Help).

2.9.2.1 Case Info screen in ASAPS

The Case Info screen should be updated as needed. Information concerning the client’s income and financial resources should be entered if known. “APS Investigation” should be selected as the case type if the investigation has not been completed (See ASAPS-Robo Help).

2.9.2.2 APS Report screen in ASAPS

Under the APS Tab, select “New APS Report”. The Report screen must be completed (See ASAPS-Robo Help).

2.9.3 When there is an open service case in ASAPS

When the case is already an open service case in ASAPS, access the case.

2.9.3.1 APS Report screen in ASAPS

Under the APS Tab, select “New APS Report”. The Report screen must be completed (See ASAPS-Robo Help).

2.9.3.2 Case Info screen in ASAPS

The case type should not be changed until the investigation is completed. If the disposition is “Needs Protective Services and Accepts,” change the case type to the appropriate APS case type.

2.9.4 Invalid reports

LDSS are encouraged to document invalid reports in ASAPS to improve the efficiency of managing invalid reports and to provide accurate credit for the worker’s time spent in obtaining the information, evaluating the validity of the report and making appropriate referrals. Follow the procedures above, depending on whether the report occurred in a New, Closed, or Open case.

2.10 Time frame for initiating an APS investigation

(§ [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.

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

([22 VAC 40-740-21](#)). When determining the need for an immediate response, the social worker 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.

A face-to-face contact with the alleged victim shall be made as soon as possible but not later than five calendar days after the initiation of the investigation unless there are valid reasons that the contact could not be made. Those reasons shall be documented in the adult protective services assessment narrative.

2.11 Hotline reports

For APS reports received through the APS hotline, the date/time the report was received by the LDSS is the timeframe to use to initiate the investigation.

2.12 Preparing for the investigation

Conduct an ASAPS search to identify all department records pertaining to the adult. Review all appropriate department records including records that are not in ASAPS.

Review the need to request access to any records, reports, or other information maintained by any mandated reporter ([§ 63.2-1606](#) of the Code of Virginia).

If the report alleges sexual abuse, criminal abuse and neglect, and/or other criminal activity involving abuse, neglect, or exploitation that places the adult in imminent danger of death or serious bodily harm, report the matter immediately to the local law-enforcement agency. The intake worker shall report the situation to law enforcement as soon as the intake interview is complete. Consider whether the cooperation of law enforcement and/or other state and local departments, agencies, authorities, and institutions will be needed as required under [§ 63.2-1606 K](#) of the Code of Virginia. If the need for such cooperation is indicated, initiate contact with the appropriate persons.

2.12.1 Coordinating with other investigators

The LDSS has primary responsibility for investigating all reports of suspected adult abuse, neglect, or exploitation in all settings except state correctional facilities. This responsibility shall not be delegated. However, investigations may be conducted cooperatively with such authorities. The APS worker should take the following actions for coordinating investigations:

Notify the local law-enforcement agency when a report alleges sexual abuse, criminal abuse and neglect, and/or other criminal activity involving abuse, neglect, or exploitation that places the adult in imminent danger of death or serious bodily harm.

([§ 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.

Determine the need to include other investigators as participants in planning for how the investigation will be conducted. Joint investigations are encouraged in situations where law enforcement, regulatory authorities, or other service agencies have a legitimate interest in investigating and resolving the issue that is the basis for the report. The form "[Referral for Investigation from Adult Protective Services](#)" is located on the VDSS internal website and shall be used to notify the appropriate agencies.

Immediately contact potential co-investigators to notify them of the receipt of the report and determine whether a joint investigation will be conducted.

Proceed with the investigation **within 24 hours** even if other persons who may appropriately be included as participants in the investigation are not available to proceed promptly with the investigation.

Determine who will be interviewed and in what order. In most situations, the APS worker should contact the adult first, as he or she is usually the primary source of information.

Decide whether to notify the adult and/or any legally appointed guardian or conservator before the home visit. While advance notification may be desirable, circumstances may warrant unannounced visits.

2.12.2 Where the investigation extends across city or county lines

([22 VAC 40-740-21](#)). When an investigation extends across city or county lines, local departments in those cities or counties shall assist with the investigation at the request of the local department with primary responsibility.

2.12.3 Conflict of interest

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

Examples of such situations include reports of suspected abuse, neglect, or exploitation that:

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

If the LDSS believes there is a conflict of interest, the LDSS should contact a neighboring LDSS county or city department of social services 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 may contact the appropriate AS/APS Regional Program Consultant for assistance in assigning investigatory and/or service delivery responsibility to another LDSS.

2.13 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 is in need of protective services and, if so, to identify what services are needed to provide the protection.

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.

2.13.1 Authority to initiate and conduct investigations

(§ [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.

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 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 40-740-60](#)).

([22 VAC 40-740-21](#)). The local department of social services shall conduct a thorough investigation of the report.

The investigation shall include a visit to the adult alleged to be abused, neglected, or exploited or at risk of abuse, neglect, or exploitation.

If the LDSS is refused access to the alleged victim to conduct the investigation, it is incumbent upon the LDSS to attempt to complete the investigation to determine the need for protective services, to assess whether the adult “has capacity to consent” to receive protective services, and to determine whether the adult requests or agrees to receive services.

2.13.2 Consultation with other investigators

([22 VAC 40-740-21](#)). The investigation shall include consultation with others having knowledge of the facts of the particular case.

Virginia law and regulations authorize that information may be disclosed to persons having 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 (§ [63.2-1605](#) of the Code of Virginia and [22 VAC 40-740-50](#)).

The Code of Virginia also requires that:

(§ [63.2-1606](#) of the Code of Virginia). 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.

2.13.3 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 should be documented in the APS assessment narrative in ASAPS.

(§ [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.

2.13.4 Required visit and private interview

([22 VAC 40-740-21](#)). 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.

There may be occasions in which the adult requests the presence of another person in the interview. A determination must be made 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 should be documented in the appropriate fields of the investigation screen in ASAPS.

2.13.5 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.

2.13.6 Separate interviews with alleged victim and alleged perpetrator

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

2.13.7 Taking and using photographs, video, or audio recording or appropriate medical imaging of an adult

(§ [63.2-1605 E](#) 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 should be filed in the case record. The form "[Consent for Photography in APS Investigations](#)" is located on the VDSS internal website. *APS investigation photography guidelines are available in [Appendix U](#).*

2.13.8 The alleged perpetrator

2.13.8.1 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 terms found in [Section 2.4](#). The identity of the alleged perpetrator(s) is not required to initiate an investigation.

2.13.8.2 Timing of interview with the alleged perpetrator

The APS worker should attempt to 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 named in the report, result in a lost opportunity to interview the alleged perpetrator, or could negatively impact the interview in other ways.

2.13.8.3 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.

2.13.8.4 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.

2.13.8.5 The interview with the alleged perpetrator is not completed

There may be times when an interview with the alleged perpetrator is not practical or is not in the best interest of the alleged victim. There may be times when the interview may need to be discontinued (i.e., 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 private interview is not completed, the reason for not conducting the interview should be documented in the APS assessment narrative in ASAPS.

2.13.9 Consultation with collaterals

([22 VAC 40-740-21](#)). The investigation shall include consultation with others having knowledge of the facts of the particular case.

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.

When needed to clarify the adult's medical and/or psychiatric history, the investigation should include information gathered from physicians and/or other health professionals to whom the adult is known. Contact with other agencies and persons may be needed in order to gather additional information for assessing the adult's needs.

2.13.10 Requirement to release information by mandated reporters

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 and, upon request, make available to the APS worker investigating the report any information, records or reports that document the basis for their suspicion of abuse, neglect, or exploitation.

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

2.13.11 Authority to access information and records regarding action taken by attorneys-in-fact or other agents

The APS unit of the LDSS is designated by the [§ 26-87](#) of the Code of Virginia as having an interest in the welfare of persons believed to be unable to attend to their

affairs. (See definition of “Person Interested in the Welfare of a Principal” in [Section 2.4](#) of this chapter.)

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 attorney-in-fact, should request the needed information and/or records from the attorney-in-fact, citing [§ 26-85](#) of the Code of Virginia. If so requested, **within 30 days** the agent shall comply with the request or provide a writing or other record substantiating why additional time is needed and shall comply with the request within an additional 30 days.

If the attorney-in-fact 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.

([§ 26-87](#) 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 [§ 26-85](#), 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.

2.13.12 Requests to include other individuals in interviews with collaterals

When the collateral requests the presence of another person in the interview, a determination must be made 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 should be documented in the APS assessment narrative in ASAPS.

2.13.13 Collaterals in facilities

In a facility investigation, 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.

2.14 APS assessment

([22 VAC 40-740-21](#)). The purpose of the investigation is to determine whether the adult alleged to be abused, neglected or exploited or at risk of abuse, neglect or exploitation is in need of protective services and, if so, to identify services needed to provide the protection.

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

Assessment is an ongoing process. 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.

2.14.1 Components of the assessment

The two components of the APS assessment are:

- The APS assessment narrative under "Assessment Hide/Show" (found on the Investigation screen under the APS Tab in ASAPS).
- The assessment of the adult's circumstances presented in sub-headed titles under "Assessment Hide/Show."

2.14.1.1 The APS assessment narrative

([22 VAC 40-740-40](#)). An Assessment narrative shall be required for all protective services investigations and shall be titled Adult Protective Services Assessment Narrative.

There are text boxes in the "Assessment Hide/Show" narrative to address the following:

1. The allegations in the report or circumstances discovered during the investigation meet definitions of abuse, neglect or exploitation.
2. The extent to which the adult is physically, emotionally, and mentally capable of making and carrying out decisions concerning his health and well-being.

3. Risk of serious harm to the adult.
4. Need for an immediate response by the adult protective services worker upon receipt of a valid report.
5. The ability to conduct a private interview with the alleged victim, alleged perpetrator (if known) and any collateral contacts having knowledge of the case
6. If appropriate, the inability to complete the investigation within the required time frames and the plan to complete the investigation.
7. Evidence that supports the disposition. The basis for the disposition shall be documented under “Investigative Findings” in the Investigation section under the APS Tab in ASAPS (See ASAPS-Robo Help).

The APS assessment narrative may include confidential APS information and any additional information specific to APS.

2.14.1.2 The assessment of the adult’s circumstances presented in sub-headed titles

The following areas must be assessed for each alleged victim as part of the APS investigation: Environment, Functional Ability, Physical/Health, Mental Health/Psychosocial, Support System, and Income and Resources. In the “Assessment Hide/Show,” there are check-off assessment factors and text boxes for each assessment area.

The information within each sub-headed assessment area should document the major facts used by the APS worker to substantiate the APS worker’s disposition and be summarized in the “Investigative Findings” section.

The following areas must be assessed in the sub-headed title sections in the “Assessment Hide/Show” on the Investigation screen in ASAPS:

2.14.1.2.1 Environment

Assess the daily living environment to make a judgment whether this contributes to the adult’s endangerment. This should include consideration 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 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.

2.14.1.2.2 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 daily living activities is one consideration in assessing his or her need for protective services. The individual's ability to handle tasks such as bathing, dressing, toileting, transferring, and eating should be evaluated.

Other activities to be considered are the instrumental activities of daily living (IADLs) that include 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.

Physical examination and other reports from physicians and other health care professionals should be requested when needed to facilitate a determination of the adult's functional abilities and need for protective services.

2.14.1.2.3 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.).

2.14.1.2.4 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 can provide the APS worker with reason for recommending a more complete 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 problem(s).
- Adult's orientation to person, place and time as well as memory and judgment capacity.
- Any manifestations of emotional or behavioral problems (i.e., insomnia, nightmares, crying spells, depression, agitation, unusual fears, thoughts, perceptions, delusions, hallucinations, etc.).
- Any major life changes/crises in the past year (i.e., 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 (i.e., suicidal behavior, refusal of medical treatment, gross self-neglect, wandering, aggressive acts that are likely to precipitate retaliation, 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, alcoholism, 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.

2.14.1.2.5 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?

2.14.1.2.6 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.

2.15 Decision making, disposition, and application

2.15.1 Decision making

[\(22 VAC 40-740-40\)](#). After investigating the report, the adult protective services worker must review and evaluate the facts collected and make a disposition as to whether the adult is in need of protective services and, if so, what services are needed.

2.15.2 Eligible adults

The need for protective services may be based on the adult's age, impaired health, or disability.

(§ [63.2-1603](#) of the Code of Virginia). "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.

An "incapacitated person" means any adult who is impaired by reason of mental illness, mental retardation, 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.

Adults 60 years of age or older are eligible for protective services without other qualifying conditions. An adult may be considered incapacitated in one facet of his or her life but able to function adequately in other areas.

2.15.3 Dispositions

2.15.3.1 Time frame for making dispositions

([22 VAC 40-740-40](#)). The investigation shall be completed and a disposition assigned by the local department within 45 days of the date the report was received. If the investigation is not completed within 45 days, the record shall document reasons.

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 "Assessment Hide/Show" narrative in ASAPS. The narrative should specify a plan for completing the investigation.

Evidence supporting the disposition shall be documented in the APS Assessment Narrative in ASAPS at the time the disposition is made.

Based on the investigative findings, the APS worker can reach one of *five* dispositions.

2.15.3.2 "Needs protective services and accepts"

([22 VAC 40-740-40](#)). This disposition shall be used when:

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

- c. The adult consents to receive services pursuant to § [63.2-1610](#) of the code of Virginia; or
- d. Involuntary services are ordered by the court pursuant to § [63.2-1609](#) or Article 1.1 (§ [37.2-1000](#)) of chapter 4 of title 37.2 of the Code of Virginia.

The disposition that the adult needs protective services is based on a preponderance of evidence that abuse, neglect, or exploitation has occurred, is occurring, or that the individual is at risk of abuse, neglect, or exploitation and needs protective services in order to reduce the risk.

A finding that an adult is in need of 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. The case type should be changed to Adult Protective Services. 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 2.20.3](#)).

When services are ordered by the circuit court, the appropriate disposition is “needs protective services and accepts.” The case type should be changed to

Adult Protective Services. A department-initiated application shall be completed, a service plan developed, and service delivery initiated.

2.15.3.3 “Needs protective services and refuses”

([22 VAC 40-740-40](#)). 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. If the capable adult refuses to accept all of the services offered, the case will be closed or appropriate referrals made.

2.15.3.4 “Need for protective services no longer exists”

([22 VAC 40-740-40](#)). 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 ceased to be at risk of further abuse, neglect or exploitation.

The risk(s) to the adult no longer exists because:

- 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. The adult is no longer at risk and the case will be closed.
- The subject of the report died during the course of the investigation and there was a preponderance of evidence of abuse, neglect, or exploitation. The case will be closed. The case shall be reported to the local law enforcement agency and the medical examiner when there is a suspicion that the death was the result of abuse or neglect.

- The adult permanently relocated and, thus, is not expected to return to the setting where the abuse, neglect, or exploitation occurred. The adult is no longer at risk and the case will be closed.
- The perpetrator of abuse, neglect, or exploitation is another patient/resident who has been permanently separated from the victim so that future contact between the two is not possible. The adult is no longer at risk and the case will be closed.
- For reasons *other than an intervention by the APS worker*, the risk of abuse, neglect, or exploitation has been removed. The adult is no longer at risk and the case will be closed.

2.15.3.5 “Unfounded”

([22 VAC 40-740-40](#)). 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 the APS worker is unable to complete the investigation, or there is no preponderance of evidence of abuse, neglect, or exploitation, the disposition should be unfounded.
- If the disposition is unfounded, adult protective services are not offered. Adult services may be offered if the adult is eligible for services and agrees to the service delivery.

For an investigation in an ongoing case, the case will remain open to the appropriate service(s).

For a new case, appropriate adult services may be offered or the case should be closed.

2.15.3.6 “Invalid”

If, after an investigation has been initiated, the report is found not to meet the criteria of a valid report, the APS worker should select “Invalid” in the disposition drop-down box in ASAPS.

Upon determining that the adult needs protective services, the need for protective services no longer exists, the report is unfounded or determined to be invalid, the APS worker documents the finding on the Investigation screen in ASAPS (See ASAPS-Robo Help).

2.15.4 APS Report Form

After completing the Report and Investigation screens in ASAPS, the APS report form can be printed if needed.

2.16 Notification/time frames

[\(22 VAC 40-740-40\)](#). Notice of the completion of the investigation must be made in writing and shall be mailed to the reporter within 10 working days of the completion of the investigation.

If the person making the report is a mandated reporter, the notice of the completed investigation shall be in writing and shall be mailed within **ten** working days of the completion of the investigation. The Notification screen in ASAPS is used to document these required letters. The notice should inform the reporter that his or her report has been investigated and that necessary action has been taken.

If the person making the report is a voluntary reporter, the notice of the completed investigation shall be in writing and shall be mailed within **ten** working days of the completion of the investigation. The APS worker should inform the reporter that his or her report has been investigated and that necessary action has been taken. Oral notification may be given if the voluntary reporter did not wish to provide an address and should be documented on the Notification screen in ASAPS.

2.16.1 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 case narrative 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 assessment narrative in ASAPS.

2.16.2 Referrals to law enforcement, medical examiners, Commonwealth Attorneys, and the Adult Fatality Review Team

If the APS report or the investigative findings indicate that sexual abuse, criminal abuse and neglect, and/or other criminal activity involving abuse, neglect, or exploitation that places the adult in imminent danger of death or serious bodily harm has occurred, as those terms are defined in the criminal section [§ 18.2-369](#) of the Code of Virginia, the APS worker shall report the case immediately to local law enforcement. If the APS report or the investigative findings indicate there is a

suspicious death that may have been the result of abuse or neglect, the APS worker shall report the case immediately to the appropriate medical examiner (see [Appendix M](#) for medical examiner contact information). The Commonwealth's attorney may also be notified. Provide appropriate information to the Adult Fatality Review Team.

2.16.3 Agencies or programs with a legitimate interest

Agencies or programs identified in Section [2.37.1](#) have a legitimate interest in the disposition of the report.

2.17 Opening a case to Adult Protective Services

([22 VAC 40-740-60](#)). Once a disposition of the report and an assessment of the adult's need and strengths have been made, the department shall assess the adult's service needs. A case shall be opened for adult protective services when:

- a. The disposition is that the adult needs protective services; and
- b. The service needs are identified; and
- c. The adult agrees to accept protective services or protective services are ordered by the court.

A service application shall be completed when services are to be delivered beyond the investigation.

([22 VAC 40-740-31](#)). The application process is designed to assure the prompt provision of needed adult protective services including services to adults who are not able to complete and sign a service application.

The following persons may complete and sign a service application for adult protective services on behalf of an adult in need of services:

- ([22 VAC 40-740-31](#)). 1. The adult who will receive the services or the adult's legally appointed guardian or conservator;
2. Someone authorized by the adult; or
3. The local department.

The APS worker may complete and sign the service application when the adult is believed to be incapacitated, in cases of an emergency, or when the individual verbally accepts services but does not sign the application. The case record should document

reason(s) for the LDSS-initiated service application at the bottom of the service application or within the case narrative.

2.18 Service planning and service delivery

2.18.1 The service plan

[\(22 VAC 40-740-60\)](#). A service plan which is based on the investigative findings and the assessment of the adult's need for protective services shall be developed. The service plan is the basis for the activities that the worker, the adult, and other persons will undertake to provide the services necessary to protect the adult.

2.18.2 Assessment

Upon determining that protective services will be provided, the APS worker shall complete a full Virginia Uniform Assessment Instrument (UAI). The UAI in ASAPS is used to meet this requirement (See ASAPS-Robo Help).

2.18.3 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).

Each open case shall have a service plan that addresses the protective service needs of the adult. The Services Plan shall be completed within 60 days of the date that the adult agrees to accept services. The Service Plan in ASAPS shall be used (See ASAPS-Robo Help).

The information in the service plan will vary according to the case situation and will be based on the investigative findings, the assessment, and the adult's preferences.

2.18.4 Participation of the adult

When the service plan is being developed, 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 40-740-40](#)). The adult protective services program shall respect the rights of adults with capacity to consider options offered by the program and refuse services, even if those decisions do not appear to reasonably be in the best interests of the adult.

2.18.5 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 must be respected as a 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. When appropriate, the service plan can be used to develop a variety of activities and services from the least to the most restrictive level.

2.18.6 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 2.20](#)).

2.18.7 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.

2.18.8 Community-based services

If the adult is found to be in need of 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, etc.) should be considered as methods of protection in one's own home.

2.18.9 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.

2.18.9.1 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.

2.18.9.2 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 city or county 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 both the board or authority and the state facility physician to be in need of treatment, training, or habilitation in a state facility.

2.18.9.3 Placement when the adult lacks capacity to consent

[Section 2.20](#) addresses the provision of protective services when the adult lacks the capacity to consent.

2.18.10 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 [§ 37.2-1000](#) 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).

2.18.11 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, in order to stabilize the situation of the individual and provide the needed protection.

Purchased services that are often identified for APS 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 Budget Line 895.*

2.18.12 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.

2.18.13 Components of the service plan

All APS service plans shall include the following components:

- Goal(s)
- Unmet needs
- Objectives
- Tasks
- Target dates for meeting objectives

Goals and objectives are developed after the situation has been assessed and a determination made regarding the protective services needed and the adult's preferences.

2.18.13.1 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.

2.18.13.2 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. The unmet needs are identified and documented on the UAI.

2.18.13.3 Objectives

Objectives should reflect the desired outcome(s) of service delivery. Objectives and services selected should be relevant to the goal(s).

Each objective shall state clearly WHAT will be achieved in order to accomplish the goals(s).

Objectives should be:

- Identified to eliminate or diminish identified need(s).
- 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.

2.18.13.4 Tasks

Planning HOW to achieve each objective is an essential element in a workable service plan. Tasks describe the actual provision of services, identifying specifically WHO will be involved in accomplishing each task and WHEN services will be provided. All participating service providers will be identified in the Service Plan.

2.18.13.5 Target dates

The service plan shall include date(s) for achievement of objective(s).

2.19 Implementaton of the service plan

Implementation is the delivery of the services needed to provide adequate protection to the adult. The services may be delivered directly, through purchase of service, through casework services and case management by the APS worker, through informal support, or through referral. The continuous monitoring of the adult's progress towards reaching the service plan goals and revising the objectives and tasks in response to that progress is a part of the implementation phase.

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

- Make contact with 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 or telephone contact with the adult 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 case narrative.

2.20 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 attorney representing the LDSS. APS workers may offer background information and other facts and provide other assistance, as requested, by the attorney representing the LDSS.

2.20.1 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.

2.20.2 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. In the event that 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.

2.20.3 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 10 (§ [37.2-1000](#) et seq.) of Title 37.2.

If the adult is in need of 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 local department attorney for a hearing to obtain the earliest possible court date requesting court authorization to provide protective services on an emergency basis.

An emergency order can be granted for 15 days and may be extended for an additional five days.

See [Appendix C](#), [Appendix D](#), and [Appendix E](#) for examples of orders.

The following procedure is followed when an emergency order is requested:

- Petition shall include:
 - 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.
 - If the 24-hour notice will seriously jeopardize the adult's welfare, clearly explain in the petition why the notice should be waived.
 - 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 2.22.1.2](#)).

- An APS worker or other person appointed as temporary guardian 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 APS worker should petition the court for a renewal as soon as it is realized that additional time is needed.
- If an ongoing guardian will be needed, the APS worker needs to locate a suitable person to be appointed.
- Upon completion of emergency services, the APS worker files a report with the court to inform the court about:
 - Services provided during the emergency guardianship period.
 - The status of the adult.
 - Any plan for ongoing protection of the adult.

2.20.4 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 who is the subject of the petition is incapable of making an informed decision regarding a specific treatment or course of 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. However, the court shall not authorize a proposed course of treatment that is proven by a preponderance of the evidence to be contrary to the person's religious beliefs or basic values, 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.

2.20.5 Filing petition for appointment of a guardian and/or conservator (§ [37.2-1001](#) 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 [Appendix F](#) for procedures for petitioning for a guardian and/or conservator.)

2.20.6 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 (see [Appendix F](#)).

2.20.7 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.

2.20.8 Procedure in absence of an advance directive (§ [54.1-2986](#) of the Code of Virginia)

In the absence of an Advanced Directive, a number of 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, mental retardation/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, 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.);
- The patient's spouse except where a divorce action has been filed and the divorce is not final;
- An adult child of the patient;
- A parent of the patient;
- An adult brother or sister of the patient; or
- Any other relative of the patient in the descending order of blood relationship, 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.

For the purposes of this section "incapable of making an informed decision" means unable to understand the nature, extent or probable consequences of a proposed health care decision, or unable to make a rational evaluation of the risks and benefits of the proposed decision as compared with the risks and benefits of alternatives to that decision.

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

Absent a prohibition in an Advanced Directive or with the authority granted in the court order appointing a guardian; the agent, guardian or public guardian may admit an adult to a mental health facility if the following conditions are met:

(§ [37.2-805.1](#) of the Code of Virginia). 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

- (a) Has a mental illness,
- (b) Is incapable of making an informed decision, as defined in § [54.1-2982](#) regarding admission, and
- (c) Is in need of treatment in a facility;
- (ii) The proposed admitting facility is willing to admit the person; and

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.

2.20.9.1 Additional requirements

Admission by an advanced 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](#).

Admission by a 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 § [37.2-1009](#).

(§ [37.2-805.1](#) of the Code of Virginia). 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.

2.20.10 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 by the procedure described in § [37.2-805](#), or
2. 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 other 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.

2.20.11 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 (i) the recommendations of any treating or examining physician or psychologist licensed in Virginia, if available, (ii) any past actions of the person, (iii) any past mental health treatment of the person, (iv) any relevant hearsay evidence, (v) any medical records available, (vi) any affidavits submitted, if the witness is unavailable and it so states in the affidavit, and (vii) 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 may not exceed four hours unless the magistrate grants an extension for up to *two* hours. 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.

2.20.12 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 member including:

- Spouse or former spouse, whether or not the spouse or former spouse resides in the same house with the abuser.
- 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 abuser.
- 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 abuser.
- Any individual who has a child in common with the abuser whether or not the individual and the abuser have been married or lived together at any time.
- Any individual who cohabits or who, within the previous 12 months, cohabited with the abuser, and any children of either of them then residing in the same home with the abuser.

2.20.13 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; and

- granting the family or household member possession of the premises occupied by the parties, and exclude from the premises the offending party. (§ [16.1-253.4](#) of the Code of Virginia)

2.20.14 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).

2.20.15 Criminal abuse and neglect of incapacitated adults

(§ [18.2-369](#) of the Code of Virginia). It shall be unlawful for any responsible person to abuse or neglect any incapacitated adult as defined in this section. Any responsible person who abuses or neglects an incapacitated adult in violation of this section and the abuse or neglect does not result in serious bodily injury or disease to the incapacitated adult shall be guilty of a class 1 misdemeanor. Any responsible person who is convicted of a second or subsequent offense under this subsection shall be guilty of a class 6 felony.

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

Abuse and neglect of an incapacitated adult can be prosecuted as a criminal offense when the abuse or neglect is perpetrated by a “responsible person” as defined in [Section 2.4](#).

Abuse and neglect meeting definitions under § [18.2-369](#) of the Code of Virginia should be referred to the Commonwealth’s Attorney for possible prosecution.

2.21 Reimbursement for legal services

Legal representation for advice to and representation of the local department on an adult-specific basis for cases before the court related to adult protective services may be reimbursed from administration funds or Budget Line 895 (APS Purchase of Services) as long as the adult is eligible for adult protective services.

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.

2.21.1 Payment for emergency order proceedings

2.21.1.1 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.

2.21.1.2 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.

2.21.2 Payment for guardianship proceedings

2.21.2.1 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.

(§ [37.2-1008](#) of the Code of Virginia). If a guardian or conservator is appointed and the estate of the incapacitated person is available and sufficient therefore, the court shall order that the petitioner be reimbursed from the estate for all costs and fees.

2.21.2.2 When cost is borne by the Commonwealth

(§ [37.2-1008](#) 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.

2.21.3 Payment for guardians ad litem and other attorney fees

2.21.3.1 When cost is borne by the petitioner

(§ [37.2-1003](#) 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.

(§ [37.2-1006](#) 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.

2.21.3.2 When cost is borne by the Commonwealth

(§ [37.2-1008](#) 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 which are fixed by the court or taxed as costs shall be borne by the Commonwealth.

2.21.3.3 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 a fund established at the VDSS for this purpose.

The funds are available 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 VDSS internal website.

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

2.21.4 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 VDSS internal website.

2.21.5 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.

2.21.5.1 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.

2.21.5.2 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.

2.22 Evaluation/reassessment

2.22.1 Evaluation

The evaluation shall address the effectiveness of the service plan in eliminating or mitigating the abuse, neglect, or exploitation or risks of abuse, neglect, or exploitation. The evaluation should indicate which objectives have been met. Unmet needs should be identified and reasons such needs remain unmet should be addressed. A brief summary of the effectiveness of the service plan should be documented in the "Evaluation of Services" section in the Service Plan in ASAPS. If additional space is needed the service worker should enter the information in the ASAPS Narrative and identify the type of contact as a "Case Action."

2.22.2 Reassessment

A reassessment of the adult's situation and evaluation of the effectiveness of services provided shall be conducted as frequently as indicated by changes in the adult's situation but not less frequently than every 12 months.

The UAI must be updated to reflect the findings from reassessments. The UAI in ASAPS should be updated by following the instructions in the ASAPS-Robo Help for placing a copy of the UAI in "History" and revising the current UAI.

The case should be continued for adult protective services, transferred, or closed based on the updated UAI and the evaluation.

2.22.2.1 Continue Adult Protective Services

The adult protective services 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.

2.22.2.2 Transfer to Adult Services

The adult protective services case should be transferred to adult services and the case type changed to reflect the current status of the case 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.

2.22.3 Close the case

The adult protective services 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.

2.22.3.1 Procedure for closure

When a decision is made to close an adult protective services case, the APS worker shall:

- Send a written notice of action to the adult and/or his or her legally appointed guardian and/or conservator and other service providers who may be participating in the service plan.

- Document in the case narrative the reasons for not notifying, if notification is not appropriate. (Refer to Chapter 3, Case Management for additional information on closing a case.)
- Close case in ASAPS.
- Initiate referrals, if appropriate, to other services within the department, to other LDSS, or to community resources.

2.23 Investigations in long-term care facilities, acute-care facilities, and other group care facilities

For the purposes of this section, long-term care facilities, acute care facilities, and other group care 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 (i.e., 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 (i.e., hospices, home care organizations) shall be investigated according to procedures outlined in [Section 2.5](#) to [Section 2.23](#).

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.

2.24 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 should be immediately reported to local law enforcement and the APS worker should coordinate the investigation with law enforcement.

2.24.1 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 the facility.

2.24.2 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.

2.24.3 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.

2.24.4 Incident reports

A facility incident report 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.

2.24.5 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.

2.24.6 Sexual abuse and sexual assault in long-term care facilities, acute-care facilities, and other group care 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.

2.24.7 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 (i.e., 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.

2.24.8 Facility reports that do not meet validity criteria

In some instances reports involving facilities do not meet criteria for a valid APS report. For example, 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 from the facility. However the circumstances reported are within the purview of statutory or regulatory agencies.

If the information received is such that 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 statutory or regulatory agencies, the APS worker shall refer the person making the report to the appropriate regulatory authority (see [Appendix M](#) for contact information). The APS worker should also promptly forward a written summary of the reported incident(s) to the appropriate regulatory authority. The written summary should state the reason an APS investigation will not be conducted. The form "Referral for Investigation from Adult Protective Services" may be used to provide the written statement and a copy filed in the individual's case record (if available).

The invalid report may be entered into ASAPS following the procedures for ASAPS depending on whether the case is open, closed or a new APS case. The notification can be documented on the Notification screen. If the only case action is to document the invalid report, the case will be "Closed" on the Case Info Screen once the notification is mailed.

2.24.9 Reports that address the general conditions of a facility

Reports/complaints addressing the general conditions of a facility that are not specific to a resident(s) (i.e., food choices, building maintenance issues, etc.) 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 and/or licensing authority (see [Appendix M](#) for contact information). The APS worker should also promptly forward a written summary of the reported incident(s) to the appropriate regulatory authority. The written summary should state the reason an APS investigation will not be conducted. The form "Referral for Investigation from Adult Protective Services" may be used to provide the written statement.

2.25 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. With the exception of 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.

2.26 Coordination with investigators with related responsibilities

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/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 statutory 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 or statutory 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.

2.27 Investigators with regulatory or statutory authority

For current contact information, including telephone numbers and addresses of investigators with regulatory or statutory authority, see [Appendix M](#).

2.27.1 The Department of Social Services, Division of Licensing Programs

The licensing authority is located in the area serving each LDSS. 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.

2.27.2 The Department of Health, Office of Licensure and Certification

The Office of Licensure and Certification (OLC), is a division of the Virginia Department of Health. This office has regulatory authority for nursing facilities, acute care hospitals, hospices, and home health care organizations. 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 that the report will be investigated.

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

The DBHDS Office of Licensure has licensure authority for any non-state operated hospital, facility, institution or outpatient program that provides care or treatment for adults with mental illness, mental retardation/intellectual disability, or substance abuse problems. When suspected abuse, neglect, or exploitation is alleged to have occurred in a facility or program licensed by this office, the Office of Licensure should be given the opportunity to participate.

The Office of Human Rights 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. When suspected abuse, neglect, or exploitation is alleged to have occurred in a state-operated facility or program, the Office of Human Rights should be given the opportunity to participate. Human Rights Advocates are available throughout the state and can be reached through the state hospitals and other state programs.

2.27.4 The Office of the State Long-Term Care Ombudsman

The Office of the State Long-Term Care Ombudsman is located within the Virginia Association of Area Agencies on Aging. In addition to the State Ombudsman, sub-state programs are located in some, but not all, area agencies on aging throughout the state. The long-term care ombudsman 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 long-term care ombudsman should be provided the opportunity to participate.

2.27.5 The Virginia Office for Protection and Advocacy

The Virginia Office for Protection and Advocacy (VOPA) is an independent state agency. VOPA is authorized to receive and investigate complaints regarding any activity, practice, policy, or procedure in institutional or community settings that adversely affects the health, safety, welfare, civil or human rights of any person with mental, cognitive, sensory, or physical disabilities. Individuals who have problems that are targeted in its program goals may also receive advocacy services and/or legal representation by VOPA. VOPA has the option of working in collaboration with the state system (APS) or, if the circumstances warrant, may investigate alone. VOPA should be informed when the report of suspected abuse, neglect, or exploitation specifies an adult in an institutional setting who has mental, cognitive, sensory, or physical disabilities.

2.27.6 The Department of Health Professions

The Department of Health Professions (DHP) receives and investigates complaints made against regulated health care professionals (i.e., 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.

2.27.7 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. Joint investigations with APS are acceptable. Referrals are not mandatory but encouraged.

2.27.8 Local law enforcement

The LDSS shall immediately notify local law enforcement where the adult resides, or where the alleged abuse, neglect, or exploitation took place, or if these places are unknown, then where the alleged abuse, neglect, or exploitation was discovered, when in receipt of a report describing any of the following:

1. Sexual abuse as defined in [§ 18.2-67.10](#); ([§ 63.2-1605](#) of the Code of Virginia).
2. Death, serious bodily injury or disease as defined in [§ 18.2-369](#) that is believed to be the result of abuse or neglect; or

3. Any other criminal activity involving abuse or neglect that places the adult in imminent danger of death or serious bodily harm.

2.28 Information sharing

See Chapter 6 for general information on confidentiality which also applies to APS cases. [Section 2.37](#) also applies to APS cases and should be used in conjunction with Chapter 6.

2.28.1 Information sharing for the purposes of 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) problems of the adult who is the subject of the report.

2.28.2 Disclosure of the identity of the reporter

([22 VAC 40-740-50](#)). 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 identity of the person who reported the suspected abuse, neglect, or exploitation may be disclosed if the reporter authorizes the disclosure of his or her identity or disclosure is ordered by the court. If the report is in regard to an individual residing in a long-term care facility, an acute care facility, or other group care facility, the worker taking the report should ask the reporter for oral or written consent to release his or her name to a representative from the appropriate regulatory authority so direct contact with the reporter can be made by the representative. Oral consent shall be documented on the Report screen in ASAPS. Written consent will be maintained in

the client's record. If the reporter does not agree to release his or her identifying information, the APS worker shall not release it unless ordered by the court.

2.28.3 Information sharing when a joint investigation is not planned

When agencies with legitimate interest in confidential information, as specified in [Section 2.37.1](#), are not participants in a joint investigation, the information specified at [Section 2.37.4.1](#) shall be shared as needed.

2.28.4 Assurances that information will be held confidential

The APS worker shall obtain assurances according to [Section 2.37.4.2](#) and [Section 2.37.4.3](#) that the persons or agencies identified in [Section 2.37.1](#) and [Section 2.37.2](#) who receive confidential information will protect the information. State-level agreements pursuant to [Section 2.37.4.3](#) are in effect with:

- Department for the Aging (VDA).
- 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.

2.28.5 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.

2.28.6 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 2.37](#).

2.29 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.

2.29.1 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.

Federal regulations at § 164.512 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.”

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).

2.29.2 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.

2.29.3 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.

2.30 Persons to inform when a facility report will be investigated

2.30.1 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 in charge to inform him or her that a report has been received and to request his or her cooperation with the investigation. Contact with the facility administrator, director, superintendent, or 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 prerogative to decide whether the investigation will be assisted by arriving at the facility unannounced or by a prior telephone call to the facility.

Without prior contact with the facility administrator, director, superintendent, or person in charge, the APS worker may initiate the investigation without entering the facility (i.e., 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).

2.30.2 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 notify him or her 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 that no person was in charge at the facility.

2.30.3 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 of this situation.

2.30.4 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 2.16.1](#).

2.30.5 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 2.16.1](#).

2.31 Facility Investigation

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, reasons shall be documented in the appropriate field on the Investigation screen in ASAPS. If additional space is needed, the service worker should enter the information in the "Investigation Notes" text box in the APS Assessment Hide/Show section the ASAPS Investigation screen.

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 particular case.

Nursing facilities are prohibited by [§ 32.1-138.4](#) of the Code of Virginia from retaliating or discriminating against any person who cooperates with an agency having responsibility for protecting the rights of patients of nursing facilities. Hospitals are prohibited by [§ 32.1-125.4](#) of the Code of Virginia from retaliating or discriminating against any person who cooperates with an agency having responsibility for protecting the rights of individuals treated in hospitals. Assisted living facilities and adult day care centers have the same prohibitions under the [§§ 63.2-1730](#) and [63.2-1731](#) of the Code of Virginia.

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 Investigation screen in ASAPS may be used for this report. The APS Report form can be printed from ASAPS (See ASAPS Robo Help).

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.

2.32 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, he or she shall document the differences in the APS assessment narrative.
- Completes the Investigation screen in ASAPS.
- Records appropriate information in ASAPS.
- 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 2.37.4.1](#). This report may be shared with agencies or persons with a legitimate interest as specified in [Section 2.37.2](#).

2.33 Notifications and Reports

2.33.1 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 (i.e., nursing facilities, assisted living facilities, facilities operated by DBHDS).
- Superintendents of school systems.
- The adult's legally appointed guardian, conservator, or authorized representative.
- The person who made the report.

The person who made the initial report shall be notified according to procedures in [Section 2.16](#).

2.33.2 Reports

The APS worker sends a report as follows:

- The appropriate AS/APS Regional Program Consultant shall be notified by email of the completion of the facility investigation. The email should provide the ASAPS case number and the adult's name. The Regional Program Consultant will review the case online through ASAPS.
- 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 2.37.1](#)).

2.34 Identification of service needs and service planning

When the investigation finds that the adult needs protective services as described in [Section 2.15.3](#), 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 does not make recommendations about the continued employment of staff by a facility.

2.35 Monitoring and follow-up

The APS worker shall make follow-up contacts and take other appropriate action, as needed, in cases with “needs protective services” 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.

2.36 Confidentiality

(§ [63.2-1605](#) of the Code of Virginia). The report and evidence received by the LDSS 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), 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.

(§ [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](#) and, if reviewed by the Team, shall be subject to all of the Team's confidentiality requirements.

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.

2.37 Release of information

Agencies and/or individuals receiving confidential information shall provide the LDSS with assurances that the information will be held confidential.

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.

2.37.1 Agencies with a legitimate interest in confidential information

([22 VAC 40-740-50](#)). 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. Virginia office for Protection and Advocacy;
2. Office of the Attorney General, including the Medicaid Fraud Control Program;
4. Department for the Aging;
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. Prosecutors; and
15. Any other entity deemed appropriate by the Commissioner or local department 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.

2.37.2 Persons/agencies with legitimate interest

([22 VAC 40-740-50](#)). 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 [§ 63.2-104](#) and the release of information is in the best interest of the adult:

1. Representatives of public and private agencies including community services boards, area agencies on aging and local health departments requesting disclosure when the agency has legitimate interest;
2. A physician who is treating an adult whom he reasonably suspects is abused, neglected or exploited;
3. The adult's legally appointed guardian or conservator;
4. A guardian ad litem who has been appointed for an adult who is the subject of an adult protective services report;
5. A family member who is responsible for the welfare of an adult who is the subject of an adult protective services report;
6. An attorney representing a local department in an adult protective services case;
7. The Social Security Administration; or
8. Any other entity that demonstrates to the commissioner or local department director that legitimate interest is evident

2.37.3 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. APS Regulations [22 VAC 40-740-40](#) also require the minimum disclosure in notifying the reporter that the investigation has been completed.

2.37.3.1 When disclosure is ordered by the court

If a subpoena is issued for an APS case record or for LDSS representatives to testify in connection with an investigation or proceedings not directly related to the purpose for which the information in the record was collected and maintained, the worker needs to notify the attorney who represents the LDSS. The attorney will advise the court of the federal and state laws and regulations pertaining to confidentiality and request the court to no longer require disclosure of such information. If the court continues to order disclosure, the LDSS shall comply.

2.37.3.2 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. **Notification letters are available under the Notification Tab on the investigation screen in ASAPS.**

2.37.4 Request for private information

Local departments are required to disclose information under the following circumstance:

([22 VAC 40-740-50](#)). 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.

Any individual, including perpetrators of abuse, neglect, and exploitation, 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 setting forth his or her position according to procedures set forth in § [2.2-3806](#) of the Code of Virginia.

2.37.4.1 Specific confidential information that may be disclosed

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

Any or all of the following specific information may be disclosed at the discretion of the LDSS to agencies or persons specified in [Section 2.37.2](#):

- ([22 VAC 40-740-50](#)). 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 or incidents of abuse, neglect, or exploitation;
4. Description of medical problems to the extent known;
5. Disposition of the adult protective services report; and
6. The protective services needs of the adult.

2.37.4.2 Assurances to the LDSS

Agencies or persons who receive confidential information pursuant to [Section 2.37.1](#) and [Section 2.37.2](#) shall provide the following assurances to the LDSS:

- ([22 VAC 40-740-50](#)). 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

2.37.4.3 Methods of obtaining assurances

Any one of the following methods may be used to obtain assurances required in [Section 2.37.4.2](#):

- Use of the form "[Consent to Exchange Information](#)" located on the VDSS internal website 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;

- ([22 VAC 40-740-50](#)). Agreements between local departments and other community service agencies that provide blanket assurances required in [Section 2.37.4.2](#) for all adult protective services cases (see [Appendix N](#));
- State-level agreements that provide blanket assurances required in [Section 2.37.4.2](#) for all adult protective services cases;
- Use the “[Assurances of Confidentiality](#)” form located on the VDSS internal website.

2.37.4.4 Notification that information has been disclosed

([22 VAC 40-740-50](#)). When information has been disclosed pursuant to this chapter, notice of the disclosure shall be given to the adult who is the subject of the information or to his legally appointed guardian. If the adult has given permission to release the information, further notification shall not be required.

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

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 Services forms page](#) of the VDSS internal website.

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 [VDSS public website](#).

APS Intake Report

This form may be used to take an APS report.

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

This form is used to notify other agencies of an APS investigation.

Report of Guardian for Incapacitated Person

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

Request to Impose Civil Penalty

This form is used to request that the DSS 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 which 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: Sample notice of hearing (to consider ordering emergency services)

VIRGINIA
IN THE CIRCUIT COURT OF THE CITY/COUNTY OF (name of city or county)
IN RE: (name of the adult who will be before the court).

NOTICE

TO: (name of the adult; notice shall also be given to the adult's spouse, or if none, to his nearest known next of kin)

You are hereby notified that on the ____ day of _____ (month) _____ (year), at the hour of _____ (time of day) or as soon thereafter as may be heard, the _____ (local department of social services that is petitioning) pursuant to Section 63.2-1609 of the Code of Virginia, as amended, will petition the circuit court of the _____ (city or county) of _____ (city or county) to order emergency protective services for _____ (adult's name) and for the appointment of a temporary guardian.

At the above-mentioned time and place, you may appear and take whatever action you deem advisable to protect your interests in the matter.

By

Attachment: Copy of the Petition

2.41 Appendix D: Sample petition for emergency protective services and appointment of a temporary guardian

The undersigned petitioner representing the **(local department of social services)** respectfully represents to the court as follows:

That _____ **(adult's name)**,
an adult _____ **(age of adult)** years of age is a resident of the _____
(the word "city or county") of _____ **(city or
county)** residing at

_____ **(adult's
address)** and that _____ **(he/she)** is presently in need of emergency protective
services by
reaso_____

_____ **(state the nature of the emergency and the nature of the adult's incapacity)** and
that the petitioner attempted on _____ **(pertinent
dates)** to obtain _____
(adult's name) consent for the services and

(state the outcome of the attempts).

Your petitioner further represents that it is his or her reasonable belief that:

- (type of services needed)** services are necessary to improve or correct the conditions creating the emergency; and
- That hospitalization or a change of residence ("**is or is not**") necessary.

WHEREFORE, pursuant to Section 63.2-1609 of the Code of Virginia, as amended, your petitioner hereby requests that the court order emergency adult protective services for **(name of adult)** and that the petitioner be appointed temporary guardian.

Date

Petitioner and Title

Name and Address of Department

2.42 Appendix E: Sample order of emergency protective services

IN THE CIRCUIT COURT OF THE CITY/COUNTY OF (city or county)

IN RE: (name of adult).

ORDER

This matter came to be heard upon the petition of (name, title, and department), asking that the court order emergency protective services for (name of adult) under Section 63.2-1608 of the Code of Virginia as amended and upon proof of service of notice of this proceeding upon the said (name of adult); and upon the evidence taken in open court respecting said petition and argued.

And it appearing to the court that the said (name of adult) is:

- incapacitated; and
- an emergency exists; and
- the adult lacks the capacity to consent to receive adult protective services.

The Court doth Adjudge, Order and Decree that emergency protective services (type of services ordered) be provided for (name of adult); and that hospitalization or a change of address (is or is not) necessary.

Further, the Court orders that the said emergency protective services may be provided only for a period of **15** days. This order may be renewed once for a **5** day period upon showing to this Court that the continuation of this original order is necessary to remove the emergency.

Further, the Court orders that the cost of the proceeding shall be borne by (the Commonwealth or the adult; if the adult is indigent, the cost of the proceeding shall be borne by the Commonwealth. If the adult is not indigent, the cost of the proceeding shall be borne by the adult).

ENTERED THIS _____ (day) day of _____ (month), _____ (year).

Judge

2.43 Appendix F: Protecting vulnerable adults through guardianship and/or conservatorship

2.43.1 Basis and purpose

A guardian/conservator is appointed for a person who has been found by the court to be incapable of receiving and evaluating information effectively or responding to people, events, or environments to such an extent that the person lacks the capacity to make decisions concerning his or her health and well-being. The purpose of the guardianship and/or conservatorship is to protect the incapacitated person or his or her assets from abuse, neglect, or exploitation.

The creation, conduct, and termination of a guardianship or conservatorship is based on Chapter 10 ([§ 37.2-1000 et seq.](#)) of Title 37.2 of the Code of Virginia.

The 2011 Session of the General Assembly passed the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, which addresses jurisdiction for appointment of a guardianship, the transfer of a guardianship or conservatorship to another state and the transfer of a guardianship or conservatorship to Virginia. (§§ [37.2-1031 through 37.2-1052](#) of the Code of Virginia).

2.43.2 Types of protection and responsibilities

2.43.2.1 Guardian

An individual may be appointed to serve as guardian of the adult (i.e., to make decisions about the personal life and affairs of the incapacitated adult). The guardian of the adult may be authorized by the court to make all personal decisions for the incapacitated adult or may be authorized to make decisions in only those areas specified by the court. The primary responsibilities of the guardian are to make decisions about where the incapacitated adult will live, how meals and personal care will be provided, and how health care and personal care decisions are made.

2.43.2.2 Conservator

An individual may be appointed to serve as conservator of the incapacitated adult's estate (i.e., to manage property, pay bills as they come due and make financial decisions). The primary responsibilities of the conservator are to manage the incapacitated adult's assets. The court may authorize the conservator to make all property and financial decisions or may limit that authority to certain areas. The conservator shall have prior approval from the court to buy or sell real property. The authority to buy or sell real property may be a part of the original order. If the authority is not a part of the original order

and if the conservator needs to buy or sell property, he or she will need to petition the court for an amended or supplemental order.

2.43.2.3 Guardians and conservators

An individual may be appointed to serve as both guardian of the incapacitated adult and conservator of his or her estate. This individual 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.

2.43.3 Situations that indicate need for a guardian or conservator

In Virginia, a court may appoint a guardian or conservator for the following situations:

- 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.

2.43.4 Determining the need for a guardian/conservator

The petitioning party has the responsibility to present clear and convincing evidence to substantiate the need for the appointment of a guardian/conservator. Evidence generally consists of:

- 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 incapacitated adult that documents the appropriateness and necessity of guardianship/conservatorship. This report is required under [§ 37.2-1005](#) of the Code of Virginia.

2.43.5 Documenting incapacity

2.43.5.1 Indicators of incapacity

Section [37.2-1000](#) of the Code of Virginia specifies that an adult is incapacitated when he or she is incapable of receiving and evaluating information effectively or responding to people, events, or environments.

The comprehensive evaluation

(§ [37.2-1005](#) of the Code of Virginia). A report evaluating the condition of the respondent shall be filed with the court and provided to the guardian ad litem within a reasonable time prior to the hearing on the petition. 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. If a report is not available, the court may proceed to hold the hearing without the report for good cause shown and absent objection by the guardian ad litem or may order a report and delay the hearing until the report is prepared, filed and provided to the guardian ad litem.

Prior to the guardianship/conservatorship hearing, the circuit court requires that one or more licensed physicians, psychologists, or licensed professionals skilled in the assessment of the physical or mental conditions alleged prepare a comprehensive evaluation of the current condition of the adult who is alleged to be incapacitated.

The LDSS may be asked to assist with the portion of the evaluation of which it has knowledge. If the LDSS is the petitioner, the report shall be prepared before going to court.

The purpose of the report is to inform the court about the condition of the alleged incapacitated adult. The report shall include the best available information and represent the belief of those who sign the report. It shall include 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 cost of the evaluation may be charged as part of the costs of the proceedings at the discretion of the court.

2.43.5.2 The nature and extent of the adult's alleged incapacity

The petition shall specify the type of guardianship or conservatorship requested and a brief description of the nature and extent of the adult's alleged incapacity ([§ 37.2-1002](#) of the Code of Virginia).

When the petition requests appointment of a guardian, include a brief description of the services currently being provided for the adult's health, care, safety, or rehabilitation. Where appropriate, include a recommendation as to living arrangement and treatment plan. If a limited guardian is requested, include the specific areas of protection and assistance being requested.

If a limited conservator is requested, include the specific areas of management and assistance being requested.

2.43.5.3 Documenting the alleged incapacitated adult's decision-making difficulties

The APS worker shall examine all available information concerning the alleged incapacitated adult's decision-making in areas that are critical to the adult. The APS worker should document situations in which the adult has been unable to make decisions in his or her own interest in the following areas:

- 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.

2.43.6 Who serves as guardian/conservator

Every effort should be made to locate the most appropriate guardian/conservator for the alleged incapacitated adult. A family member or close friend may be appropriate to serve as guardian/conservator. The first person considered for the guardian/conservator should be the adult's spouse unless the spouse is unable or unwilling to serve.

Criteria for determining the appropriateness of a person to serve as guardian/conservator includes: 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; emotional stability; and good physical health of the proposed guardian/conservator.

2.43.6.1 Guardians/conservators who are Virginia residents

An appropriate person who is a resident of the Commonwealth may be appointed and allowed to qualify as guardian/conservator of the alleged incapacitated adult.

2.43.6.2 Guardians/conservators who are non-residents

A non-resident adult parent, brother, sister, spouse, child, or other adult descendant of an adult adjudged incapacitated or any combination thereof, may be appointed and allowed to qualify as guardian/conservator of an incapacitated adult. At the time of qualification, a non-resident guardian/conservator shall file with the clerk of the circuit court his or her consent in writing that service of process in any action or proceeding against him or her as fiduciary, or any other notice with respect to the administration of the estate, trust or person in his or her charge in the Commonwealth, may be by service upon the clerk of the circuit court in which he or she is qualified or upon a resident of the Commonwealth and at the address that he or she specifies in the written instrument ([§ 26-59](#) of the Code of Virginia).

2.43.7 Eligibility for public guardian or conservator

([§ 37.2-1010](#) of the Code of Virginia). The circuit court may appoint a local or regional program authorized by the Department for the Aging pursuant to article 2 ([§ 2.2-711](#)) of Chapter 7 of Title 2.2 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.

The guidelines for determining indigency set forth in § [19.2-159](#) shall be used by the court 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

2.43.8 When the incapacitated subject of the petition is indigent

When the incapacitated adult who is the subject of the guardianship petition is indigent, any fees and costs of the proceedings shall be borne by the Commonwealth.

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.

2.43.9 Procedures to petition for appointment of a guardian/conservator

2.43.9.1 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 other similar facilities. 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 nonresident 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 (§ [37.2-1001](#) of the Code of Virginia).

2.43.9.2 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 ([§ 37.2-1039](#) of the Code of Virginia).*

A significant-connection state is defined as 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 ([§ 37.2-1037](#) of the Code of Virginia).

2.43.9.3 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.*
- *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 proceedings at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment ([§ 37.2-1040](#) of the Code of Virginia).

2.43.9.4 Appropriate Forum

A court of the Commonwealth that has jurisdiction to appoint a guardian 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 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 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.*
- *If an appointment were made, the court's ability to monitor the conduct of the guardian or conservator ([§ 37.2-1042](#) of the Code of Virginia).*

2.43.9.5 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 adult is unable to take care of himself or herself or his or her financial affairs or both and is, therefore, in need of a guardian/conservator to perform certain duties. The petitioner's attorney files a petition with the court and is responsible for notifying relatives of the alleged incapacitated adult of the guardianship and/or conservatorship hearing ([§ 37.2-1002](#) of the Code of Virginia).

Petitioners are frequently relatives. It is appropriate for an LDSS to petition in an adult protective services case when there is no family member or other interested person to file.

If a guardian/conservator is needed to protect the incapacitated adult from abuse, neglect, or exploitation, the department attorney should be consulted as a first step in planning for petitioning the circuit court for the appointment.

2.43.9.6 Information to include in a petition

The filing of a guardianship/conservatorship petition with the clerk of court constitutes the practice of law and shall be done by an attorney. However, APS workers are frequently expected to gather essential information and complete certain paperwork in preparation for the filing. See [Appendix G](#) for an example of a petition.

(§ [37.2-1002](#) 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 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 three such persons cannot be identified and located, that fact should be included in the petition.
3. 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.
4. 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. The petitioner shall attach a copy of any such document, if available.
5. The type of guardianship or conservatorship requested and a brief description of the nature and extent of the respondent's alleged incapacity.
6. 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 arrangement and treatment plan.
7. If the appointment of a limited guardian is requested, the specific areas of protection and assistance to be included in the Order of Appointment should be listed. If the appointment of a limited conservator is requested, the specific areas of management and assistance to be included in the order should be listed.

8. The name and post office address of any proposed guardian or conservator or any guardian or conservator requested by the respondent, and that person's relationship to the respondent.
9. The native language of the respondent and any necessary alternative mode of communicating.
10. 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.
11. A statement of whether the petitioner believes the respondent's attendance at the hearing would be detrimental to his/her health, care or safety; and
12. A request for appointment of a guardian ad litem.

2.43.9.7 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 [§ 37.2-1008](#) of the Code of Virginia).

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 ([§ 37.2-1008](#) of the Code of Virginia). Those fees include the fees for the respondent's attorney and the guardian-ad-litem.

2.43.10 Petition for restoration of capacity, modification, termination of the guardianship/conservatorship or removal of the guardian/conservator

Any adult found by the court to be incapacitated, the guardian/conservator of any adult found by the court to be incapacitated, or any other person may petition the court to restore the incapacitated adult's capacity. Likewise, a petition may be filed to request modification of the guardianship/conservatorship, or to terminate, or to order the removal of the guardian/conservator ([§ 37.2-1012](#) 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.

2.43.11 Compensation to guardian ad litem, attorney, 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 ([§ 37.2-1012](#) of the Code of Virginia).

2.43.12 Duties and powers of guardians

A guardian's relationship to the incapacitated adult for whom he or she was appointed guardian is based on trust. 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.

The guardian's responsibilities to the incapacitated adult include:

- Maintaining sufficient contact with the incapacitated adult to know of his or her capabilities, limitations, needs, and opportunities. The guardian shall visit the incapacitated adult as often as necessary.

- 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 (§ [37.2-1020](#) of the Code of Virginia).
- Filing an annual report on the incapacitated adult's condition with the LDSS for the jurisdiction in which he or she was appointed (§ [37.2-1021](#) of the Code of Virginia).

2.43.13 Reasons for termination of guardianship

A guardianship 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.

2.43.14 Transfer of guardianship or conservatorship

(§ [37.2-1046](#) 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.

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.

2.43.15 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 (§ [37.2-1047](#) of the Code of Virginia).

2.43.16 Registration of guardianship orders

(§ [37.2-1048](#) 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.

2.43.17 Guardian reports filed with the LDSS

When a guardian qualifies before the clerk of the circuit court, the clerk is required by § [37.2-1011](#) of the Code of Virginia, to forward a copy of the Order of Appointment 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 for the jurisdiction in which he or she was appointed

2.43.17.1 First report

Within six months from the date of the guardian's qualification, he or she is required to file the first report on the status of the incapacitated adult with the LDSS in the jurisdiction where he or she was appointed. This first report addresses the status of the incapacitated adult during the first four months, beginning on the date of qualification of the guardian.

When the incapacitated adult lives outside the Commonwealth of Virginia, the court that appointed the guardian retains jurisdiction and reports shall continue to be made to the LDSS in the jurisdiction in which the guardian was appointed.

If the incapacitated adult relocates to or resides in a jurisdiction other than where the guardian was appointed, it is the responsibility of the LDSS where the guardian was appointed to forward the guardian's report to the LDSS in the jurisdiction where the incapacitated adult then resides.

All reports filed by the guardian with the LDSS shall be on a form prepared by the Office of the Executive Secretary of the Supreme Court of Virginia. See "[Annual Report of Guardian for an Incapacitated Person](#)" located on the VDSS internal website.

The report shall be accompanied by a filing fee of \$5.00 made payable to the LDSS where the report is submitted.

2.43.17.2 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 filing fee of \$5.00 made payable to the LDSS in the jurisdiction where the incapacitated adult resides.

2.43.17.3 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 be accompanied by the \$5.00 filing fee.

2.43.17.4 Processing the guardian report filing fees

Section [37.2-1021](#) of the Code of Virginia requires that the guardian report be accompanied by a filing fee of \$5.00. Checks for filing fees should be made payable to the LDSS. The LDSS should report all guardian report filing fees as a receipt to Adult Protective Services, Budget Line 895, Cost Code 89503.

2.43.17.5 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 Guardianship shall be forwarded to a neighboring county or city department of social services and the annual reports shall be made by the guardian to the neighboring department. The LDSS may contact the appropriate AS/APS Regional Program Consultant for assistance in assigning responsibility to another department.

2.43.17.6 Referral of guardian reports to another LDSS

When a guardian is appointed, the clerk of the circuit court is instructed by [§ 37.2-1011](#) of the Code of Virginia, to promptly forward a copy of the order appointing the guardian to the LDSS in the jurisdiction where the incapacitated adult resides. Guardians are instructed by [§ 37.2-1021](#) of the Code of Virginia to file annual reports with the LDSS for the jurisdiction in which he or she was appointed. Section [37.2-1021](#) of the Code of Virginia assigns to the LDSS receiving the report the responsibility for forwarding the annual report to the LDSS in the jurisdiction where the incapacitated adult currently resides.

After forwarding the report and a copy of the Order, the LDSS for the jurisdiction where the guardian was appointed shall notify the guardian in writing to send subsequent reports, accompanied by the \$5.00 filing fee, to the LDSS for the jurisdiction where the incapacitated adult resides. The written notification to the guardian shall provide the name, telephone number, and mailing address of the LDSS for the jurisdiction.

The LDSS for the jurisdiction where the incapacitated adult resides is required to follow all guidance in Sections [2.43.17.7](#), [2.43.17.8](#), and [2.43.17.9](#) below.

2.43.17.7 Review of guardian reports 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, an APS 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 [Appendix I](#)).

2.43.17.8 Follow-up on the review of guardian reports

If the review of the guardian report finds the report is incomplete, the guardian should be requested to submit the missing information.

If it is the judgment of the APS worker that 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 case should be opened in ASAPS and procedures for documenting the report followed (see ASAPS-Robo Help). An investigation should be initiated.

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 APS worker should 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 should be filed in the case record.

If it is the judgment of the APS worker that there is no reason to suspect that the subject of the report is abused, neglected, or exploited, or is at risk of abuse, neglect, or exploitation, the date of review and the name of the APS worker should be noted and the report filed in a place designated by the local department.

(§ [37.2-1021](#) of the Code of Virginia). Within 60 days of the receipt of the annual report, the local department of social services shall file a copy of the report with the clerk of the circuit court that appointed the guardian, to be placed with the court papers pertaining to the guardianship case.

2.43.17.9 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, a “Notice of Overdue Guardian Report” may be sent to the guardian (see [Appendix I](#)).

The LDSS may ask the court whether the guardianship was transferred to another state.

If, after a good faith effort by the LDSS to obtain the guardian’s report, 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, the LDSS shall, at its discretion, initiate an APS report and proceed with an investigation.

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 ([§ 37.2-1021](#) of the Code of Virginia).

2.43.17.10 Death of the incapacitated adult; final report

When the incapacitated adult dies, the guardian shall prepare a summary report and include with the report the notice of the incapacitated adult’s death. The summary report will be filed with the LDSS as required by [§ 37.2-1021](#) of the Code of Virginia.

2.43.17.11 Maintenance of the guardian report form

When the guardian report has been reviewed by an APS worker, and no further action is needed, the completed report form should be filed in the adult’s record (if available) or in a place designated by the department. Guardian report forms are considered documents or reports maintained by APS and are not subject to the Virginia Freedom of Information Act.

2.43.17.12 Purging of the guardian report form

Guardian report forms filed with the LDSS in compliance with [§ 37.2-1021](#) of the Code of Virginia may be purged by the LDSS following the schedule (GS-15) established by the Library of Virginia. [GS 15](#) is located on the Library of Virginia’s website.

- Adult Services cases that do not contain an APS report, an ALF assessment or a PAS screening shall be retained for three years after the last action.
- Adult Services cases and APS cases with an APS report shall be retained five years after case closure.

- Cases that contain ALF assessments or nursing facility PAS shall be retained five years after the date of assessment.
- Records or cases that have been retained for the appropriated time frame shall be destroyed according to number 8 on the first page of the GS-15.

2.43.18 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 ([§ 37.2-1022](#) of the Code of Virginia).

2.43.19 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.

([§ 37.2-1023](#) of the Code of Virginia). A conservator shall comply with and be subject to the requirements imposed upon fiduciaries generally under Title 26, specifically including the duty to account set forth in [§ 26-17.4](#).

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.

2.43.20 Management powers and duties of conservators

A conservator, in managing the estate of an incapacitated adult, has the following powers and duties ([§ 37.2-1023](#) 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 ([§ 26-72](#) of the Code of Virginia), or
 - To claim a share of the estate of a deceased spouse under [§ 64.1-13](#) of the Code of Virginia;
- 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).

When the LDSS receives a report that the incapacitated adult's funds are being misused by the conservator, an APS investigation should be initiated.

2.44 Appendix G: Sample petition for appointment of a guardian or conservator (for information purposes only)

VIRGINIA:

IN THE CIRCUIT COURT OF _____ COUNTY/CITY
IN RE (name of the adult for whom a guardian is sought)

FIDUCIARY NO. _____

PETITION FOR APPOINTMENT OF GUARDIAN OR CONSERVATOR

COMES NOW the (**department name**) Department of Social Services (hereinafter “the Department”), pursuant to the Code of Virginia § 37.2-1002 and petitions this Honorable Court to appoint a guardian (**and/or conservator**) for (**name of adult**). In support of its Petition, the Department states as follows:

- 1) State the name of the petitioner, place of residence, post office address, and relationship, if any, to the adult for whom a guardian or conservator is sought.
- 2) State the name of the adult for whom a guardian or conservator is sought. Include the adult’s date of birth, place of residence or location, social security number, and post office address.
- 3) Include the names and post office addresses of the adult’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 adult, including step-children. If three such persons cannot be identified and located, the petitioner should so state in the petition.
- 4) State 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 adult’s care or custody.
- 5) State 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 adult is the principal. State the name of any guardian, committee, or conservator currently acting, whether in this state or elsewhere. Attach a copy of any such documents if available.

- 6) State the type of guardianship or conservatorship requested. Give a brief description of the nature and extent of the adult's alleged incapacity. When the petition requests appointment of a guardian, give a brief description of the services currently being provided for the adult's health, care, safety, or rehabilitation and, where appropriate, a recommendation as to living arrangement and treatment plan. If the appointment of a limited guardian is requested, state the specific areas of protection and assistance to be included in the order of appointment. If the appointment of a limited conservator is requested, state the specific areas of management and assistance to be included in the order of appointment.
- 7) State the name and post office address of any proposed guardian or conservator or any guardian or conservator nominated by the adult, and that person's relationship to the adult.
- 8) State the native language of the adult and any necessary alternative mode of communication.
- 9) Provide a statement of the financial resources of the adult. The statement shall list, to the extent known, the approximate value of the adult's property and the adult's anticipated annual gross income and other receipts, and debts.
- 10) Include a statement of whether the petitioner believes the adult's attendance at the hearing would be detrimental to the adult's health, care, or safety.

WHEREFORE, your Petitioner prays:

- 1) That **(name of proposed guardian)** be appointed guardian for the said **(insert name of the adult)** under the provisions of § 37.2-1002 of the Code of Virginia.
- 2) That a Guardian ad litem be appointed to represent **(name of adult)** in this proceeding.
- 3) That your Petitioner may have such further relief as the Court shall deem just and proper.

Respectfully submitted,

_____ **(Name of department)**

BY _____
Counsel **(City/County Attorney)**

STATE OF VIRGINIA
COUNTY/CITY OF

Personally appeared before me this _____ day of _____, 20____. _____

(Name of petitioner),

who, after first being duly sworn under oath, deposes and says that the matters contained in the foregoing petition are true to the best of (his/her) knowledge and belief.

Subscribed to and sworn to before me, a Notary Public in and for the City/County of

_____.

My Commission Expires: _____

2.45 Appendix H: Instructions to newly appointed guardians

Court-appointed guardians are required under [§ 37.2-1021](#) of the Code of Virginia, to file an annual report with the LDSS for the jurisdiction in which he or she was appointed.

The first report to be filed by the guardian is due at the LDSS within six months from the date of the guardian's qualification and covers the activity performed on behalf of the incapacitated person during the first four months of the guardianship.

After the first report has been filed, reports are due annually. Each report covers a 12-month period from the day the first report was filed and is due within four months of the end of that 12-month period ([§ 26-17.4](#) of the Code of Virginia).

The report shall be on a form prepared by the Office of the Executive Secretary of the Supreme Court. The first annual reporting form will be provided by the clerk of the court at the time of qualification. Subsequent annual reporting forms will be provided by the LDSS. The guardian has four months from the end of the reporting period in which to complete the annual report and submit it to the LDSS. All questions on the form must be answered.

When the guardian or the incapacitated person, either or both, live outside the Commonwealth of Virginia, the court that appointed the guardian retains jurisdiction and the report shall continue to be made to the LDSS in the jurisdiction in which the guardian was appointed.

If the incapacitated person dies, the guardian will prepare a summary report and include within the report the notice of the incapacitated person's death. The report will be filed with the LDSS as required by [§ 37.2-1021](#) of the Code of Virginia.

Incomplete report forms will be returned to the guardian for completion.

The report form shall be accompanied by a \$5.00 filing fee. The fee should be submitted in check form only and the check should be made payable to the LDSS.

If the guardian is to be compensated for his or her duties as guardian, the rate of compensation may be set in the court's order. If compensation is not set in the court order, the Commissioner of Accounts will need to approve the amount the conservator pays the guardian.

The guardian will need to make a written request for compensation from the conservator of the incapacitated person's estate. The amount of compensation that is requested should be reported in the section for itemizing "reasonable and necessary expenses" on the "Annual Report of Guardian for an Incapacitated Person" report form.

Twice each year the LDSS is required under [§ 37.2-1021](#) of the Code of Virginia to file with the Clerk of the Circuit Court a list of all guardians who are more than ninety days delinquent in filing an annual report as required.

Mail the report form and check as follows:

ANNUAL GUARDIAN REPORT

ATTENTION: _____

Department of Social Services

The local department of social services contact person regarding annual guardian reports is _____. The contact person may be reached by telephone at or by writing _____.

Guardians and Conservators are Mandated Reporters

Section [63.2-1606](#) of the Code of Virginia requires that when Guardians and Conservators suspect that an adult has been abused, neglected, or exploited or at risk of abuse, neglect, or exploitation, they shall immediately report their suspicions to Adult Protective Services of the department of social services in the locality where the incapacitated person resides or to the 24-hour, toll-free APS Hotline at **1-888-832-3858**.

Section [63.2-100](#) of the Code of Virginia provides the following definitions:

"Adult abuse" means the willful infliction of physical pain, injury or mental anguish or unreasonable confinement of an adult.

"Adult neglect" means that an adult 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.

"Adult exploitation" means the illegal use of an incapacitated adult or his resources for another's profit or advantage.

For additional information visit the [VDSS public website](#).

A Virginia Handbook for Guardians and Conservators: A Practical Guide for Court-Appointed Guardians and Conservators of Adults may be ordered from the Virginia Guardianship Association. An [order form](#) is available on the website.

2.46 Appendix I: Guidelines for review of guardian's report

Name of Incapacitated Person: The name of the person who is the subject of this report.

Circuit Court Where Guardian Appointed: The name of the circuit court where the guardian who is completing this report was appointed.

Age: The age of the person who is the subject of this report.

Circuit Court Case No.: The case number assigned by the circuit court where the guardian was appointed.

Date Appointed: The date the guardian who is completing this report was appointed to serve as guardian for the person who is the subject of this report.

Guardian's Name: The name of the guardian who is completing this report.

Guardian's Address: The address of the guardian who is completing this report.

Guardian's Telephone Number: The telephone number of the guardian who completing this report.

Conservator's Name: The name of the person who serves as conservator for the person who is the subject of this report, if the person has a conservator and if the conservator is someone other than the person who serves as guardian.

Conservator's Address: The address of the person who serves as conservator for the person who is the subject of this annual report, if the person has a conservator and if the conservator is someone other than the person who serves as guardian.

Conservator's Telephone Number: The telephone number of the person who serves as conservator for the person who is the subject of this annual report, if the person has a conservator and if the conservator is someone other than the person who serves as guardian.

Same as Guardian: A check mark should be placed on the line if the same person serves as both guardian and conservator for the person who is the subject of this report.

The Period Covered by This Report: The date the reporting period began and the date the reporting period ended.

Describe the current mental, physical, and social condition of the incapacitated person (attach additional pages if necessary): This section should describe any mental, physical and/or social problems observed by the guardian and should note any changes observed in these areas in the past year.

State any changes in the condition of the incapacitated person in the past year:

This section should describe any changes from the previous report.

Describe the living arrangements of the incapacitated person, including address:

This section should describe the setting in which the incapacitated person lives (i.e., with relatives, in a nursing home or assisted living facility, alone, etc.)

Describe all medical, educational, vocational and professional services provided to the incapacitated person for the period covered by the report, and state your opinion of the adequacy of the care received by the incapacitated person:

This section should explain the various services provided to the incapacitated person during the reporting period. This should include a statement that, in the opinion of the guardian, the services provided were adequate or were not adequate. If the guardian considers the services provided to be not adequate, the guardian should state what he or she plans to do to assure that services will improve. The guardian should identify areas in which he or she may need assistance from the LDSS to assure adequate care.

State the number of times you visited the incapacitated person, the nature of your visits and describe your activities on behalf of the incapacitated person:

This section should include a statement regarding the number of times the guardian visited the incapacitated person and the purpose of the visits. This should also include a statement describing activities performed by the guardian on behalf of the incapacitated person.

State whether or not you agree with the current treatment or habilitation plan:

This section should include a statement regarding whether the guardian believes that treatments, services, or current living arrangement is adequate or effective to meet the incapacitated person's needs.

State your recommendations as to the need for continued guardianship, any recommended changes in the scope of the guardianship, and any other information useful, in your opinion, to a consideration of the guardianship:

The guardian may recommend a continuation of the guardianship without changes; he or she may recommend expanding the authority of the guardian to areas not designated in the court order; or he or she may recommend rescinding all or part of the authority of the guardian and restoring all or part of the authority of the incapacitated person. In each case, the guardian should attach documentation to support the recommendations.

Itemize all reasonable and necessary expenses you incurred and list any request for compensation you have made:

In this section the guardian should itemize expenses incurred and state the amount of compensation requested. Any request for compensation should be made to the conservator who has control of the person's financial affairs.

I certify that the information contained in this Annual Report is true and correct to the best of my knowledge

Date: This should note the date the annual report is signed and dated by the guardian

Signature of Guardian: The guardian should use this line to affix his or her signature to the annual report.

DSS Use Only:

Date Received: The date the completed annual report is received at the LDSS should be entered on this line. If an incomplete report is received and returned to the guardian for completion, the date of receipt of the completed report is the date to be entered.

Date Reviewed: The date the report is reviewed by an APS worker should be entered on this line.

Reviewer's Signature and Title: The APS worker who reviews the annual report should sign the report and include his/her title.

2.47 Appendix J: Draft letter to guardian when the initial report is overdue

NOTICE OF OVERDUE GUARDIAN REPORT

Date: _____

Dear Guardian:

Re: (name of the incapacitated person)

This is to notify you that the (name of department) Department of Social Services has not received your Initial Guardian Report on (name of incapacitated person) which was due in this office on (date report was due). The Code of Virginia, § 37.2-1021, requires that persons who are appointed guardians of incapacitated persons file an initial report with the local department of social services within six months from the date of their qualifications. The initial report should address the status of the incapacitated person for the first four months of the guardianship.

The Clerk of the Circuit Court provided a form for your use in making this report. If you did not get the form, or have misplaced it, you may use the duplicate form that I am enclosing. Please submit your completed report to this office not later than (date report to be in LDSS office).

After you have filed this initial report, future reports on the status of (name of the incapacitated person) will be due annually. Your next report will cover a full year beginning (date of previous reporting period) and ending (one year after the date of the previous reporting period) and will be due in this office (4 months after the end of the reporting period).

If you need assistance with completing the form or if you have questions, you may telephone me at _____.

Please send your report to my attention at the address below:

Name of APS Worker to Receive the Report
Address of the Local Department

Sincerely,

Enclosure

2.48 Appendix K: Draft letter to guardian when the first or subsequent or annual report is overdue

NOTICE OF OVERDUE GUARDIAN REPORT

Date: _____

Dear Guardian:

Re: (name of the incapacitated person)

This is to notify you that the Annual Report of the Guardian on (name of incapacitated person) which was due in this office on (date report was due) has not been received. The Code of Virginia, § 37.2-1021, requires that persons who are appointed guardians of incapacitated persons file annual reports on the status of those persons with the local department of social services.

The overdue report is for the one year period which began (_____) and ended (____). The report should address the status of (name of the incapacitated person) for this 12 month period. I am enclosing a report form for your use in preparing the report. Please submit your completed report to this office not later than (date report to be in LDSS office).

If you need assistance with completing the form or if you have questions, you may telephone me at _____.

Please send your report to my attention at the address below:

Name of APS Worker to Receive the Report
Address of the Local Department

Sincerely,

Enclosure

2.49 Appendix L: AS/APS Regional Program Consultants service areas

Eastern	Central	Northern	Piedmont	Western
Carey Kalvig Pembroke Four, Suite 300 Virginia Beach, VA 23462 ☎ 757-491-3983 FAX: 757-552-1832	Marjorie Marker 1604 Santa Rosa Road Suite 130 Richmond, VA 23229 ☎ 804-662-9783 FAX: 804-662-7023	Andrea Jones 170 West Shirley Avenue Suite 200 Warrenton, VA 22186 ☎ 540-347-6313 FAX: 540-347-6331	vacant 1351 Hershberger Rd Suite 210 Roanoke, VA 24012 ☎ 540-204- 9638 FAX: 540-561-7536	Carol McCray 190 Patton Street Abingdon, VA 24210 ☎ 276-676-5636 FAX: 276-676-5621
Agencies	Agencies	Agencies	Agencies	Agencies
Accomack (001) 22 Brunswick (025) 13 Chesapeake (550) 23 Dinwiddie (053) 19 Franklin City (620) 23 Gloucester (073) 18 Greensville (081)/Emporia (595) 19 Hampton (650) 23 Isle of Wight (093) 23 James City (095) 23 Matthews (115) 18 Newport News (700) 23 Norfolk (710) 23 Northampton (131) 22 Portsmouth (740) 23 Prince George (149) 19 Southampton (175) 23 Suffolk (800) 23 Surry (181) 19 Sussex (183) 19 Virginia Beach (810) 23 Williamsburg (830) 23 York (199)/Poquoson (735) 23	Amelia (007) 14 Buckingham (029) 14 Caroline (033) 16 Charles City (036) 15 Chesterfield (041)/ Colonial Heights (570) 15 Cumberland (049) 14 Essex (057) 18 Fluvanna (065) 10 Goochland (075) 15 Hanover (085) 15 Henrico (087) 15 Hopewell (670) 19 King and Queen (097) 18 King William (101) 18 Lancaster (103) 17 Lunenburg (111) 14 Middlesex (119) 18 New Kent (127) 15 Northumberland (133) 17 Nottoway (135) 14 Petersburg (730) 19 Powhatan (145) 15 Prince Edward (147) 14 Richmond City (760) 15 Richmond County (159) 17 Westmoreland (193) 17	Alexandria (510) 8 Arlington (013) 8 Clarke (043) 7 Culpeper (047) 9 Fairfax (059)/Fairfax City (600)/Falls Church (610) 8 Fauquier (061) 9 Frederick (069) 7 Fredericksburg (630) 16 Greene (079) 10 Harrisonburg (660) 6/ Rockingham (165) King George (099) 16 Loudoun (107) 8 Louisa (109) 10 Madison (113) 9 Manassas City (683) 8 Manassas Park (685) 8 Orange (137) 9 Page (139) 7 Prince William (153) 8 Rappahannock (157) 9 Shenandoah (171) 7 Spotsylvania (177) 16 Stafford (179) 16 Warren (187) 7 Winchester (840) 7	Albemarle (003) 10 Alleghany005)/Covington (580) 5/ Clifton Forge (560) 5 Amherst (009) 11 Appomattox (011) 11 Bath (017) 6 Bedford (019)/Bedford City (515) 11 Botetourt (023) 5 Campbell (031) 11 Charlotte (037) 14 Charlottesville (540) 10 Craig (045) 5 Danville (590) 12 Franklin County (067) 12 Halifax (083)/South Boston (780) 13 Henry (089)/ Martinsville (690) 12 Highland (091) 6 Lynchburg (680) 11 Mecklenburg (117) 13 Nelson (125) 10 Pittsylvania (143) 12 Roanoke (770) 5 Roanoke Co. (161)/Salem (775) 5 Rockbridge (163)/Buena Vista (530)/ Lexington (678) 6 Shenandoah Valley (Staunton (790)Augusta (015)/ Waynesboro (820)6)	Bland (021) 3 Bristol (520) 3 Buchanan (027) 2 Carroll (035) 3 Dickenson (051) 2 Floyd (063) 4 Galax (640) 3 Giles (071) 4 Grayson (077) 3 Lee (105) 1 Montgomery (121) 4 Norton (720) 1 Patrick (141) 12 Pulaski (155) 4 Radford (750) 4 Russell (167) 2 Scott (169) 1 Smyth (173) 3 Tazewell (185) 2 Washington (191) 3 Wise (195) 1 Wythe (197) 3

The number in parentheses following locality name is the FIPS code; the number following the FIPS code is for the Planning District in which the locality is located. There are 120 LDSS.

2.50 Appendix M: Directory of agencies/programs

While conducting APS investigations, it is frequently appropriate to work with other agencies/programs with a related interest. This appendix provides websites, addresses, telephone numbers, and areas served for some of those agencies/programs with a related interest. **Note:** Numbers and addresses are subject to change. Please consult the agency's/organization's website for the most current contact information.

DIVISION OF LICENSING PROGRAMS DEPARTMENT OF SOCIAL SERVICES http://www.dss.virginia.gov/division/license/district.html	
<p>CENTRAL AREA (804) 662-9743 1604 Santa Rosa Road (804) 662-7023 FAX Wythe Building, Suite 130 Richmond, VA 23229-5008 COUNTIES SERVED: Amelia, Brunswick, Buckingham, Caroline, Charles City, Charlotte, Chesterfield, Cumberland, Dinwiddie, Essex, Fluvanna, Goochland, Halifax, Hanover, Henrico, King and Queen, King George, King William, Lancaster, Louisa, Lunenburg, Mecklenburg, New Kent, Northumberland, Nottoway, Powhatan, Prince Edward, Prince George, Richmond, Westmoreland CITIES SERVED: Blackstone, Colonial Heights, Farmville, Hopewell, Petersburg, Richmond, South Boston, West Point</p>	<p>PIEDMONT AREA (540) 204-9632 (540) 561-7536 FAX 1351 Hershberger Rd, Suite 210 Roanoke, VA 24012 COUNTIES SERVED: Alleghany, Amherst, Appomattox, Bath, Bedford, Botetourt, Campbell, Craig, Franklin, Henry, Nelson, Patrick, Pittsylvania, Roanoke, Rockbridge CITIES SERVED: Bedford, Buena Vista, Covington, Danville, Lexington, Lynchburg, Martinsville, Roanoke, Salem</p>
<p>EASTERN AREA (757) 491-3990 Pembroke Office Park (757) 417-3640 FAX Pembroke IV Office Building, Suite 300 291 Independence Boulevard Virginia Beach, VA 23462-5496 COUNTIES SERVED: Accomack, Northampton, Southampton, Greensville CITIES SERVED: Chesapeake, Norfolk, Portsmouth, Suffolk, Virginia Beach</p>	<p>VALLEY AREA (540) 332-2330 Augusta Professional Park (540) 332-7748 57 Beam Lane, Suite 303 Fishersville, VA 22939 COUNTIES SERVED: Albemarle, Augusta, Clarke, Frederick, Greene, Highland, Madison, Orange, Page, Rockingham, Shenandoah, Warren CITIES SERVED: Charlottesville, Harrisonburg, Staunton, Waynesboro, Winchester</p>
<p>PENINSULA AREA (757) 247-8020 (757) 247-8024 FAX 2600 Washington Ave., Suite 202 Newport News, VA 23607 COUNTIES SERVED: Gloucester, Greensville, Isle of Wight, James City, Mathews, Middlesex, Southampton, Surry, Sussex, York CITIES SERVED: Emporia, Franklin, Hampton, Newport News, Poquoson, Williamsburg</p>	<p>NORTHERN AREA (540) 347-6345 (540) 347-6304 FAX 170 W. Shirley Avenue, Suite 200 Warrenton, VA 20186 COUNTIES SERVED: Culpeper, Fauquier, Prince William, Rappahannock, Spotsylvania, Stafford CITIES SERVED: Fredericksburg, Manassas, Manassas Park, Woodbridge, Dale City</p>
<p>FAIRFAX AREA (703) 934-1505 (703) 934-1558 FAX 3701 Pender Drive, Suite 125 Fairfax, VA 22030 COUNTIES SERVED: Arlington, Loudoun, Fairfax CITIES SERVED: Alexandria, Annandale, Centreville, Fairfax, Falls Church, Herndon</p>	<p>WESTERN AREA (276) 676-5490 190 Patton Street (276) 676-5621 FAX Abingdon, VA 24210 COUNTIES SERVED: Bland, Buchanan, Carroll, Dickenson, Floyd, Giles, Grayson, Lee, Montgomery, Pulaski, Russell, Scott, Smyth, Tazewell, Washington, Wise, Wythe CITIES SERVED: Blacksburg, Christiansburg, Bristol, Galax, Norton, Radford</p>

OFFICE OF LICENSING
DEPARTMENT OF BEHAVIORAL SERVICES and DEVELOPMENTAL SERVICES

<http://www.dbhds.virginia.gov/OL-default.htm>

Central Office PO Box 1797 Richmond, VA 23218 804-786-1747 804-692-0066 FAX	Office of Licensing Northern Virginia Training Center 9901 Braddock Road Fairfax, VA 22032 703-323-2097 703-323-3197 703-323-2110 FAX
Office of Licensing Eastern State Hospital 4601 Ironbound Road, Building 4, PO Box 8791 Williamsburg, VA 23187 757-253-5465 757-253-5440 FAX	Office of Licensing Southeastern Virginia Training Center 2100 Steppingstone Square Chesapeake, VA 23320-2591 757-424-8364 757-424-8348 FAX
Office of Licensing Western State Hospital PO Box 2500 Staunton, VA 24401 540-332-8423 540-332-8314 FAX	Office of Licensing Southwestern Satellite Office PO Box 1797 Richmond, VA 23218 276-676-5790 276-676-5790 FAX

OFFICE OF HUMAN RIGHTS,
DEPARTMENT OF BEHAVIORAL HEALTH and DEVELOPMENTAL SERVICES

<http://www.dbhds.virginia.gov/OHR-default.htm>

Office of Human Rights P. O. Box 1797 Richmond, VA 23218 804-786-3988 804-371-2308 FAX
--

LONG-TERM CARE OMBUDSMAN PROGRAM

<http://www.vaaaa.org/LTCOP/>

Office of the State Long-Term Care Ombudsman Virginia Association of Area Agencies on Aging 24 East Cary Street, Suite 100 Richmond, VA 23219 Telephone: 804-565-1600; FAX: 804-644-5640 Toll free: 1-800-552-3402 State Long-term Care Ombudsman: Joani Latimer Assistant State Long-term Care Ombudsman: Gail Shirley Email: gshirley@theV4A.org ; jlatimer@theV4A.org ;
--

LOCAL OMBUDSMAN PROGRAMS	
http://www.vaaaa.org/LTCOP/localombud.asp	
Planning Service Area	Areas Served
Mountain Empire Older Citizens, Inc. Long-Term Care Ombudsman Program P.O. Box 888 Big Stone Gap, VA 24219-0888 Phone: 276-523-4202 FAX: 276-523-4208 Toll Free: 1-800-252-6362	Counties: Lee, Wise, & Scott. City: Norton
Appalachian Agency For Senior Citizens Long-Term Care Ombudsman Program P.O. Box 765 Cedar Bluff, VA 24609 Phone: 276-964-4915 FAX: 276-963-0130 Toll Free: 1-800-656-2272	Counties: Dickenson, Buchanan, Tazewell, Russell
District Three Governmental Cooperative Long-Term Care Ombudsman Program 4453 Lee Highway Marion, VA 24354-4270 Phone: 276-783-8157 x.3131 FAX: 276-783-3003 Toll Free: 1-800-541-0933	Counties: Washington, Smyth, Wythe, Bland, Grayson, Carroll Cities: Galax, Bristol
New River Valley Agency on Aging 141 East Main Street, Ste. 500 Pulaski, Virginia 24301 Phone: (540) 980-7720 Fax: (540) 980-7724 Toll-Free: 1-866-260-4417	Counties: Giles, Floyd, Pulaski, Montgomery City: Radford
LOA-Area Agency on Aging Long-Term Care Ombudsman Program P.O. Box 14205 Roanoke, Virginia 24038-4205 Phone: 540-345-0451 FAX: 540-206-0002	Counties: Roanoke, Craig, Botetourt, Allegany Cities: Salem, Roanoke, Clifton Forge, Covington
Valley Program for Aging Services, Inc. Long-Term Care Ombudsman Program P.O. Box 415 2137 Magnolia Ave. Buena Vista, Virginia 24416 Phone: 540-261-2553 FAX: 540-949-7143 Toll Free: 1-866-816-9020	Counties: Rockingham, Rockbridge, Augusta, Highland, Bath. Cities: Buena Vista, Lexington, Staunton, Waynesboro, Harrisonburg
Shenandoah Area Agency on Aging, Inc. Long-Term Care Ombudsman Program 207 Mosby Lane Front Royal, Virginia 22630-2611 Phone: 540-635-7141 ext. 211 FAX: 540-636-7810 Toll Free: 1-800-883-4122	Counties: Page, Shenandoah, Warren, Clarke, Frederick City: Winchester

<p>Northern Virginia Long-Term Care Ombudsman Program 12011 Government Center Pkwy., Ste. 708 Fairfax, Virginia 22035 - 1104 Phone: 703-324-5861 FAX: 703-324-3575</p>	<p>Counties: Arlington, Fairfax, Loudoun, Prince William Cities: Alexandria, Fairfax, Falls Church, Manassas, Manassas Park</p>
<p>Rappahannock-Rapidan Community Services Board Long-Term Care Ombudsman Program P.O. Box 1568 15361 Bradford Road Culpeper, Virginia 22701 Phone: 540-825-3100 x. 3416 FAX: 540-825-6245</p>	<p>Counties: Orange, Madison, Culpeper, Rappahannock, Fauquier</p>
<p>Jefferson Area Board For Aging Long-Term Care Ombudsman Program 674 Hillsdale Drive, Suite 9 Charlottesville, Virginia 22901 Phone: 434-817-5222 FAX: 434-817-5230</p>	<p>Counties: Nelson, Albemarle, Louisa, Fluvanna, Greene City: Charlottesville</p>
<p>Central Virginia Area Agency on Aging Long-Term Care Ombudsman Program 3024 Forest Hills Circle Lynchburg, Virginia 24501 Phone: 434-385-9070 FAX: 434-385-9209 Toll-Free: 1-866-255-6868</p>	<p>Counties: Bedford, Amherst, Campbell, Appomattox Cities: Bedford & Lynchburg</p>
<p>Southern Area Agency on Aging Long-Term Care Ombudsman Program 204 Cleveland Ave. Martinsville, Virginia 24112 Phone: 276-632-6442 FAX: 276-632-6252 Toll Free: 1-800-468-4571</p>	<p>Counties: Patrick, Henry, Franklin, Pittsylvania Cities: Martinsville & Danville</p>
<p>Lake Country Area Agency on Aging Long-Term Care Ombudsman Program 1105 West Danville, Street South Hill, Virginia 23970-3501 Phone: 434-447-7661 FAX: 434-447-8760 Toll Free: 1-800-252-4464</p>	<p>Counties: Halifax, Mecklenburg, Brunswick City: South Boston</p>
<p>Piedmont Senior Resources Area Agency on Aging, Inc. Long-Term Care Ombudsman Program P.O. Box 398 Burkeville, Virginia 23922-0398 Phone: 434-767-5588 FAX: 434-767-2529</p>	<p>Counties: Nottoway, Prince Edward, Charlotte, Lunenburg, Cumberland, Buckingham, Amelia</p>
<p>Senior Connections - Capital Area Agency on Aging, Inc. Long-Term Care Ombudsman Program 24 East Cary Street Richmond, Virginia 23219-3796 Phone: 804-343-3000 FAX: 804-649-2258 Toll Free: 1-800-989-2286</p>	<p>Counties: Charles City, Chesterfield, Goochland, Hanover, Henrico, New Kent, Powhatan City: Richmond</p>

<p>Rappahannock Area Agency on Aging, Inc. Long-Term Care Ombudsman Program 171 Warrenton Road Fredericksburg, Virginia 22405 Phone: 540-371-3375 FAX: 540-371-3384 Toll Free: 1-800-262-4012</p>	<p>Counties: Caroline, Spotsylvania, Stafford, King George City: Fredericksburg</p>
<p>Bay Aging Long-Term Care Ombudsman Program P.O. Box 610 Urbanna, Virginia 23175-0610 Phone: 804-758-2386 x. 44 FAX: 804-758-5773</p> <p>100 Parker View Court Williamsburg, VA 23188 Phone: 757-220-1577 FAX: 757-2201577</p>	<p>Counties: Westmoreland, Northumberland, Richmond, Lancaster, Essex, Middlesex, Mathews, King & Queen, King William, Gloucester</p> <p>Counties: James City & York Cities: Williamsburg, Newport News, Hampton, Poquoson</p>
<p>Crater District Area Agency on Aging 23 Seyler Drive Petersburg, Virginia 23805 Phone: 804-732-7020 FAX: 804-732-7232</p>	<p>Counties: Dinwiddie, Sussex, Greensville, Surry, Prince George Cities: Petersburg, Hopewell, Emporia, Colonial Heights</p>
<p>Hampton Roads Long-Term Care Ombudsman Program Senior Services of Southeastern VA 5 Interstate Corporate Center 6350 Center Drive, Suite 101 Norfolk, VA 23502-4121 Phone:1-800-766-8059 or 757-461-9481 FAX: 757-461-1068</p>	<p>Counties: Southampton, Isle of Wight Cities: Franklin, Suffolk, Portsmouth, Chesapeake, Virginia Beach, Norfolk</p>
<p>Eastern Shore Area Agency on Aging - Community Action Agency, Inc. Long-Term Care Ombudsman Program P.O. Box 415 36282 Lankford Highway Colonial Square, Suite 13-D Belle Haven, Virginia 23306 Phone: 757-442-9652 FAX: 757-442-9303 Toll-Free: 1-800-452-5977</p>	<p>Counties: Accomack, Northampton</p>

Office of the Chief Medical Examiner
400 E. Jackson Street
Richmond, VA 23219
Phone: 804-786-3174
www.vdh.virginia.gov/medexam/

District	Areas Served
<p>Central District 400 East Jackson Street Richmond, VA 23219 Phone: 804-786-3174</p>	<p>Counties Albemarle, Amelia, Brunswick, Buckingham, Caroline, Charles City, Charlotte, Chesterfield, Cumberland, Dinwiddie, Essex, Fluvanna, Gloucester, Goochland, Greene, Greensville, Halifax, Hanover, Henrico, James City, King and Queen, King George, King William, Lancaster, Louisa, Lunenburg, Matthews, Mecklenburg, Middlesex, Nelson, New Kent, Northumberland, Nottoway, Powhatan, Prince Edward, Prince George, Spotsylvania, Stafford, Surry, Sussex, Richmond County, Westmoreland.</p> <p>Cities Charlottesville, Colonial Heights, Emporia, Fredericksburg, Hopewell, Petersburg, Richmond, South Boston, Williamsburg.</p>
<p>Northern District 10850 Pyramid Place Suite 121 Manassas, VA 20110 Phone: 703-530-2600</p>	<p>Counties Arlington, Clarke, Culpeper, Fairfax, Fauquier, Frederick, Loudoun, Madison, Orange, Page, Prince William, Rappahannock, Shenandoah, Warren</p> <p>Cities Alexandria, Fairfax City, Falls Church, Manassas City, Manassas Park, Winchester.</p>
<p>Tidewater District 830 Southampton Ave. Suite 100 Norfolk, VA 23510 Phone: 757-683-8366</p>	<p>Counties Accomack, Isle of Wight, Northampton, Southampton, York.</p> <p>Cities Chesapeake, Franklin City, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach.</p>
<p>Western District 6600 Northside High School Road Roanoke, VA 24019 Phone: 540-561-6615</p>	<p>Counties Alleghany, Amherst, Appomattox, Augusta, Bath, Bedford, Bland, Botetourt, Buchanan, Campbell, Carroll, Craig, Dickenson, Floyd, Franklin, Giles, Grayson, Henry, Highland, Lee, Montgomery, Patrick, Pittsylvania, Pulaski, Roanoke, Rockbridge, Rockingham, Russell, Scott, Smyth, Tazewell, Washington, Wise, Wythe.</p> <p>Cities Bedford, Bristol, Buena Vista, Clifton Forge, Covington, Danville, Galax, Harrisonburg, Lexington, Lynchburg, Martinsville, Norton, Radford, Roanoke, Salem, Staunton, Waynesboro.</p>

DEPARTMENT OF HEALTH PROFESSIONS

www.dhp.state.va.us

Department of Health Professions Perimeter Center 9960 Mayland Drive, Suite 300 Henrico, VA 23233	804-367-4400 804-527-4475 FAX Complaints about licensees: 800-533-1560
Board of Audiology and Speech Language Pathology	804-367-4630 804-527-4471 FAX
Board of Counseling	804-367-4610 804-527-4435 FAX
Board of Dentistry	804-367-4538 804-527-4428 FAX
Board of Funeral Directors and Embalmers	804-367-4479 804-527-4413 FAX
Board of Long-Term Care Administrators	804-367-4595 804-527-4413 FAX
Board of Medicine	804-367-4600 804-527-4426 FAX
Board of Nursing	804-367-4515 804-527-4455 FAX
Medication Aide Registry	804-367-4569 804-527-4455 FAX
Board of Optometry	804-367-4508 804-527-4471 FAX
Board of Pharmacy	804-367-4456 804-527-4472 FAX
Board of Physical Therapy	804-367-4674 804-527-4413 FAX
Board of Psychology	804-367-4697 804-527-4435 FAX
Board of Social Work	804-367-4441 804-527-4435 FAX

VIRGINIA OFFICE FOR PROTECTION AND ADVOCACY

www.vopa.state.va.us

Virginia Office for Protection and Advocacy
 1910 Byrd Avenue, Suite 5
 Richmond, VA 23230
 Toll-free: 1-800-552-3962

**DEPARTMENT OF HEALTH,
 OFFICE OF LICENSURE AND CERTIFICATION**

www.vdh.virginia.gov/OLC/index.htm

Virginia Department of Health
 Office of Licensure and Certification
 9960 Mayland Dr., Suite 401
 Richmond, VA 23233
 Main #: 804-367-2102, Main Fax: 527-4502
 Complaints: 804-367-2106, Complaints Fax: 804-527-4503
 Complaint Hotline: 1-800-955-1819

MEDICAID FRAUD CONTROL UNIT

Office of the Attorney General
Medicaid Fraud Control Unit
900 East Main Street
Richmond, VA 23219
804-786-2071
800-371-0824
FAX: 804-786-3509 or 804-786-9136

ADULT PROTECTIVE SERVICES TOLL-FREE HOTLINE

1-888-832-3858

or

1-888-83ADULT

**DOMESTIC VIOLENCE AND SEXUAL ASSAULT TOLL-FREE
HOTLINE**

1-800-838-8238

2.51 Appendix N: Letter of understanding

We, the undersigned, understand and agree that the _____ (local department name) _____ Department of Social Services and _____ (the agency to receive information) _____ have service provision and _____ (insert nature of the responsibility of the agency receiving information) _____ responsibility respectively when there is abuse, neglect, or exploitation of an adult _____ (list any qualifying terms that may apply; for example an adult who is a resident in a DBHDS facility).

The Code of Virginia (Section 63.2-104) addresses the confidentiality of records and information concerning the provision of social services. The Code states:

“The records, information, and statistical registries of the Department, local departments, and of all child-welfare agencies concerning social services to or on behalf of individuals shall be confidential information, provided that the Commissioner, the Board, and their 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 any officer, agent, or employee of any child-welfare agency, the Commissioner, the State Board, their agents or employees, any person who has held any such position, and any other person to whom any such record or information is disclosed to disclose, directly or indirectly, any such confidential record or information, except as herein provided or pursuant to § 63.2-105. Every violation of this section shall constitute a Class 1 misdemeanor.”

All reports, documentary evidence, and other information received or maintained by the director (of the local Department of Social Services) shall be confidential and not subject to the Virginia Freedom of Information Act except that such information may be disclosed to persons having a legitimate interest therein where disclosure of the information is reasonably necessary for the conduct of investigations by state or local government agencies or the provision of services to the adult who is the subject of the Adult Protective Services report, in accordance with regulations promulgated by the Board. Such regulations shall require that the Board receive appropriate assurances from the agencies to which the information is disclosed that it will be held confidential except to the extent that disclosure is required by law.

The _____ (agency to receive information) is recognized in Social Services Board policy (effective January 1, 1990) as having legitimate interest in confidential APS information pursuant to this section of the Code.

This Letter or Understanding, when signed by both parties, shall serve as assurance that confidential Adult Protective Services information shared with (agency to receive information) pursuant to this section shall be held confidential in accordance with the provisions of 22 VAC 40-740-50.

(Signature of Department Head) (Date) (Signature of Agency Head) (Date)

2.52 Appendix O: Indicators of abuse, neglect, and exploitation

INDICATORS OF ABUSE, NEGLECT AND EXPLOITATION		
ABUSE		
Multiple/severe bruises, burns, welts Bilateral bruises on upper arms Clustered bruises on trunk Bruises which resemble an object Old and new bruises Signs of bone fractures Broken bones, open wounds, skull fracture Striking, shoving, beating, kicking, scratching Internal injuries	Sprains, dislocation, lacerations, cuts, punctures, black eyes, bed sores Untreated injuries, broken glasses/frames, Untreated medical condition: Burns, Scalding Restrained: tied to bed, tied to chair, locked in, isolated, over-medicated	Verbal assaults, threats, intimidation Prolonged interval between injury and treatment Demonstrates fear of caregiver Case manager not allowed to see adult alone Recent or sudden changes in behavior Unexplained fear Unwarranted suspicion
SEXUAL ABUSE		
Genital or urinary irritation, injury, infection or scarring Presence of a sexually transmitted disease Frequent, unexplained physical illness	Intense fear reaction to an individual or to people in general Mistrust of others Nightmares, night terrors, sleep Direct or coded disclosure of sexual abuse	Disturbed peer interactions Depression or blunted affect Poor self-esteem Self-destructive activity or suicidal behavior
NEGLECT		
Untreated medical condition Untreated mental health problem(s) Bedsore Medications not taken as prescribed Malnourishment Dehydration Dirt, fleas, lice on person Fecal/urine smell Animal infested living quarters	Insect infested living quarters No functioning toilet No heat, running water, electricity Homelessness Lacks needed supervision Lack of food or inadequate food Uneaten food over period of time Accumulated newspapers/debris	Unpaid bills Inappropriate or inadequate clothing Needs but does not have glasses, hearing aide, teeth, prosthetic device Hazardous living conditions Soiled bedding/furniture Frequent moving House too hot or cold
FINANCIAL EXPLOITATION		
Unexplained disappearance of funds or valuables Dependent relationship (i.e., adult child is financially dependent upon the older person or the older person is dependent for caregiving by the alleged abuser) Misuse of money or property by another person Transfer of property, savings, etc. Excessive payment for care and/or services Adult unaware of income amount Depleted bank account Sudden appearance of previously uninvolved relatives/friends	Change in payee, power of attorney, will Caregiver is overly frugal Unexplained cash flow Unusual household composition Chronic failure to pay bills	Personal belongings missing Adult is kept isolated Signature on check that does not resemble the adult's signature Adult complains doesn't know what happened to money Checks no longer come to house Adult reports signing papers and doesn't know what was signed

2.53 Appendix P: Code of ethics

The Adult Protective Services Worker is committed to the preservation of the older/incapacitated adult's rights, safety, and life style to the greatest degree possible.

The Adult Protective Services Worker accepts the older/incapacitated adult's right to make decisions until he or she delegates that right to another person or a court grants that right to another.

The Adult Protective Services Worker will respect the privacy of the older/incapacitated adult and hold in confidence all information obtained in the course of providing services, following law and Department policy.

The Adult Protective Services Worker will represent the interest of the older/incapacitated adult when the interest of family, community, and others compete.

The Adult Protective Services Worker will exercise due diligence in investigating reports and providing protection to older/incapacitated adults.

The Adult Protective Services Worker will develop relationships with other professionals, agencies, and organizations to facilitate a multi-disciplinary approach to enhance the quality of protective services.

The Adult Protective Services Worker will promote community awareness of the problem of abuse, neglect, or exploitation of older/incapacitated adults and will provide leadership to the community in responding to the problem.

The Adult Protective Services Worker will participate in professional development opportunities and will be proficient in best practice methods of the profession.

The Adult Protective Services Worker will participate in research and studies that expand the knowledge base needed to increase the effectiveness of Adult Protective Services.

Approved by the State Board of Social Services

April 20, 1995

2.55 Appendix R: Sample letter to mandated reporter (intent to impose civil penalty)

Dear:

Based on § 63.2-1606 of the Code of Virginia, you are a mandated reporter of suspected adult abuse, neglect, or exploitation. This is to notify you of the **(name of local department)** Department of Social Services' intent to request that a civil penalty be imposed on you for failure to meet your reporting requirements.

Attached is a copy of the "Request to Impose Civil Penalty" form that identifies the incident you failed to report. This request has been submitted to the Commissioner of the Virginia Department of Social Services, who will review the request and determine the action to be taken.

If imposed, the penalty for the first failure to report may be up to \$500. The fine for subsequent failures will be not less than \$100 or more than \$1000.

You may submit a written statement regarding your failure to report to the Commissioner. Your statement must be received within 45 days of the postmark of this letter. If your statement is received in a timely manner, the Commissioner will review your statement and the agency's request to determine if a civil penalty will be imposed. You will receive a written notice of the Commissioner's decision.

The Commissioner's address is:

(enter DSS home office address)

Sincerely,

(Director)
(Name of Local Department)
(Address)

2.56 Appendix S: Chapter 16 (§§ 63.2-1603 through 63.2-1610) of Title 63.2 of the Code of Virginia

§ [63.2-1603](#). Protection of adults; definitions.

As used in this article:

"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.

"Emergency" means that 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.

"Incapacitated person" means any adult who is impaired by reason of mental illness, mental retardation, 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.

§ [63.2-1604](#). Establishment of Adult Protective Services Unit; powers and duties.

There is hereby created the Adult Protective Services Unit within the Adult Services Program in the Department, which, in coordination with adult protective services programs in the LDSS, shall have the following powers and duties:

1. To support, strengthen, and evaluate adult protective services programs at local departments.
2. To assist in developing and implementing programs to respond to and prevent adult abuse, neglect, or exploitation.
3. To prepare, disseminate, and present educational programs and materials on adult abuse, neglect and exploitation to mandated reporters and the public.
4. To establish minimum standards of training and provide educational opportunities to qualify service workers in the field of adult protective services to determine whether reports of adult abuse, neglect, or exploitation are substantiated. The VDSS shall establish, and the Board shall approve, a uniform training program for adult protective services workers in the Commonwealth. All adult protective services workers shall complete such training within one year from the date of implementation of the training program or within the first year of their employment.

5. To develop policies and procedures to guide the work of persons in the field of adult protective services.
6. To prepare and disseminate statistical information on adult protective services in Virginia.
7. To operate the adult protective services 24-hour toll-free hotline and provide training and technical assistance to the hotline staff.
8. To provide coordination among the adult protective services program and other state agencies.
9. To work collaboratively with other agencies in the Commonwealth to facilitate the reporting and investigation of suspected adult abuse, neglect, or exploitation.

§ [63.2-1605](#). Protective services for adults by local departments.

A. Each local board, to the extent that federal or state matching funds are made available to each locality, shall provide, subject to supervision of the Commissioner and in accordance with regulations adopted by the Board, 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](#).

B. 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. The local department 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.

C. 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.

D. 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.

E. 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.

F. The local department shall foster the development, implementation, and coordination of adult protective services to prevent adult abuse, neglect, and exploitation.

G. The local department shall not investigate allegations of abuse, neglect, or exploitation of adults incarcerated in state correctional facilities.

H. The local department shall notify 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, then where the alleged abuse, neglect, or exploitation was discovered, when in receipt of a report describing any of the following:

1. Sexual abuse as defined in [§ 18.2-67.10](#);
2. Death, serious bodily injury, or disease as defined in [§ 18.2-369](#) that is believed to be the result of abuse or neglect; or
3. Any other criminal activity involving abuse or neglect that places the adult in imminent danger of death or serious bodily harm.

I. 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](#)), 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.

[§ 63.2-1606](#). Protection of aged or incapacitated adults; mandated and voluntary reporting.

A. 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. Medical facilities inspectors of the Department of Health are exempt from reporting

suspected abuse immediately while conducting federal inspection surveys in accordance with § 1864 of Title XVIII and Title XIX of the Social Security Act, as amended, of certified nursing facilities as defined in § [32.1-123](#). Reports shall be made to the local department or the adult protective services hotline in accordance with requirements of this section by the following persons acting in their professional capacity:

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

B. 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. 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. Any person required to make the report or notification required by this subsection shall do so either orally or in writing and shall disclose all information that is the basis for the suspicion of adult abuse, neglect, or exploitation. 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. 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 Team as provided in [§ 32.1-283.5](#) and, if reviewed by the Team, shall be subject to all of the Teams confidentiality requirements.

C. Any financial institution staff who suspects that an adult has been exploited financially may report such suspected exploitation 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. For purposes of this section, financial institution staff means any employee of a bank, savings institution, credit union, securities firm, accounting firm, or insurance company.

D. 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.

E. Any person who makes a report or provides records or information pursuant to subsection A, C or D, 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.

F. An employer of a mandated reporter shall not prohibit a mandated reporter from reporting directly to the LDSS or to the adult protective services hotline. Employers whose employees are mandated reporters shall notify employees upon hiring of the requirement to report.

G. 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 shall be guilty of a Class 4 misdemeanor. Any subsequent conviction of this provision shall be a Class 2 misdemeanor.

H. 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 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 or his designee. The Board shall establish by regulation a process for imposing and collecting civil penalties, and

a process for appeal of the imposition of such penalty pursuant to § [2.2-4026](#) of the Administrative Process Act.

I. 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.

J. 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.

K. All law-enforcement departments and other state and local departments, agencies, authorities and institutions shall cooperate with each adult protective services worker of an LDSS in the detection, investigation, and prevention of adult abuse, neglect, and exploitation.

§ [63.2-1608](#). Involuntary adult protective services.

A. 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 10 (§ [37.2-1000](#) et seq.) of Title 37.2.

B. In ordering involuntary adult protective services, the court shall authorize only that intervention which it finds to be least restrictive of the adult's liberty and rights, while consistent with his welfare and safety. The basis for such finding shall be stated in the record by the court.

C. 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.

§ [63.2-1609](#). Emergency order for adult protective services.

A. 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 the evidence, that:

1. The adult is incapacitated.
2. An emergency exists.
3. The adult lacks the capacity to consent to receive adult protective services.
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.

B. In issuing an emergency order, the court shall adhere to the following limitations:

1. Only such adult protective services as are necessary to improve or correct the conditions creating the emergency shall be ordered, and the court shall designate the approved services in its order. When ordering adult protective services, the court shall consider the right of a person to rely on non-medical remedial treatment in accordance with a recognized religious method of healing in lieu of medical care.
2. The court shall specifically find in the emergency order whether hospitalization or a change of residence is necessary. Approval of the hospitalization or change of residence shall be stated in the order. No adult may be committed to a mental health facility under this section.
3. Adult protective services may be provided through an appropriate court order only for a period of 15 days. The original 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.
4. In its order, the court shall appoint the petitioner or another interested person, as temporary guardian of the adult with responsibility for the adult's welfare and authority to give consent for the adult for the approved adult protective services until the expiration of the order.
5. The issuance of an emergency order and the appointment of a temporary guardian shall not deprive the adult of any rights except to the extent provided for in the order or appointment.

C. The petition for an emergency order shall set forth the name, address, and interest of the petitioner; the name, age and address of the adult in need of adult protective services; the nature of the emergency; the nature of the adult's incapacity, if determinable; the proposed adult protective services; the petitioner's reasonable belief, together with facts supportive thereof, as to the existence of the facts stated in subdivisions A 1 through A 4; and facts showing the petitioner's attempts to obtain the adult's consent to the services and the outcomes of such attempts.

D. 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 a copy of the petition shall be attached. Such notice shall 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.

E. Upon receipt of a petition for an emergency order for adult protective services, the court shall hold a hearing. The adult who is the subject of the petition shall have the right to be present and be represented by counsel at the hearing. If it is determined that the adult is indigent, or, in the determination of the judge, lacks capacity to waive the right to counsel, the court shall locate and appoint a guardian ad litem. If the adult is indigent, the cost of the proceeding shall be borne by the Commonwealth. If the adult is not indigent, the court may order that the cost of the proceeding shall be borne by such adult. This hearing shall be held no earlier than 24 hours after the notice required in subsection D has been given, unless such notice has been waived by the court.

F. The adult, the temporary guardian, or any interested person may petition the court to have the emergency order set aside or modified at any time there is evidence that a substantial change in the circumstances of the adult for whom the emergency services were ordered has occurred.

G. Where adult protective services are rendered on the basis of an emergency order, the temporary guardian shall submit to the court a report describing the circumstances thereof including the name, place, date and nature of the services provided. This report shall become part of the court record. Such report shall be confidential and open only to such persons as may be directed by the court.

H. If the person continues to need adult protective services after the renewal order provided in subdivision B 3 has expired, the temporary guardian or the local department shall immediately petition the court to appoint a guardian pursuant to Chapter 10 (§ [37.2-1000](#) et seq.) of Title 37.2.

§ [63.2-1610](#). Voluntary adult protective services.

A. The local department shall provide or arrange for protective services if the adult requests or affirmatively consents to receive these services. If the adult withdraws or refuses consent, the services shall not be provided.

B. 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. In the event that interference occurs on a continuing basis, the director may petition the court of competent jurisdiction to enjoin such interference.

C. 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.

2.57 Appendix T: Code of Virginia, criminal abuse or neglect of incapacitated adults

(§ 18.2-369). Abuse and neglect of incapacitated adults; penalty.

A. It shall be unlawful for any responsible person to abuse or neglect any incapacitated adult as defined in this section. Any responsible person who abuses or neglects an incapacitated adult in violation of this section and the abuse or neglect does not result in serious bodily injury or disease to the incapacitated adult shall be guilty of a Class 1 misdemeanor. Any responsible person who is convicted of a second or subsequent offense under this subsection shall be guilty of a Class 6 felony.

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

"Incapacitated adult" means any person 18 years or older who is impaired by reason of mental illness, mental retardation, physical illness or disability, advanced age or other causes to the extent the adult lacks sufficient understanding or capacity to make, communicate or carry out reasonable decisions concerning his well-being.

"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 an incapacitated adult.

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

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

2.58 Appendix U: 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.

2.58.1 Photographs taken during investigations

- Prior to taking any photographs during the course of an APS investigation, the APS worker shall document all efforts to obtain consent from the adult or his or her legal representative. 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 internal website.
- If an APS worker takes photographs during an APS investigation, one or more photographs should be printed for inclusion in the hard copy case record (if available). All of the photographs do not need to be printed. One or two photographs may suffice but should clearly represent the injury or the situation which prompted the investigation. At least one (1) photograph should be an overall photograph that identifies the adult. The hard copy case record photographs should be large enough to be easily viewed. Each photograph or page of photographs should be labeled with the APS worker's name, the ASAPS case ID, date of the APS report, and the date the photograph was taken.
- After downloading photographs from the camera, all photographs should be stored on a CD. Photographs taken by the APS worker will be put on that CD and placed in the adult's hard copy case record (if available). Each CD should be identified with the adult's ASAPS case ID, date of the APS report, and the date the photographs were taken. If a hard copy case record is not available, the CD should be stored in a secure location. If the APS worker leaves his or her position in the APS program, the CD will be given to the APS supervisor.
- 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 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.

2.58.2 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 ASAPS case ID, the date of the APS report, and the date the photographs were taken.

2.58.3 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. A padded camera case is recommended to prolong the life of the camera.
- 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.
- A color printer is recommended for printing photographs. Photo paper should be used when the photographs are to be used in court.

3

ADULT SERVICES CASE MANAGEMENT

TABLE OF CONTENTS

- 3.1 Case management**
- 3.2 Definitions**
- 3.3 Confidentiality**
- 3.4 Adult services intake**
 - 3.4.1 Information and referral
 - 3.4.1.1 Information
 - 3.4.1.2 Referral
- 3.5 Application for adult services**
 - 3.5.1 LDSS responsibilities
 - 3.5.2 Service application initiated by the individual
 - 3.5.3 LDSS-initiated service application
 - 3.5.4 Date of application
 - 3.5.5 When a new application is needed
- 3.6 Determining eligibility and opening a case**
 - 3.6.1 Target populations and criteria
 - 3.6.2 Case opening procedures
 - 3.6.3 Notification
- 3.7 Types of eligibility**
 - 3.7.1 Universal access
 - 3.7.2 Income maintenance
 - 3.7.2.1 Verification of receipt of income maintenance
 - 3.7.3 Eligibility based on income
 - 3.7.3.1 Verification of income eligibility/determination of monthly income
 - 3.7.3.2 Family size and income

- 3.7.3.3 Case composition
- 3.7.3.4 Use of the Median Income Chart

3.8 Fraud

3.9 Assessment process

- 3.9.1 Basis
- 3.9.2 The Virginia Uniform Assessment Instrument (UAI)
- 3.9.3 Required assessment areas
 - 3.9.3.1 Physical environment (section 1 of UAI)
 - 3.9.3.2 Functional status (section 2 of UAI)
 - 3.9.3.3 Physical health assessment (section 3 of the UAI)
 - 3.9.3.4 Psychosocial (mental health) assessment (section 4 of the UAI)
 - 3.9.3.5 Support systems (sections 1, 4, and 5 of the UAI)

3.10 The service plan

- 3.10.1 Service plan requirements
- 3.10.2 Goals, unmet needs, objectives, tasks, and target dates
 - 3.10.2.1 Goals
 - 3.10.2.2 Unmet needs
 - 3.10.2.3 Objectives
 - 3.10.2.4 Tasks
 - 3.10.2.5 Target dates
 - 3.10.2.6 Service plan: an example
 - 3.10.2.7 Date resolved

3.11 Case type selection

- 3.11.1 APS
- 3.11.2 APS – home-based care
- 3.11.3 APS investigation
- 3.11.4 AS
- 3.11.5 AS – home-based care
- 3.11.6 AS – intensive services
- 3.11.7 AS – Intensive services-home based care
- 3.11.8 ALF reassessment
- 3.11.9 Guardian report

3.12 Resource appraisal and selection

3.13 Service delivery

- 3.13.1 Direct services
- 3.13.2 Referrals
- 3.13.3 Purchased services
- 3.13.4 Ongoing service planning and delivery
- 3.14 Waiting lists**
- 3.15 Fees for services**
- 3.16 Required contacts**
 - 3.16.1 Contacts with the adult
 - 3.16.2 Collateral contacts
 - 3.16.3 Written correspondence
 - 3.16.4 Regular quarterly contact not required
- 3.17 Monitoring**
- 3.18 Redetermination/reassessment/evaluation of service delivery**
- 3.19 Closure of an adult services case**
- 3.20 Relocation**
- 3.21 Notice of action**
 - 3.21.1 Notice of action/application
 - 3.21.2 Termination of application other than approval or denial
 - 3.21.3 Failure to follow through or disappearance
 - 3.21.4 Notice of action/case management requirements
 - 3.21.5 Notice of action/closure
- 3.22 Death of the adult**
- 3.23 Appendix A: Forms**
- 3.24 Appendix B: Income eligibility determination**
- 3.25 Appendix C: Expenditures for services**
 - 3.25.1 Funding allocations
 - 3.25.2 Reimbursement to localities for adult services
 - 3.25.3 Budget lines, cost codes, and descriptions used by Adult Services

3

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 in Adult Services 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 words and terms are defined in state regulation and the Code of Virginia. When used in this chapter, they shall have the following meaning, unless the context clearly indicates otherwise:

Term	Definition
Auxiliary Grants Program	A state and locally funded assistance program to supplement income of a Supplemental Security Income (SSI) recipient or adult who would be eligible for SSI except for excess income, who resides in an assisted living facility or in adult foster care with an approved rate (22 VAC 40-25-10).
Department (VDSS)	The Virginia Department of Social Services (22 VAC 40-740-10).
Direct Service	Services provided to adults directly by local social services staff (22 VAC 40-780-10).

Term	Definition
Eligibility Determination	The process of deciding whether an individual or family meets the criteria for receiving a service (22 VAC 40-780-10).
Local Department (LDSS)	Any local department of social services in the Commonwealth of Virginia (22 VAC 40-740-10).
Purchased Service	Services provided by paid resource other than local social services staff (22 VAC 40-780-10).
Service Worker	The worker responsible for case management or service coordination and meeting the Department's requirements for the provision of services.
SSI (Supplemental Security Income)	A federal cash transfer program to help assure individuals a minimum income. Begun in 1974, SSI replaced the federal-state assistance program for the low-income aged, blind, and disabled that was originally established under the Social Security Act of 1935.
Universal Access	The provision of services without regard to income or membership in an income maintenance group (22 VAC 40-780-10).

3.3 Confidentiality

The Code of Virginia and federal laws and regulations require that an individual's information be kept confidential. With certain APS program exceptions, the adult shall give written permission before information may be obtained from other sources or given to another person or agency. The form, entitled [Consent to Exchange Information](#) is located on the VDSS internal website and should be used when sharing information. See Chapter 6, "Confidentiality" for additional information on confidentiality.

3.4 Adult services intake

Intake services provide an initial access point for services provided by the LDSS. Upon determining that there is no valid APS report, the worker proceeds with the adult services 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. 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. An ASAPS case is not opened for brief information and referral. If assistance is needed beyond information and referral, the adult may 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 Application for adult services

Anyone may apply for services. There shall be no requirement as to citizenship or length of residence in the jurisdiction. The application may be requested in person, by mail, or by telephone. Telephone calls to the LDSS are not considered an “application” unless the LDSS started a department-initiated application. A Service Application is available on the following VDSS websites:

[Internal Website](#)

[Public Site](#)

3.5.1 LDSS responsibilities

- LDSS shall accept all applications.
- Eligibility shall be determined as promptly as possible. LDSS shall notify the individual of its decision or lack of decision promptly but no later than 45 days after the application is received.

- An individual shall be given the opportunity to complete a service application on the day services are requested. An application requested by mail or telephone shall be mailed the same day.
- Assistance with completing the application shall be given if the individual requests assistance. A home visit may be necessary if the individual is unable to get to the department. 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 for financial assistance when appropriate.

3.5.2 Service application initiated by the individual

If the individual or authorized representative applies for services, a service application shall be completed.

The application may be initiated as pending or approved. The term "case" refers only to an approved case. Until approval, it is considered a pending application.

3.5.3 LDSS-initiated service application

The service application is initiated by the LDSS for any of the following:

- When the applicant is unable to sign the application or is incapacitated;
- A request for services is made from another agency or individual within or outside of the Commonwealth; or
- The application may be taken and processed by a service vendor if the agreement/contract with the vendor specifies this responsibility.

Service applications are not required for case type "ALF Reassessment" if the only service provided is the annual reassessment or case type "Guardian Report" if the only service provided is the review of the Annual Report of the Guardian (**Note:** the Application Date for the Case Info screen in ASAPS would be the date the case information is received in the LDSS). If additional services are provided beyond the service required for each of these case types, a signed service application shall be obtained. For additional information on case types see [Section 3.11](#).

3.5.4 Date of application

The date of application is one of following:

- The day the completed and signed Service Application or program-specific form is received by the LDSS.
- The date of the receipt of a valid Adult Protective Services (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.
- The date a vendor receives the application, when the vendor is responsible, per the agreement/contract, for receiving the service application and determining eligibility.

3.5.5 When a new application is needed

A new application is needed only when a case is properly closed and the individual wishes to reapply. It is not to be taken when a new service is added to an open case or when the basis of eligibility for service changes.

3.6 Determining eligibility and opening a case

A service case is opened based on eligibility, determination of need, and the availability and intent to deliver the service. Financial eligibility requirements as designated by local social services boards in local policy shall be considered.

3.6.1 Target populations and criteria

An adult who receives Adult Services (i.e., companion, chore, or homemaker services, adult day services, or adult foster care) shall fall within one of the target populations and meet one of the following criteria:

- Be 60 years of age or older; or
- Be 18 years of age or older and be impaired.

“Being impaired” means any adult:

([22 VAC 40-800-10](#)). Whose physical or mental capacity is diminished to the extent that he needs counseling or supervisory assistance, or assistance with activities of daily living (ADLs) such as feeding, bathing, and walking or instrumental activities of daily living (IADLs) such as shopping and money management.

An individual does not need to be determined eligible for SSA, SSI, or SSDI benefits prior to receiving services from the LDSS.

Adult protective services are provided to incapacitated adults 18 years of age or over and adults 60 years of age or over who are abused, neglected or exploited or at risk of abuse, neglect, or exploitation.

“Incapacitated person” means any adult:

(22 VAC 40-740-10). "Incapacitated person" means any adult who is impaired by reason of mental illness, mental retardation, physical illness or disability, advanced age or other causes to the extent that the adult lacks sufficient understanding or capacity to make, communicate or carry out reasonable decisions concerning his or her well-being. This definition is for the purpose of establishing an adult's eligibility for adult protective services and such adult may or may not have been found incapacitated through court procedures.

3.6.2 Case opening procedures

To open a case to Adult Services, proper procedures shall be followed regarding ASAPS and Notice of Action. See the [ASAPS-Robo Help](#) on the VDSS internal website.

3.6.3 Notification

The LDSS shall notify the individual of application decisions promptly, but no later than 45 days after the application is received.

3.7 Types of eligibility

Eligibility for services shall be determined by a service worker or a volunteer under the supervision of a service worker. To receive services an individual or family shall be found eligible in one of three categories:

- Universal Access
- Income Maintenance
- Eligibility Based on Income

3.7.1 Universal access

Individuals receiving services under universal access are eligible for services without regard to income. The LDSS may elect to provide all direct services on a universal access basis. Certain purchased services are universal access, depending on APS

program requirements and local board policy. The LDSS may choose one of two options in providing direct services on a universal access basis:

- All individuals needing direct services may be served on a universal access.
- Only individuals needing the following services/components may be served on a universal access basis.
 - APS.
 - Services provided to elderly and incapacitated adults at risk of abuse, neglect, or exploitation.

3.7.2 Income maintenance

Individuals are eligible for services in this category because they receive SSI or Auxiliary Grant. The applicable direct and purchased services available in this category are those provided by the LDSS within the limits set by the local board. Verifications are recorded in the “Eligibility/Income” section on the General Information screen in ASAPS.

3.7.2.1 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.
- Auxiliary Grant eligibility should be verified by Benefit Programs staff at the LDSS that processed the individual’s AG application.

3.7.3 Eligibility based on income

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 SMI is issued by a Broadcast each year prior to September 1st. The SMI chart is also available within the “Eligibility/Income” section on the General Information screen in ASAPS and the VDSS [internal website](#). The local board of social services selects the percentage cut-off point used and records this decision in the board minutes. The applicable direct and purchased services available to this broad category are those provided by the LDSS within limits set by the local board. Verifications are recorded in the “Eligibility/Income” section on the General Information screen in ASAPS.

3.7.3.1 Verification of income eligibility/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.

3.7.3.2 Family size and income

- For the AS/APS program, the family is the basic unit for social services delivery. Family means any individual adult, spouses or adult(s) 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 (see [Section 3.7.3.3](#)).
- 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.

3.7.3.3 Case composition

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

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 Income/Eligibility section of the General Information screen.

Adult children are always a considered a family of one. Common narrative can be linked through "Linked person" function in ASAPS (see ASAPS-Robo Help).

3.7.3.4 Use of the Median Income Chart

The State Median Income (SMI) Chart identifies the maximum income levels by family size by percentage of median income. Except for special condition

groups, the maximum percentage of median income is 50 percent. If a local board decides to limit the incremental percentage below 50 percent for any service, the percent selected shall be documented in local board minutes or in local board approved policy.

Twenty percent above the selected SMI percentage is used for individuals with a disability including individuals who are blind, deaf, have an intellectual disability, cerebral palsy, epilepsy, or autism. Adults at risk of institutionalization may be included at local option.

3.8 Fraud

The LDSS shall explain to individuals applying for Adult Services 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.

3.9 Assessment process

3.9.1 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. Assessment should take place throughout the entire case management process and is essential to service planning. 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 is to continue on a mutual basis between the individual and service worker in order 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. These activities will be reflected in the completed service plan.

3.9.2 The Virginia Uniform Assessment Instrument (UAI)

The UAI is used by public human services agencies in the Commonwealth to assess adults for service needs and service eligibility. The definitions used and procedures for completing the UAI are found in the User's Manual: Virginia Uniform Assessment

Instrument. The [User's Manual](#) and the [UAI](#) are available on the VDSS internal website.

The UAI is also found in ASAPS (see ASAPS-Robo Help) and may be printed as needed.

The following are guidelines for use of the UAI in the LDSS:

- At a minimum, the following five areas shall be addressed in the assessment process: the individual's physical health, psychosocial status, functional abilities, support systems, and physical environment. The UAI provides a format that assesses each area.
- If, during an assessment, it is determined that the individual is being abused, neglected, or exploited or is at risk of being abused, neglected, or exploited, an APS report shall be made and APS procedures followed according to Chapter 2.
- The UAI shall be completed in its entirety for any purchased services including home-based services (companion, chore, and homemaker), adult day services, and adult foster care. When the UAI is completed in its entirety, the worker has met the assessment requirements for the development of the service plan for an Adult Services case. In an Adult Protective Services case, an assessment to determine the need for protective services is required (see Chapter 2). If services are provided after the determination of the protective services needs, the entire UAI shall be completed.
- The UAI shall be completed in its entirety for nursing facility preadmission screening. For nursing facility preadmission screenings, the Department of Medical Assistance Services (DMAS) will accept a UAI with the initial assessment and only one reassessment.
- The UAI shall be completed for assisted living facility (ALF) assessments per guidance in the Assisted Living Facility Assessment Manual.
- For case types AS (Adult Services) and AS – Intensive Services that are NOT purchased services (i.e., assisting with SSI or Social Security issues), the short form of the UAI (pages 1 through 4) shall be completed. The worker shall ensure that all required assessment areas are addressed.
- When completing the short form of the UAI, the worker shall ensure that all required assessment areas are addressed. The required assessment areas of physical health, psychosocial status, and support systems may be addressed by completing other relevant sections of the UAI.

- The UAI shall be used for reassessments. The term "Reassessment" and date shall be noted on the front of the UAI to indicate that it has been used for this purpose. When using the UAI in ASAPS, follow the instructions in ASAPS Robo Help for placing a copy of the UAI in "History" and revising the current UAI.
- DMAS will reimburse for any completed nursing facility preadmission screening or ALF assessment that was completed in good faith, regardless of whether or not the individual assessed meets eligibility requirements or accesses services. The financial eligibility determination and the functional assessment using the UAI are two separate processes and should be completed simultaneously.
- For ALF assessments and reassessments and nursing facility preadmission screenings, the original UAI should be sent to the facility in which the individual will reside.
- The UAI is not required for case type "Guardian Report" if that is the only reason the case has been opened.

3.9.3 Required assessment areas

Assessments shall be performed in all of the five following areas for all adult services cases. Completion of the UAI meets this requirement. Additional assessments may be necessary as determined by the worker.

3.9.3.1 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.

3.9.3.2 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.

3.9.3.3 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.
- 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.).

3.9.3.4 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 problem 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 problem(s).
- Any manifestations of emotional, mental, or behavioral problems (e.g., insomnia, nightmares, crying spells, depression, agitation, unusual fears, thoughts, or perceptions, delusions, hallucinations, etc.).
- Any major life change/crisis in the past 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.

3.9.3.5 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.

3.10 The service plan

A service plan will be initiated that includes the services to be provided, resources to be used to meet the presenting or immediate problem area(s), and an identification of initial target dates.

3.10.1 Service plan requirements

- Each open case shall have a clearly identifiable, written service plan. Service plans are not required for case types “ALF Reassessment” and “Guardian Report.” The Service Plan Screen in ASAPS shall be used (see ASAPS Robo Help for details). The Service Plan may be printed from ASAPS if needed.
- 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.
- Within 60 days of the date of eligibility, the service plan shall be completed. Service plans are formulated jointly between the individual and the service worker as well as the individual’s family, when appropriate.
- 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 for meeting objectives.

3.10.2 Goals, unmet needs, objectives, tasks, and target dates

3.10.2.1 Goals

The following are goals for Adult Services 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.

3.10.2.2 Unmet needs

An unmet need is an identified need that is not currently being met in a way that assures the safety and welfare of the adult. Unmet needs are identified on the UAI after the completion of the assessment.

3.10.2.3 Objectives

- Objectives should reflect the consensus of the individual, the individual's family (where appropriate), and service worker regarding 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 in order to accomplish the goal(s).
- Objectives should be:
 - Identified by the individual or representative and worker to eliminate or diminish identified 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.

3.10.2.4 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 providers and their services shall be identified in the service plan.

3.10.2.5 Target dates

The service plan shall include dates for achievement of objectives. These dates should be realistic, and should not exceed the redetermination date on the Case Info screen in ASAPS.

3.10.2.6 Service plan: an example

- Goal: To restore or retain Mr. J's independent functioning to the greatest extent possible.
- Unmet Need: Nutrition.
- Objective: Mr. J. will gain 10 pounds.
- Task: Arrange 5 hours of companion services weekly to prepare lunch and an evening meal.
- Target Date: 3 months from date of plan.

3.10.2.7 Date resolved

The date resolved will indicate when the objectives are met. If the objective is not achieved by the target date, the reasons should be documented in the "Evaluation of Services" section on the Service Plan in ASAPS.

3.11 Case type selection

Each open service case shall have a primary "case type" designated. Cases shall be opened according to one of the following case type definitions:

3.11.1 APS

The APS report has been investigated and the disposition was "Needs Protective Services and Accepts." Protective services are being provided except there are no home-based care services being provided. Contacts shall be made at least **monthly** with the adult/collateral.

3.11.2 APS – home-based care

The APS report has been investigated and the disposition was "Needs Protective Services and Accepts". Home-based care (companion, chore, homemaker) is one of the protective services being provided. The "-Home Based Care" extension was added to make it easier to identify a case with home-based care services within a caseload listing. Contacts shall be made at least **monthly** with the adult/collateral.

3.11.3 APS investigation

An APS report is being investigated and no disposition has been made. Once a disposition has been made, the case type is changed if the case remains open, or the case is closed.

3.11.4 AS

A case in which intervention is primarily needed to maintain and monitor on-going services to promote self-sufficiency and enhance functioning of the adult. At least a **quarterly** contact with the adult/collateral shall be made.

3.11.5 AS – home-based care

A case in which intervention is primarily needed to maintain and monitor on-going services to promote self-sufficiency and enhance functioning of the adult. Home-based care (companion, chore, homemaker) is one of the services being provided. The “-Home Based Care” extension was added to make it easier to identify a case with home-based care services within a caseload listing. At least a **quarterly** contact with the adult/collateral shall be made.

3.11.6 AS – intensive services

A case in which intervention may be intense and require many resources in an attempt to stabilize the situation. Frequent and planned contacts with the adult/collateral are documented in the service plan. Contacts shall be made at least **monthly** with the adult/collateral.

3.11.7 AS – Intensive services-home based care

A case in which intervention may be intense and require many resources in an attempt to stabilize the situation. Frequent and planned contacts with the adult/collateral are documented in the service plan. Home-based care (companion, chore, homemaker) is one of the services being provided. The “-Home Based Care” extension was added to make it easier to identify a case with home-based care services within a caseload listing. Contacts shall be made at least **monthly** with the adult/collateral.

3.11.8 ALF reassessment

A case in which the only service being provided is the annual reassessment of the adult in an ALF that is required to maintain eligibility for AG. The case is opened and the redetermination date is the date the reassessment is due.

3.11.9 Guardian report

A case in which the only service being provided is the receipt and review of the Annual Report of the Guardian that is required by the [§ 37.2-1022](#) of the Code of Virginia. The case is opened and the redetermination date is the date the initial or annual report is due. See Appendix F in Chapter 2, Adult Protective Services for details on the required time frames for guardian reports.

3.12 Resource appraisal and selection

The individual may require a service provider outside of the LDSS. [Guidance manuals](#) listed below provide references on resources and are available on the VDSS internal website:

Long-Term Care Services	Chapter 4
Adult Services Providers	Chapter 5

The [Local Finance Guidelines Manual](#) is also available on the VDSS internal website.

Purchase of Services	Local Finance Guidelines Manual, Section 5.20 –Purchase of Services
----------------------	---

3.13 Service delivery

Social services shall be provided directly, by referral, or by purchase as required in order to assure appropriate service delivery and resource utilization necessary for implementation of the service plan.

3.13.1 Direct services

Direct services are those services provided, arranged, monitored, and/or referred by the LDSS staff as outlined in the service plan. Case management is an inherent part of the provision of direct services.

3.13.2 Referrals

Referrals are made when the worker directs the adult to an outside source for assistance.

3.13.3 Purchased services

Purchased services are those services purchased for adults by LDSS from approved providers, including department-approved providers and providers with whom the LDSS contracts. A [Purchase of Services Order](#) is available on the VDSS internal website.

3.13.4 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 in order 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.

3.14 Waiting lists

If department funds are inadequate to maintain the level of service to adults of an optional service or service mandated to the extent funds are available, localities should maintain a waiting list. Service by date of request is an acceptable means of administering a waiting list. Any other proposed policy for a waiting list, such as by degree of need or at-risk status, shall be sent to the appropriate AS/APS Regional Program Consultant for approval prior to submission to the local board of social services. Waiting list criteria shall be uniformly applied to all individuals requesting the service. Waiting lists should be updated at least annually.

The service plan in ASAPS allows a worker to indicate if the individual has to be placed on a waiting list for the designated service. See [ASAPS-Robo Help](#) for additional information about placing an individual on a waiting list.

3.15 Fees for services

Upon approval from the VDSS, the LDSS may also charge fees for other services. Agencies are encouraged to test fee systems where appropriate. Fee systems for service programs should be submitted to the appropriate AS/APS Regional Program Consultant for review prior to being submitted to the local board for approval.

3.16 Required contacts

For adult services and adult protective services, contact includes communication with the individual or a legally appointed guardian. More frequent contact should occur as needed. The worker should verify by observation or personal interview that the adult is receiving the planned services and to identify any changes in his or her situation. The worker shall make timely, regular contacts with providers to monitor the provision of services and the well-being of the individual. All contacts should be documented in the case narrative. Required provider monitoring contacts should be documented on the Compliance Form for Agency Approved Providers (See Chapter 5, Section 5.25).

3.16.1 Contacts with the adult

Contacts with the adult may include face-to-face visits in the field and/or office, telephone conversations, and written correspondence. Contacts should be conducted for the purpose of determining the individual's progress toward achieving objectives stated in the service plan.

For case types AS-Intensive Services, AS-Intensive Services-Home Based Care, APS and APS-Home Based Care, contacts (face-to-face or by telephone) shall be made at least monthly. More frequent contacts may be needed depending on the case situation. For case types AS, and AS-Home Based Care, contacts with the

adult (face-to-face or by telephone) are required at least every three months (quarterly).

3.16.2 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 and/or telephone conversations, and written correspondence.

3.16.3 Written correspondence

Written correspondence and collateral contacts are not counted as quarterly contacts for caseload monitoring purposes.

3.16.4 Regular quarterly contact not required

Regular quarterly contacts are not required for the following:

- Case type “Guardian Report.”
- Case type “ALF Reassessment.”
- The individual’s whereabouts prevent the department from having contact within the required time frame. The case record shall specify why the contact was not made.

3.17 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.

3.18 Redetermination/reassessment/evaluation of service delivery

The individual and the service worker shall conduct, collaboratively, an evaluation of progress towards meeting the goals and objectives and the delivery of services at the time of any completion or termination of a service or at other times as deemed appropriate, not to exceed the time standards for case reviews and redetermination. Redetermination 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). Verification is recorded in the “Eligibility/Income” section on the General Information screen in ASAPS.

If information is received in the interim that affects eligibility, redetermination shall be performed **within 30 days** of receipt of information.

The service worker shall reassess a case 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 a brief summary evaluation of the effectiveness of service delivery and an update of the service plan as appropriate. Follow the instructions in the ASAPS-Robo Help for placing a copy of the UAI in "History" and revising the current UAI.

The evaluation of service delivery shall address the effectiveness of the service plan in meeting the goals and objectives of the adult and the worker. The evaluation shall indicate whether target dates were met or modified and why and shall report the outcome of the service worker's service provision. The evaluation of the service delivery shall be documented in the "Evaluation of Service" section in the Service Plan in ASAPS. If additional space is needed the service worker should enter the information in the ASAPS Narrative and identify the type of contact as a "Case Action."

Based on the UAI reassessment, the worker shall document:

- The effectiveness of the service plan; the service plan shall be updated, if necessary.
- A description of the individual's current situation with input from the individual and family, if applicable, to determine if there are needs which should be addressed.
- An indication of whether additional services are needed. If so, the service plan shall be revised accordingly. If no further services are needed, the case should be closed.

3.19 Closure of an adult services case

An adult services case may be closed under any one of the following circumstances:

- The service plan goals and objectives have been met.
- Services are no longer needed.
- The individual requests closure, and, in the worker's professional judgment, the individual has the capacity to make that decision.
- The individual is no longer eligible due to excess income.

- The capable individual fails to follow the mutually agreed upon service plan, and the case record documents repeated attempts by worker to implement the plan.
- The LDSS is no longer able to serve the individual, and the individual is not a required population to be served.
- The time limit expires on a specific program.
- The LDSS is not able to maintain contact with the individual at least every quarter because the individual cannot be located or is not available.
- The individual relocates to another jurisdiction. Entering a long-term care facility may be considered a relocation.
- The individual dies.

3.20 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. The LDSS previously providing services may close the case. The case is opened by the LDSS serving the jurisdiction where the individual now resides. *The case may also be transferred by the supervisor in the original jurisdiction to a designated worker in the new jurisdiction. [ASAPS-Robo Help](#) provides information on transferring a case from one locality to another. See the guidance under the heading "Supervisors Tasks in ASAPS."*

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 placement. If services will be needed, the sending LDSS should:

- Notify the receiving LDSS of the expected date of the placement, the facility selected, and the services needed.
- If only ALF Reassessment is needed, the sending LDSS shall notify the receiving LDSS of the admission date and the name of the facility.
- Offer to assist in completing an application if needed.
- If the individual requests it, send a copy of the record and a brief summary to the receiving LDSS before the individual arrives.

For case type Guardian Report follow the procedures in Chapter 2, Adult Protective Services, Appendix F.

3.21 Notice of action

Proper procedures regarding notice to the individual and documentation shall be followed regarding a decision on an application or when closing a case. Proper notice is also required for all purchase of services. The form [Notice of Action for Service Programs](#) may be used to inform an individual about actions taken on his or her case and is available on the VDSS internal website.

3.21.1 Notice of action/application

- LDSS shall notify the individual of its decision or lack of decision on an application promptly but no later than 45 days after application is received.
- If the application is approved, the notice may be oral. If approval includes a purchase of service payment, the notice shall be written.
- Written notice shall be sent for denial of application or if a decision has not been made.

3.21.2 Termination of application other than approval or denial

- The individual may withdraw the application. For special procedures on Adult Protective Services, see Chapter 2.
- If the withdrawal was done by letter, telephone call or personal visit, a Notice of Action or letter shall be sent to acknowledge the withdrawal in order to protect the department and individual from any misunderstanding.
- The individual should be told that he or she may reapply at any time.

3.21.3 Failure to follow through or disappearance

If an individual disappears or fails to follow through with an application, VDSS does not need to try to find the individual unless a valid Adult Protective Service report has been made. If there has been no valid APS report, a Notice of Action terminating the application is sent 45 days after the application was received.

3.21.4 Notice of action/case management requirements

- A Notice of Action or letter shall be mailed or given to the individual when a purchased service payment is approved, reduced, suspended, or terminated.

- When mailed, send the Notice of Action approximately **14 days before** the date the action is to become effective so that the individual has a 10-day notice.
- Notices are not required for fluctuations in purchased service payments when the Purchase Order authorization remains the same.
- Use either a Notice of Action or a letter when written notice is required. If a letter is used, it shall specify:
 - The action taken or planned. If a service payment is involved, the letter must give the current amount, if any, and proposed amount.
 - The effective date.
 - The reason for the action.
 - Information on appeal procedures.

3.21.5 Notice of action/closure

A Notice of Action or letter shall be mailed or given to the individual or his/her representative when a case is closed.

3.22 Death of the adult

If the LDSS receives reliable information of an individual's death, the LDSS closes the case. A Notice of Action or letter may be sent to an appropriate relative or to the person(s) with whom applicant was living.

3.23 Appendix A: Forms

The following forms may be used for case management purposes. Unless otherwise indicated, these forms are located on the [Adult Services forms page](#) on the VDSS internal website.

Notice of Action for Service Programs

This form is used to notify an individual about an action that has been taken or will be taken on his or her case.

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.

Service Application

This form should be used by an individual to apply for services.

3.24 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

- Per capita payments to or funds held in trust for any individual in satisfaction of a judgment of the Indian Claims Commission or the Court of Claims.
- Money received from sale of property, such as stock, bonds, a house, or a car (unless the person was engaged in the business of selling such property in which case the net proceeds would be counted as income from self-employment).
- Earnings of less than \$25.00 a month.
- Withdrawals of bank deposits.
- Money borrowed.
- Tax refunds.
- Gifts.
- Lump sum insurance payments.
- Capital gains.
- The value of *Supplemental Nutritional Assistance Program (SNAP) benefits*.
- The value of USDA donated foods.
- The value of supplemental food assistance under the Child Nutrition Act of 1966 and the special food service program for children under the National School Lunch Act as amended.

- Earnings of a child under 14 years of age.
- Any benefits received under *Title III, Nutrition Program*, of the Older Americans Act, as amended.
- Any grant or loan to any undergraduate for educational purposes made or insured under any program administered by the Commissioner of Education.
- Any other scholarship loan or grant obtained and used under conditions that preclude its use for current living costs.
- Home produce used for household consumption.
- Earnings received by any youth under the Youth Employment Demonstration Program of the Comprehensive Employment and Training Act of 1973 (CETA).
- Payment to *Americorp/VISTA* volunteers.
- Payment to vendors for services to recipients. These are not to be considered income for the recipient.
- Garnished wages.
- The portion of income paid for child support, if being paid, whether court-ordered or not. The *child support* payment is income for the person receiving it.
- SSI.

3.25 Appendix C: Expenditures for services

3.25.1 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 its adults, the LDSS should return the surplus funds in a timely manner to the state for reallocation to other LDSS. The LDSS should make an effort to spend all of their funding for necessary services for the elderly and impaired adults in their communities.

3.25.2 Reimbursement to localities for adult services

The Division of Finance utilizes an automated system referred to as LASER (Locality Automated System for Expenditure Reimbursement) to process LDSS expenditures for the purpose of providing reimbursement from VDSS.

3.25.3 Budget lines, cost codes, and descriptions used by Adult Services

Below are descriptions of Adult Services that LDSS may provide. Not all agencies offer all of these programs.

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.

Localities should complete page two of the [Response to Medicaid Referral form](#) located on the VDSS internal website. 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 Adult Services program manager.

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).

SCREENINGS/ASSESSMENTS

Nursing Facility Preadmission Screening

Individuals who are Medicaid eligible or will be Medicaid eligible within 180 days of placement and who are seeking Medicaid coverage for nursing facility care shall be screened to determine their need for the service ([§ 32.1-330 of the Code of Virginia](#)). See the Virginia Medicaid Nursing Home Preadmission Screening Manual for details on procedures. DMAS reimburses for Medicaid pre-admission screenings through the RMS process.

The reimbursement for the following processes are not made through LASER, but directly by DMAS through ACS to the LDSS.

Assisted Living Facilities (ALF) – Initial Full Assessment

LDSS assess individuals receiving Auxiliary Grant (AG) using the UAI to determine the level of care required in an ALF. The LDSS providing the assessment will be reimbursed at the initial assessment rate for a full assessment. See the Virginia Assisted Living Facility Assessment Manual for details on procedures. Payments to localities are made directly by DMAS to the LDSS.

ALF – Initial Short Assessment

LDSSs assess individuals receiving AG using the UAI to determine the level of care required in an ALF. The LDSS providing the assessment will be reimbursed at the initial assessment rate for a short assessment. Payments to localities are made directly by DMAS to the LDSS.

ALF – Annual Reassessments

LDSS reassess individuals receiving AG annually to determine if the adult continues to meet the level of care that is required in an ALF. See the Assisted Living Facility Assessment Manual for details on procedures. Payments to localities are made directly by DMAS to the LDSS.

ADULT SERVICES (833)

83304 Adult Services- Home-Based Companion (State Supplement)

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.

83301 Adult Services – Home-Based Care -- Chore (State Supplement)

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 Homemaker (State Supplement)

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.

ADULT PROTECTIVE SERVICES (895)

This budget line is used to fund the APS program. This funding may be used for reimbursable expenses of the Adult Protective Services Program at the local level. A base amount is provided to each locality. Additional APS funding is distributed using a need-based formula.

89501 Adult Protective Services

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. APS provides services to elders and to incapacitated adults. Purchase of services are appropriate under the following circumstances: 1) an APS report has been taken and the investigation has determined that an elder or an incapacitated 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 2) an APS report has been taken and the protective services investigation has found an elder or an incapacitated 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.

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 854 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 the problem of adult abuse.

89503 Adult Protective Services-Guardianship Fees

Section [37.2-1021](#) of the Code of Virginia requires an annual personal status report on the incapacitated adult for whom a guardian has been appointed, the Annual Report of Guardian for an Incapacitated Person Form (Form CC-1644). Section [37.2-1021](#) requires that guardians complete this form and submit it annually to the LDSS in the jurisdiction where the incapacitated adult lives. Section [37.2-1021](#) requires that the annual report, when filed, be accompanied by a filing fee of \$5.00. Checks for filing fees should be made payable to the LDSS.

Section [37.2-1021](#) requires that the \$5.00 filing fee that accompanies annual guardianship reports be retained by the LDSS in the jurisdiction where the fee is collected and be used in the provision of services to protect vulnerable adults and prevent abuse, neglect or exploitation of vulnerable adults.

Enter the receipt of fees paid to the locality using expenditure type "R" (receipt) as a credit to account number 40895, Receipt of Fees, using the non-reimbursable fund code 0033. LDSS should use funds in this cost code for services to adults in the same manner that funds are used in 89501 for services to vulnerable adults served through the APS program.

4

LONG-TERM CARE SERVICES

TABLE OF CONTENTS

- 4.1 Introduction**
- 4.2 Home-Based Care Services to adults**
 - 4.2.1 Home-Based Care Services defined
 - 4.2.2 Purpose of Home-Based Care Services
 - 4.2.3 Eligibility for Home-Based Care Services
 - 4.2.3.1 Financial eligibility
 - 4.2.3.2 Living arrangements
 - 4.2.3.3 Prioritizing need for Home-Based Services/waiting lists
 - 4.2.3.4 Temporary reduction or termination of SSI
 - 4.2.4 Criteria for Companion Services
 - 4.2.4.1 Definition
 - 4.2.4.2 Provision of Companion Services
 - 4.2.5 Criteria for Chore Services
 - 4.2.5.1 Definition
 - 4.2.5.2 Eligible persons - Chore Services
 - 4.2.5.3 Provision of Chore Services
 - 4.2.6 Criteria for Homemaker Services
 - 4.2.6.1 Definition
 - 4.2.6.2 Provision of Homemaker Services
 - 4.2.7 Assessment required for Home-Based Care Services
 - 4.2.7.1 Use of Virginia Uniform Assessment Instrument
 - 4.2.7.2 Assessment procedure
 - 4.2.7.3 Types of services
 - 4.2.7.4 Duplication of service activities

- 4.2.8 Service delivery – Home-Based Care Services
 - 4.2.8.1 Maximum hours
 - 4.2.8.2 Provider pay rate
 - 4.2.8.3 Methods of service delivery
 - 4.2.8.4 Sliding-fee system
 - 4.2.8.5 LDSS responsibility
 - 4.2.8.6 Licensing standards
 - 4.2.8.7 Minimal safety standards
- 4.2.9 Receiving Home-Based Care Services and Medicaid Waiver Personal Care Services
- 4.2.10 The LDSS as the adult's fiscal agent

4.3 Adult Day Services

- 4.3.1 Definition – Adult Day Services
- 4.3.2 Eligible individuals - Adult Day Services
- 4.3.3 Purchase components - Adult Day Services
- 4.3.4 Providers - Adult Day Services
- 4.3.5 Rates of payment - Adult Day Services
- 4.3.6 Service requirements - Adult Day Services

4.4 Adult Foster Care (AFC)

- 4.4.1 Definition – AFC
- 4.4.2 Eligible individuals/payment sources - AFC
 - 4.4.2.1 Local-only funding eligibility
 - 4.4.2.2 Auxiliary Grant (AG) eligibility
 - 4.4.2.3 Private pay
- 4.4.3 LDSS services - AFC
 - 4.4.3.1 Recruitment, screening, and approval of AFC homes
 - 4.4.3.2 Assessment using the Virginia UAI
 - 4.4.3.3 Assistance with placement
 - 4.4.3.4 Monitoring
 - 4.4.3.5 Ongoing contact
 - 4.4.3.6 AG
- 4.4.4 Medical examination - AFC
- 4.4.5 Monthly Rate- AFC
 - 4.4.5.1 Room and board
 - 4.4.5.2 Maintenance and care

- 4.4.6 AG - Adult Foster Care
 - 4.4.6.1 Maximum rate to be paid to AFC providers
 - 4.4.6.2 Room, board, supervision, and special services
 - 4.4.6.3 Coordinating eligibility for an AG
- 4.4.7 Coordination with local Community Services Boards (CSB) – AFC
- 4.5 Assisted Living Facility (ALF) assessment**
 - 4.5.1 Introduction to ALF assessment
 - 4.5.2 Definition of ALFs
 - 4.5.3 Persons to be assessed in ALFs
 - 4.5.4 Assessors for public pay individuals in ALFs
 - 4.5.5 Assessors for private pay individuals in ALFs
 - 4.5.6 Assessment and determination of services to be provided in ALFs
 - 4.5.7 When to complete a UAI for individuals residing in an ALF
 - 4.5.8 Criteria for placement in an ALF
 - 4.5.8.1 Criteria for residential living
 - 4.5.8.2 Criteria for assisted living
 - 4.5.8.3 Prohibited conditions
 - 4.5.8.4 Private pay individuals only - exceptions to the above
 - 4.5.9 Possible results from an ALF assessment
 - 4.5.10 Case typing for ALF assessments
- 4.6 Nursing facility preadmission screening**
 - 4.6.1 Community-Based Preadmission Screening (PAS) team
 - 4.6.1.1 Composition of the team
 - 4.6.1.2 Responsibilities and procedures of the team
 - 4.6.2 LDSS responsibilities
 - 4.6.3 Procedures for adults residing in the community
- 4.7 The Department of Behavioral Health and Developmental Services (DBHDS) and Community Services Boards (CSB)**
 - 4.7.1 Case management
 - 4.7.2 Case review by a prescription team
 - 4.7.3 Admission to a state facility operated by DBHDS
 - 4.7.4 Convalescent leave and discharge planning
- 4.8 Long-term care coordinating committees**
- 4.9 Appendix A: Forms**

4

LONG-TERM CARE SERVICES

4.1 Introduction

It is the responsibility of the service worker working with the adult and/or his or her representative to determine the most appropriate method of service delivery such as direct services, purchased services, or referral to another agency. This chapter identifies the primary services provided by local Adult Services programs and describes the responsibilities of the local department of social services (LDSS) in relation to other agencies.

4.2 Home-Based Care Services to adults

4.2.1 Home-Based Care Services defined

Home-Based Care Services consist of three components: Companion, Chore, and Homemaker services.

Each local board shall provide for the delivery of at least one of these services to the extent that federal and/or state matching funds are made available. The local board shall determine which of the three services is mandated ([§ 63.2-1600](#) of the Code of Virginia).

The local board shall develop policy addressing all aspects of home-based care provided in the locality, including criteria for receiving home-based services, financial eligibility criteria, which home-based service(s) will be provided, and how an assessment will be conducted to determine the number of approved hours. The policy shall be reviewed and approved by an AS/APS Regional Program Consultant prior to board approval.

4.2.2 Purpose of Home-Based Care Services

Home-Based Care Services are used for the following purposes:

- To provide protection to adults or prevent abuse, neglect, or exploitation.

- To assist adults in attaining or retaining self-care, self-sufficiency, and independence.
- To prevent inappropriate institutionalization.

4.2.3 Eligibility for Home-Based Care Services

4.2.3.1 Financial eligibility

Eligible individuals are adults who meet financial eligibility criteria contained in Chapter 3, Adult Services Case Management and local board policy, and who are assessed to need the service.

4.2.3.2 Living arrangements

An adult is eligible to receive Home-Based Care Services if one of the following conditions is met:

- The home is owned in full or in part by the adult; or
- The rent or mortgage and utilities, etc. are paid in the adult's name; or
- The rent or mortgage, utilities, household expenses, etc., are shared between the adult and others; or
- The adult lives in the home of a relative, friend, roommate, or other housing situation; or
- The adult does not live in a residential care setting such as a nursing facility, assisted living facility, or a hospital.

4.2.3.3 Prioritizing need for Home-Based Services/waiting lists

When funds are inadequate to maintain the level of services or to increase service delivery as needed, the LDSS shall develop criteria for prioritizing need and/or establish a waiting list. Waiting list criteria shall be uniformly applied to all adults requesting the service. Waiting lists should be updated at least annually. Service by date of request is an acceptable means of administering a waiting list. The LDSS may adopt additional criteria regarding the adult's living situation if diminished funding has reduced the availability of the service. Acceptable examples of additional criteria include providing the service only to adults who live alone or who are at risk of institutionalization. Any other proposed policy shall be sent to the appropriate AS/APS Regional Program Consultant for approval prior to local board approval. Documentation of local board approval shall be submitted to the appropriate AS/APS Regional Program Consultant.

4.2.3.4 Temporary reduction or termination of SSI

In cases where the Social Security Administration (SSA), the Virginia Department of Social Services (VDSS), or the LDSS has made an error that requires a temporary reduction or temporary termination of an individual's SSI payment due to an overpayment, the adult may continue to be eligible for service as an SSI recipient. The case record shall identify error(s) resulting in overpayment, who was responsible for the error(s), and what affect the error(s) had on the adult's SSI benefits.

4.2.4 Criteria for Companion Services

4.2.4.1 Definition

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. Companion Services shall be provided only to an individual who meets the eligibility requirements in [Section 4.2.3](#). Activities include, but are not limited to:

- Bathing.
- Dressing.
- Toileting.
- Eating/feeding.
- Transportation.
- Meal preparation.
- Shopping.
- Supervision.
- Light housekeeping.
- Companionship.
- Household/financial management.

4.2.4.2 Provision of Companion Services

- A parent, spouse, or other relative of an eligible adult may be approved as a companion provider if the written documentation shows that:

- He or she is the most available and/or qualified person to provide the service.
 - He or she is unable or unwilling to provide these services free of charge.
 - In the professional judgment of the worker, this would be the best plan of care for the adult.
- An LDSS shall not establish policy that prohibits the utilization of a relative as a companion provider.

4.2.5 Criteria for Chore Services

4.2.5.1 Definition

Chore Services are the performance of non-routine, heavy home maintenance for adults unable to perform such tasks. Chore Services shall be provided for adults living in an independent situation who are responsible for maintenance of their residence and have no one available to provide this service without cost. Heavy home maintenance activities include but are not limited to:

- Performing minor repair work on furniture and appliances in the home.
- Carrying coal, wood, and water.
- Chopping wood.
- Removing snow.
- Yard maintenance.
- Painting.

4.2.5.2 Eligible persons - Chore Services

To qualify for Chore Services, the following information shall be documented in the case record:

- The adult is living in an independent situation and is responsible for maintenance of his or her residence.
- The adult is unable to perform the necessary heavy home maintenance task(s).

4.2.5.3 Provision of Chore Services

Chore Services shall not be purchased from a relative who is a member of the household; however, chore services may be purchased from a relative who is not a member of the household.

4.2.6 Criteria for Homemaker Services

4.2.6.1 Definition

Homemaker Services are performed by an individual or an agency provider who provides instruction in (or, where appropriate, performs) activities to maintain a household. The activities include:

- Personal care.
- Home management.
- Household maintenance.
- Nutrition.
- Consumer education.
- Hygiene education.

4.2.6.2 Provision of Homemaker Services

- Homemaker Services may be provided directly by staff of the LDSS.
- Services provided by all homemaker providers shall be supervised and monitored by the service worker or supervisor.
- The adult receiving care shall meet the requirements of [Section 4.2.3](#).

4.2.7 Assessment required for Home-Based Care Services

4.2.7.1 Use of Virginia Uniform Assessment Instrument

The LDSS shall use the Virginia Uniform Assessment Instrument (UAI) to assess the need for home-based services. The UAI may be found in ASAPS and may be printed as needed.

4.2.7.2 Assessment procedure

Each LDSS shall establish a procedure for conducting a home-based care assessment to determine the required number of service hours. The method

used to determine the amount of services to be provided shall be approved by the local board and uniformly applied within each LDSS. Services should not be authorized prior to the date of assessed need. Any change in authorized hours shall be documented on an assessment form. The home-based care assessment shall be completed as needed, but at least annually for each adult receiving home-based services.

4.2.7.3 Types of services

As part of the assessment, informal services (e.g., family, friends, community groups) and formal services shall be explored that could help meet the adult's needs. Home-based services may be used to complement informal and/or formal service providers, or they may be the only service provided to the individual.

4.2.7.4 Duplication of service activities

An adult receiving home-based services may be assessed by the nursing facility preadmission screening team for nursing facility admission or community-based care when he or she is at risk of institutionalization. Although an adult may receive services from both home-based services and Waiver personal care simultaneously in order to meet his or her needs, duplication of service activities shall be avoided. Documentation in the service plan should demonstrate services provided by the LDSS and other providers. Service plans should be developed in coordination with other providers when possible.

4.2.8 Service delivery – Home-Based Care Services

4.2.8.1 Maximum hours

Each LDSS shall establish local board policy to specify the maximum number of hours of home-based services that may be provided per adult per week.

4.2.8.2 Provider pay rate

Each LDSS shall establish local board policy to specify the rate of pay for providers. Home-based providers shall be paid at least minimum wage.

4.2.8.3 Methods of service delivery

Social services are provided directly, by referral, or by purchase as required to ensure appropriate service delivery and resource utilization necessary for the implementation of the service plan.

4.2.8.4 Sliding-fee system

The LDSS may develop a sliding-fee system for services. The LDSS fee system shall be approved by the appropriate AS/APS Regional Program Consultant prior to local board approval.

4.2.8.5 LDSS responsibility

When home-based services are contracted out to other agencies (i.e., not managed directly by the LDSS), the LDSS continues to be responsible for ensuring that the UAI and any needed reassessments are completed as well as ensuring compliance with other requirements noted in this section.

4.2.8.6 Licensing standards

Home-based services shall be purchased from providers who are approved as meeting the standards established by the State Board of Social Services as set forth in [22 VAC 40-771](#) and Chapter 5 Adult Services Providers or by demonstration of appropriate licensure through a licensing authority.

4.2.8.7 Minimal safety standards

If the adult's living situation does not meet minimal standards of safety (such as is required for the provision of Medicaid-funded personal care), the LDSS cannot deny services to the adult. However, the situation may preclude a provider from entering the home.

4.2.9 Receiving Home-Based Care Services and Medicaid Waiver Personal Care Services

Eligibility for one service does not necessarily preclude an adult's eligibility for another service.

The LDSS shall not deny or terminate home-based services solely because the adult is eligible for or receiving Medicaid Waiver services. Before home-based services are terminated, the Medicaid Waiver hours necessary to meet the individual's needs shall be approved or recommended by the Medicaid Waiver provider and/or the preadmission screening team; the Medicaid Waiver program hours shall be ready to be implemented. This does not prohibit the LDSS from terminating home-based services if the combination of support systems and Medicaid Waiver can meet the adult's assessed needs.

Home-based services cannot be denied based on the home-based services provider's level of training, education, or professional credentials as long as the provider can meet the needs of the adult and meets standards established in [22 VAC 40-771](#) and Chapter 5.

If an adult is eligible for other services (such as Medicaid Waiver services), but cannot afford the co-payment or chooses companion services in lieu of Medicaid Waiver services, the LDSS cannot deny services to that adult if he or she meets eligibility requirements for the requested service(s).

4.2.10 The LDSS as the adult's fiscal agent

See Chapter 5 for information on the relationship between department-approved providers of home-based services and the adult receiving care. Neither the state nor the LDSS is the provider's employer.

4.3 Adult Day Services

4.3.1 Definition – Adult Day Services

Adult Day Services is the purchase of day services from approved providers or licensed providers for a portion of a 24-hour day. Adult Day Services include personal supervision of the adult and promotion of social, physical, and emotional well-being through companionship, self-education, and leisure activities.

4.3.2 Eligible individuals - Adult Day Services

Eligible individuals are those adults who meet financial eligibility criteria contained in Chapter 3 and local board policy, and who fall within all of the following categories:

- The adult has been assessed using the Virginia UAI as needing assistance with ADLs, IADLs, and/or supervision.
- The adult is in a family situation where the people normally responsible for his or her care are not available to provide such care.
- The adult does not live in an assisted living facility, nursing facility, hospital, or other public institution.

4.3.3 Purchase components - Adult Day Services

The following are purchase components for Adult Day Services:

- Registration required by facilities when not a part of unit cost.
- Transportation to and from center or home.
- Day services provided by a licensed or an approved provider.

4.3.4 Providers - Adult Day Services

Adult Day Services providers are either:

- Licensed by the VDSS, Division of Licensing Programs; or
- Approved by the LDSS. The provider and home shall meet the standards found in Chapter 5, Adult Services Providers.

4.3.5 Rates of payment - Adult Day Services

Rates of payment for services shall be negotiated by the LDSS on an individual basis with each vendor according to guidance regarding governing purchase of services or by the rate-setting process for department-approved providers by the local board.

4.3.6 Service requirements - Adult Day Services

The entire UAI shall be completed to begin this service and shall be updated at least annually.

4.4 Adult Foster Care (AFC)

4.4.1 Definition – AFC

AFC is a locally optional program that provides room and board, supervision, and special services to an adult who has a physical or mental health need ([§ 63.2-1601](#) of the Code of Virginia). The adult shall be assessed prior to admission to the program using the Virginia UAI and determined to be incapable of independent living or unable to remain safely in his or her own home. AFC may be provided for up to three adults by any one provider. Care provided for more than three adults requires licensure by the VDSS as an assisted living facility.

The provision of an AFC program shall be approved by the local board of social services. Placements are made in homes approved by the LDSS. There shall be local board policy addressing AFC when this option is chosen. The LDSS is responsible for approving AFC homes in which adult placements are made. If an AFC provider is approved by the LDSS, the provider is bound by the department-approved provider standards located in Chapter 5 and regulations ([22 VAC 40-771](#)).

The LDSS may only approve AFC homes in which it will make placements. The LDSS may not approve AFC homes for placements by other agencies that are not part of the VDSS system.

Additional guidance about AFC is available in the AFC Program Manual on [SPARK](#).

4.4.2 Eligible individuals/payment sources - AFC

4.4.2.1 Local-only funding eligibility

Eligible individuals are those adults who meet financial eligibility criteria contained in Chapter 3 and local board policy, and who are assessed to need the service.

4.4.2.2 Auxiliary Grant (AG) eligibility

Eligible individuals are those adults who meet the criteria for a monetary payment under the AG Program (to be determined by the eligibility worker), and local board policy, and who are assessed to need the service.

4.4.2.3 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.

4.4.3 LDSS services - AFC

Services that the LDSS shall provide as part of AFC are:

4.4.3.1 Recruitment, screening, and approval of AFC homes

The intent of the AFC program is to keep the adult in his or her own community. The recruitment of AFC homes and the placement of adults are limited to bordering city/county jurisdictions, so long as the adult's specified needs can be met in the AFC home.

Prior to the recruitment and approval of AFC homes and the placement of an adult in another bordering jurisdiction, there shall be a written agreement between the placing and receiving jurisdictions. The appropriate AS/APS Regional Program Consultant shall receive a copy of the agreement prior to the placement. A sample [interagency agreement](#) is available on the DSS internal website.

Refer to Chapter 5 for additional information on recruitment, screening, and approval.

4.4.3.2 Assessment using the Virginia UAI

The entire UAI shall be completed for each individual applying for AFC prior to the beginning of the service and shall be updated at least annually. Each individual applying for AFC is assessed to determine his or her need for AFC and special services. The worker shall evaluate the adult's ability to perform activities of daily living, instrumental activities of daily living, manage medications, the adult's behavior pattern and orientation, and assess the availability of the informal support systems (e.g., family, friends, neighbors, community groups, etc.) to assist in meeting the adult's needs. Based on the results of the UAI assessment, the LDSS will determine if the adult's needs:

- Can be met by independent living with supportive services;
- Can be met by a placement in AFC; or
- Require a higher level of care such as an assisted living facility or nursing facility.

4.4.3.3 Assistance with placement

Assistance with placement arrangements is provided to match the adult to an approved provider. This is based on:

- 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.

The LDSS shall arrange for any needed services from other community agencies prior to the individual's admission to the AFC home.

4.4.3.4 Monitoring

The LDSS shall monitor the services that are provided to the adult and the provider for ongoing compliance. LDSS staff shall visit the home of the provider as often as necessary, but at least every six (6) months. The purpose of the monitoring visit is to determine the provider's compliance with applicable requirements and the progress and well-being of the adult. The provider monitoring visits shall be documented on the [Compliance Form for Department Approved Providers](#), which is available on the DSS internal website.

The LDSS will reapprove the provider prior to the end of the 24-month approval period if the provider continues to meet requirements. The LDSS shall determine and document that the provider is qualified to provide the special services required by the adult. For example, if the physician has instructed the provider on the correct procedure for dressing changes or medication management, and the provider is able to and does provide the services, then this is to be documented in the provider's record.

4.4.3.5 Ongoing contact

The placing LDSS will maintain contact with the adult residing in AFC and the provider as required by Adult Services manual guidance. The placing department maintains responsibility for the provision of direct services, case management, ongoing supervision of the adult, and monitoring of services provided in the AFC home. The adult's case shall remain open as long as services are provided, and the service plan shall be evaluated and updated in accordance with Chapter 3, Adult Services Case Management.

4.4.3.6 AG

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.

4.4.4 Medical examination - AFC

Each adult in an AFC home shall submit a medical statement from a licensed physician or a local health department that contains the following information:

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

4.4.5 Monthly Rate- AFC

The following services are included in the monthly rate paid to the AFC provider for a publicly funded adult residing in AFC:

4.4.5.1 Room and board

- Provision of a furnished room in a home that meets applicable zoning, building, and fire safety codes.
- Housekeeping services based on the needs of the adult.
- Meals and snacks, including extra portions and special diets.
- Clean bed linens and towels as needed and at least weekly.

4.4.5.2 Maintenance and care

- 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.
- Medication monitoring.
- Provision of generic personal toiletries including soap and toilet paper.
- Assistance with the following: care of personal possessions; care of personal funds if requested by the adult and the home's policy permits it; use of telephone; arranging transportation; obtaining necessary personal items and clothing; making and keeping appointments; and correspondence.
- Securing health care and transportation when needed for medical treatment.
- Providing social and recreational activities as required by provider standards.
- General supervision for safety.

4.4.6 AG - Adult Foster Care

4.4.6.1 Maximum rate to be paid to AFC providers

Individuals eligible for an AG payment and approved for AFC shall pay the provider a rate not to exceed the established AG rate. The LDSS shall not use local or local-only payments to reimburse the provider more than the established AG rate.

The AFC home may not request or require the receipt of any money, gift, donation, or other consideration from or on behalf of an adult as a condition of admission or continued stay. AG checks shall be provided directly to the adult or his responsible party who then pays the provider. The AFC home is required to provide each adult residing in the home, a monthly statement or itemized receipt of the adult's expenses not covered by the AG payment. Unless a guardian or conservator has been appointed by the court, the adult is free to manage his or her personal finances.

4.4.6.2 Room, board, supervision, and special services

An agreement stating the amount to be paid by the adult shall be reduced to writing and fully explained to the adult. The service worker, AFC provider, and the adult residing in AFC shall sign this agreement. A sample [agreement for AFC](#) is available on the VDSS internal website.

Any modifications in the amount to be paid shall be indicated on the signed agreement and initialed and dated by the service worker, the AFC provider, and the adult residing in AFC. Appropriate notification to the eligibility worker shall be made.

The adult shall retain a personal needs allowance for personal use. The amount retained shall not be less than what is allowable under the AG program.

4.4.6.3 Coordinating eligibility for an AG

For an adult to be eligible for an AG payment in AFC, the following shall occur:

- Both the service worker and the eligibility worker shall determine the adult's eligibility. Whoever has contact with the adult first shall refer the adult to the other.
- The service and financial eligibility determination processes shall occur simultaneously when possible. The service worker shall assess the adult's needs and arrange for the potential placement. The eligibility worker shall determine financial eligibility and shall notify the service worker of the adult's eligibility for AG.
- Upon notification that the adult is eligible for AG, the service worker shall assist with the placement. The service worker shall provide verification to the eligibility worker of the placement. The eligibility worker shall approve the case and determine the amount of the AG payment. The LDSS shall ensure that there is coordination of information between the service worker and the eligibility worker.

4.4.7 Coordination with local Community Services Boards (CSB) – AFC

LDSS are encouraged to coordinate with CSBs in the provision of AFC to adults with mental illness and/or mental retardation/intellectual disability. Prior to assisting individuals who receive services from the local CSB, the LDSS shall enter into an administrative support agreement with the local CSB concerning AFC. This agreement should specify which agency will be responsible for assessment, monitoring of services, placement, and discharge services provided to an adult with mental illness and/or mental retardation/intellectual disability in the AFC home.

The LDSS is responsible to approve the AFC home and follow the requirements of this chapter when the adult's assessment and residence in AFC is funded by the LDSS.

The LDSS has no responsibility for approving AFC homes when placement and services are provided and funded by the CSB or any other agency.

4.5 Assisted Living Facility (ALF) assessment

4.5.1 Introduction to ALF assessment

The following is a brief overview of the assessment process for individuals residing in an ALF. Please refer to the [Assisted Living Facility Assessment Manual](#), which is located on the DSS internal website, for complete information.

For information on assessment of private pay individuals, see the [Assisted Living Facility Private Pay Assessment Manual](#) on the DSS internal website.

4.5.2 Definition of ALFs

ALFs are licensed by the VDSS Division of Licensing Programs to provide care and maintenance to four or more adults. ALF placement is appropriate when the adult is assessed to need assistance with activities of daily living (ADLs), instrumental activities of daily living (IADLs), administration of medication, and/or supervision due to behavioral problems, but does not require the level of care provided in a nursing facility.

4.5.3 Persons to be assessed in ALFs

Individuals applying to reside in or residing in ALFs, regardless of payment status or anticipated length of stay, shall be assessed using the Virginia UAI to determine the individual's need for residential or assisted living. Except in the case of a documented emergency, no one can be admitted to an ALF prior to an assessment.

4.5.4 Assessors for public pay individuals in ALFs

Employees of the following agencies can conduct ALF assessments:

- LDSS.
- Area agencies on aging.
- Local departments of health.
- Community services boards.
- Centers for independent living.
- State facility staff of the Department of Behavioral Health and Developmental Services (DBHDS). *Note: initial assessments only.*
- Designated staff of the Department of Corrections. *Note: initial assessments only.*
- Entities contracting with DMAS to perform nursing home preadmission screening (NHPAS) or to complete the UAI for a home- and community-based waiver program, including an independent physician contracting with DMAS to complete the UAI for individuals in ALFs, or any hospital that has contracted with DMAS to perform NHPAS. An independent physician is a physician chosen by the individual and who has no financial interest in the ALF, directly or indirectly, as an owner, officer, or employee or as an independent contractor with the residence.

By statute, the LDSS is the assessor of last resort if there is no other assessor willing or able to perform the assessment or reassessment.

4.5.5 Assessors for private pay individuals in ALFs

Unless a private pay (i.e., non-AG) individual requests that an assessment be completed by a public assessor, qualified staff of the ALF or an independent private physician may complete the UAI for private pay individuals. Qualified staff of the ALF is an employee with documented training in the completion of the UAI. The administrator or the administrator's designated representative shall approve and sign the completed assessment.

4.5.6 Assessment and determination of services to be provided in ALFs

The [User's Manual: Virginia Uniform Assessment Instrument](#), available on the DSS internal website, provides thorough instructions regarding completion of the assessment. Information gathered on the UAI will allow the assessor to determine whether the individual meets the level of care criteria for ALF placement. An individual shall meet these criteria to be considered for public-funded ALF placement.

The UAI for ALFs is comprised of a short assessment or a full assessment. The short assessment may be used when the intake information indicates that the adult will need only residential level of care. The short assessment (Part A or pages 1-4) plus an assessment of the individual's medication management ("How do you take your medicine?" question on page 5 of the UAI) and behavior ("Behavior Pattern" section on page 8 of the UAI) is designed to briefly assess the individual's need for services and to determine if a full assessment (Parts A+B or entire UAI) is needed. The [UAI and the short form attachment](#) are available on the DSS internal website. The assessment focuses on the individual's ability to function while documenting functional dependencies and other needs. Emphasis shall be on assessing the total individual to determine activities he or she is able to safely perform in his or her usual environment.

For public pay individuals, the short assessment shall be completed. (Note: DMAS will reimburse the assessor only at the short-form rate if that is all that is needed even if the full assessment is completed.) If, upon completing the short assessment, it is noted that the individual is rated dependent in two or more ADLs or is rated dependent in behavior pattern, then a full assessment is completed. DMAS will monitor assessments to ensure that the appropriate version (i.e., short vs. full) is completed.

4.5.7 When to complete a UAI for individuals residing in an ALF

- The UAI shall be completed or updated within 90 days prior to the date of admission to the ALF. No one can be admitted to an ALF without having been assessed prior to admission except in the case of a documented emergency admission.
- An assessment using either the short-form or full UAI, as appropriate, shall be completed or updated at least once every 12 months on all individuals residing in an ALF.
- The UAI shall be completed or updated as needed whenever there is a change in the individual's condition that appears to warrant a change in the individual's approved level of care.

4.5.8 Criteria for placement in an ALF

4.5.8.1 Criteria for residential living

Individuals meet the criteria for residential living as documented on the UAI when at least one of the following describes their functional capacity:

- Rated dependent in only one of seven ADLs (i.e., bathing, dressing, toileting, transferring, bowel function, bladder function, and eating/feeding) (page 4 of UAI).

- Rated dependent in one or more of four selected IADLs (i.e., meal preparation, housekeeping, laundry, and money management) (page 4 of UAI).
- Rated dependent in medication administration (page 5 of UAI).

4.5.8.2 Criteria for assisted living

Individuals meet the criteria for assisted living as documented on the UAI when at least one of the following describes their functional capacity:

- Rated dependent in two or more of seven ADLs (page 4 of UAI).
- Rated dependent in behavior pattern (i.e., abusive, aggressive, or disruptive) (page 8 of UAI).

4.5.8.3 Prohibited conditions

Assessors shall also determine that individuals do not have any of the prohibited conditions listed below before authorizing placement in an ALF. If any of these conditions are present, the assessor shall document that they are present on the UAI and the individual is not eligible for ALF placement. Please refer to the Assisted Living Facilities Assessment Manual for more specific information on prohibited conditions.

State law prohibits admission or retention of individuals in an ALF when they have any of the following conditions or care needs:

- Ventilator dependency.
- Dermal ulcers stage III and IV except those stage III ulcers which are determined by an independent physician to be healing and care is provided by a licensed health care professional under a physician's treatment plan.
- Intravenous therapy or injection directly into the vein except for intermittent intravenous therapy managed by a health care professional licensed in Virginia.
- Airborne infectious disease in a communicable state that requires isolation of the individual or requires special precautions by the caretaker to prevent transmission of the disease.
- Psychotropic medications without appropriate diagnosis and treatment plans.

- Nasogastric tubes.
- Gastric tubes except when the individual is capable of independently feeding himself or herself and caring for the tube.
- Individuals presenting an imminent physical threat or danger to self or others.
- Individuals requiring continuous licensed nursing care (seven days a week, 24 hours a day).
- Individuals whose physician certifies that placement is no longer appropriate.
- Unless the individual's independent physician determines otherwise, individuals who require maximum physical assistance as documented by the UAI and meet Medicaid nursing facility level of care criteria as defined in the State Plan for Medical Assistance.
- Individuals whose health care needs cannot be met in the specific assisted living facility as determined by the ALF.

4.5.8.4 Private pay individuals only - exceptions to the above

At the request of the private pay individual, care for the conditions or care needs specified in the third and seventh bullet above may be provided to an individual in an ALF by a physician licensed in Virginia, a nurse licensed in Virginia under a physician's treatment plan, or by a home care organization licensed in Virginia when the resident's independent physician determines that such care is appropriate for the individual residing in the ALF. **This exception does not apply to individuals receiving AG.**

When care for an individual's special medical needs is provided by licensed staff of a home care agency, the ALF staff may receive training from the home care agency staff in appropriate treatment monitoring techniques regarding safety precautions and actions to take in case of emergency.

4.5.9 Possible results from an ALF assessment

- A recommendation for ALF care;
- Referral to a Nursing Facility Preadmission Screening (PAS) Team to determine if the individual is appropriate for Medicaid-funded community-based care or nursing facility care;

- Referrals to other community resources (non-Medicaid-funded) such as home-based care services, health services, adult day care centers, home-delivered meals, etc.; or
- Referral for services not required.

4.5.10 Case typing for ALF assessments

Cases should be opened following all usual adult services assessment and case management procedures. Case typing will depend upon the adult's situation at the time of the initial assessment. For individuals needing ALF services, only the assessment requirements for completing the designated sections of the UAI shall be followed. Once placement has been made and the case management agency has been designated, if applicable, the case may be closed if the placement is outside of the LDSS's jurisdiction. If no other case management agency has been designated, the LDSS making the placement shall notify the LDSS where the placement is made that an individual receiving AG is residing in an ALF in its jurisdiction. The receiving LDSS will open the case with a case type of ALF Reassessment if the annual reassessment is the only case management service needed.

For case management, the case type would normally be AS (Adult Services). However, depending on the intensity of the needed case management services, case type AS – Intensive Services may be appropriate for Medicaid-funded ALF targeted assessment.

Case type APS is used in all cases where an individual residing in an ALF has been a victim of abuse, neglect, or exploitation, or is at risk of abuse, neglect, or exploitation, and all APS procedures found in Chapter 2, Adult Protective Services shall be followed if the individual is receiving protective services. If the adult remains in the LDSS jurisdiction and no other services are being offered to the individual who is receiving AG in the ALF, the worker should change the case type to ALF Reassessment, keep the case open and complete the required annual reassessment one year from the date of the placement assessment.

When an LDSS has been notified that an individual who is receiving AG is residing in an ALF in its jurisdiction and no other services are needed, the receiving department should open the case in case type ALF Reassessment and follow procedures for completing the required annual reassessment. If the individual needs other services, the worker should follow procedures in the [ASAPS-Robo Help](#) to determine the proper case type and to document the need for the required annual reassessment.

4.6 Nursing facility preadmission screening

Individuals who are Medicaid eligible or will be Medicaid eligible within 180 days of placement and who are seeking Medicaid coverage for nursing facility care shall be screened to determine their need for the service (§ 32.1-330 of the Code of Virginia). See the [Preadmission Screening Manual](#) on the DMAS website for details on policies and procedures.

4.6.1 Community-Based Preadmission Screening (PAS) team

4.6.1.1 Composition of the team

The team shall consist of a physician, a nurse, and a service worker who are employees of either the local department of health or LDSS.

4.6.1.2 Responsibilities and procedures of the team

- The team determines:
 - If the adult meets nursing facility criteria upon completion of the UAI.
 - If the adult has a condition of mental illness, intellectual disability, or a related condition, the team shall determine whether an additional screening for active treatment needs is necessary.
 - If the adult's needs can best be provided in a nursing facility or in the community.
- The service worker and/or the nurse on the team shall collaborate with the adult and the adult's family to identify resources to meet the adult's needs. All community-based services are to be considered.
- The team shall notify the adult by letter of its decision to approve or deny the requested services.

4.6.2 LDSS responsibilities

- The LDSS has screening responsibilities for adults who:
 - Are residing in the community and desire a preadmission screening.
 - Move or plan to move into the LDSS' jurisdiction and request services (see the Pre-Admission Screening Manual for the requirements). [Medicaid Manuals](#) are available on the DMAS website.

- Are being paroled or otherwise released from a correctional facility and need a determination of Medicaid eligibility for admission to a nursing facility. LDSS are to accept these Medicaid applications even though the individual may be an inmate in a public institution at the time of application. The purpose of these applications is to determine eligibility for the individual at the time of release from prison. The parole officer will complete the Medicaid application and, if needed, the Medicaid History and Disability Report, and will send the application to the locality of residence prior to the inmate's incarceration. Preadmission screening will be completed by the local department of health or LDSS. Applications are subject to regular processing time frames.
- LDSS do not have nursing facility preadmission screening responsibilities for individuals who are:
 - **In acute-care hospitals.** Adults seeking nursing facility preadmission screening when in an acute-care hospital should be referred to the hospital-based preadmission screening team. For adults being discharged from military or Veterans' Administration hospitals, refer to the Medicaid Nursing Home Preadmission Screening Manual.
 - **Discharged from state mental health/intellectual disability/substance abuse facilities.** Adults seeking nursing facility preadmission screening prior to discharge from a state mental health/mental retardation or substance abuse facility should be referred to DMAS for screening.
 - **Transferred between nursing facilities within the state.** Adults transferred between nursing facilities within the state are not required to be screened by local screening teams. The nursing facility from which the individual is transferring sends a copy of all screening material to the receiving facility; the receiving facility initiates appropriate documentation for admission certification purposes.
 - **Transferred from out-of-state nursing facilities entering in-state nursing facilities.** Direct transfers from an out-of-state nursing facility should be referred to the receiving nursing facility.
 - **Currently receiving Medicaid-funded community-based care waivers.** The local preadmission screening team is not responsible for screenings for individuals who are in the Elderly or Disabled with Consumer Direction (EDCD) Waiver and who are transferring to a nursing facility.

- **Currently receiving nursing facility services and transferred to a Medicaid-funded community-based waiver.** The local preadmission screening team is not responsible to screen individuals who currently are in a nursing facility and are transferring to a Medicaid-funded community-based waiver program.

4.6.3 Procedures for adults residing in the community

- Adults or their representatives should be referred to the local health department and/or LDSS for screening in the jurisdiction in which the adult is living at the time of application.
- If the adult is not already Medicaid-eligible, the adult should also be referred to the LDSS so that eligibility for Medicaid can be determined. Screening may occur either before or after determination of financial eligibility for Medicaid. DMAS will reimburse for screenings of individuals who are currently financially Medicaid-eligible or are expected to be financially eligible within 180 days of receipt of nursing facility care.
- Decisions of the screening committees may be appealed. If an individual wishes to appeal, he or she must submit a written request within 30 days of the PAS team's action. The request must be sent to the Client Appeals Unit, Virginia Department of Medical Assistance Services, 600 East Broad Street, Richmond, Virginia 23219.

4.7 The Department of Behavioral Health and Developmental Services (DBHDS) and Community Services Boards (CSB)

4.7.1 Case management

The local community services board (CSB) shall be contacted for information regarding the availability of case management services in the locality that it serves. CSB case management services include assessing the need for services, planning for service delivery, linking the adult to the needed services, and monitoring the provision of services to the individual. The LDSS may participate in the case management process.

4.7.2 Case review by a prescription team

The local CSB should be contacted for information regarding the specific activities and services of the local CSB prescription team.

The LDSS is identified in the Code of Virginia as a member of the prescription team established by the CSB. The team, under the direction of the CSB, shall be responsible for integrating the community services necessary to accomplish effective

prescreening and pre-discharge planning for adults referred to the CSB (§§ [37.2-505](#) and [37.2-837](#) of the Code of Virginia).

4.7.3 Admission to a state facility operated by DBHDS

The LDSS shall refer adults to the local CSB for preadmission screening for admission into state psychiatric and intellectual disability facilities. When admission to a state facility operated by DBHDS is being sought, the LDSS may be requested to assist in preparing portions of the comprehensive evaluation.

4.7.4 Convalescent leave and discharge planning

When an adult returns to the community from a DBHDS facility, an LDSS may be requested to participate in the facility's pre-discharge planning process (§§ [37.2-505](#) and [37.2-837](#) of the Code of Virginia). Adults released on convalescent status or expected to be discharged from DBHDS facilities who will be in need of social services are the responsibility of the LDSS of:

- First, the county or city where the adult was residing at the time of admission; or
- Second, the locality where the adult has chosen to reside, if the locality where the adult previously resided has not maintained service responsibility for the case; or
- Third, in the absence of such a place, the jurisdiction of the institution from which the adult is being released.

4.8 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. 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.

The governing body of each county or city, or combination thereof, shall designate a lead agency and member agencies to accomplish the coordination of local long-term care services. The agencies shall establish a long-term care coordinating committee composed of, but not limited to, representatives of each agency. The membership of the coordinating committee shall be comprised of, but not limited to, representatives of the local department of public health, the LDSS, the community services board or community mental health clinic, the area agency on aging, and the local NHPAS team. A plan shall be implemented that ensures the cost-effective utilization of all funds available for long-term care services in the locality. Localities are encouraged to provide services within each category of service in the continuum and to allow one person or

agency to deliver multiple services, when possible (§§ [63.2-1602](#) and [2.2-708](#) of the Code of Virginia).

4.9 Appendix A: Forms

The following forms may be used during the provision of Adult Services. Unless otherwise indicated, these forms are located on the [Adult Services forms page](#) of the DSS internal website.

Adult Foster Care Agreement

This form is used as an agreement among the individual receiving foster care services, the LDSS and the foster care 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.

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, home-based services, and Medicaid funded services.

5

ADULT SERVICES PROVIDERS

TABLE OF CONTENTS

- 5.1 Legal basis**
- 5.2 Definitions**
- 5.3 LDSS-approved providers**
 - 5.3.1 Mixed programs
 - 5.3.2 Subcontracted providers
- 5.4 Requirements for providers and their households**
 - 5.4.1 Age
 - 5.4.2 Criminal records
 - 5.4.2.1 Application
 - 5.4.2.2 Central Criminal Records Exchange – all providers
 - 5.4.2.2.1 Local police records
 - 5.4.2.2.2 Criminal record information from other states
 - 5.4.2.2.3 National criminal background check
 - 5.4.2.2.4 LDSS Adult Protective Services (APS) check
 - 5.4.2.3 Information received from the Central Criminal Record Exchange
 - 5.4.2.4 Determining when criminal convictions jeopardize adults
 - 5.4.2.5 Confidentiality of criminal record information
- 5.5 Interviews, references, employment history, and assessment**
 - 5.5.1 Interviews – all providers
 - 5.5.1.1 Out-of-home providers
 - 5.5.1.2 In-home providers
 - 5.5.2 References – all providers
 - 5.5.2.1 Application
 - 5.5.2.2 Follow-up

- 5.5.3 Employment history – all providers
 - 5.5.3.1 Application
 - 5.5.3.2 Follow-up
 - 5.5.3.3 Additional requirements
- 5.5.4 Assessment of provider – all providers
 - 5.5.4.1 Adult foster care and adult day services providers
 - 5.5.4.2 Additional requirement for adult foster care providers
 - 5.5.4.3 Homemaker providers
- 5.6 Training – all providers**
- 5.7 Medical requirements – all providers**
 - 5.7.1 Tuberculosis
- 5.8 Updated information**
- 5.9 Requirements for care**
 - 5.9.1 Non-discrimination – all providers
 - 5.9.2 Supervision – all providers
 - 5.9.2.1 Substitute care and supervision
 - 5.9.3 Food – adult foster care and adult day services providers
- 5.10 Transportation – all providers**
- 5.11 Medical care – all providers**
 - 5.11.1 Medical care – adult foster care and adult day services providers
 - 5.11.2 Additional requirement for adult foster care providers
- 5.12 Activities – adult foster care and adult day services**
- 5.13 Abuse, neglect, and exploitation reporting – all providers**
- 5.14 Rights of adults in care**
- 5.15 Responsibilities of adults in adult foster care or adult day services**
- 5.16 Clothing – adult foster care**
- 5.17 Requirements for the home of the out-of-home provider**
 - 5.17.1 Physical accommodations
- 5.18 Home safety – adult foster care and adult day services**
 - 5.18.1 Fire and safety inspections
- 5.19 Sanitation – adult foster care and adult day services**
 - 5.19.1 Water testing fee
- 5.20 Capacity – adult foster care and adult day services**
 - 5.20.1 Capacity of home providing more than one type of care

- 5.21 Record requirements for the out- of- home provider**
 - 5.21.1 Confidentiality
- 5.22 Provider approval – all providers**
 - 5.22.1 Approval period
 - 5.22.2 Application
 - 5.22.3 Compliance form
 - 5.22.4 Certificate of Approval
 - 5.22.5 Expiration of approval period
 - 5.22.6 Notification
- 5.23 Allowable variance**
 - 5.23.1 Procedures for requesting a variance
 - 5.23.2 Approval or denial of a variance
- 5.24 Emergency approval of a provider**
 - 5.24.1 Criminal history information
 - 5.24.2 Length of time
 - 5.24.3 Denial of approval
 - 5.24.4 Notification
- 5.25 Provider monitoring**
- 5.26 Renewal process**
- 5.27 Provider responsibilities**
- 5.28 Inability of the provider to meet requirements**
 - 5.28.1 Provisional approval
 - 5.28.2 Suspension of approval
 - 5.28.3 Revocation of approval
 - 5.28.4 Notification of action
- 5.29 Relocation of the out- of-home provider – adult foster care and adult day services**
 - 5.29.1 Within the approving jurisdiction
 - 5.29.2 Outside of the approving jurisdiction
- 5.30 Right of review**
 - 5.30.1 Review process
- 5.31 Use of provider by more than one LDSS**
- 5.32 LDSS record-keeping**
 - 5.32.1 Contents of the provider file

- 5.33 Department data system**
- 5.34 When the provider is the subject of an APS allegation**
- 5.35 The LDSS as the adult's fiscal agent**
 - 5.35.1 Authorization to act on adult's behalf
 - 5.35.2 Purchase of Services Orders
 - 5.35.3 Immigration and Naturalization Service verification
 - 5.35.4 Contracting with an external organization for home-based services
 - 5.35.5 SSI benefits received by provider
 - 5.35.6 Rate of payment for home-based services
- 5.36 Fraud**
- 5.37 Appendix A: Forms**
- 5.38 Appendix B: Rights of adults in care**
- 5.39 Appendix C: Sample letter – reference/employment verification**
- 5.40 Appendix D: Sample letter – denial of application or renewal**
- 5.41 Appendix E: Sample letter – emergency approval or denial**
- 5.42 Appendix F: Sample letter – provisional, suspension, or revocation of approval**
- 5.43 Appendix G: Sample letter – request for fire inspection**
- 5.44 Appendix H: Sample letter – request for sanitation inspection**
- 5.45 Appendix I: Code of Virginia – criminal history release**
- 5.46 Appendix J: Code of Virginia – barrier crimes**

5

ADULT SERVICES 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 40-771](#)). 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 section describes policies and procedures for providers of services to adults who are approved by the local department of social services (LDSS). The services include:

- Home-based services (i.e., companion, chore, and homemaker services).
- Adult foster care.
- Adult day services.

5.2 Definitions

The following words and terms are defined in state regulation ([22 VAC 40-771-10](#)). 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 (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.

<u>Term</u>	<u>Definition</u>
Adult Abuse	The willful infliction of physical pain, injury or mental anguish, or unreasonable confinement of an adult.
Adult Day Services Provider	A provider who gives personal supervision for up to three adults for part of a day. The provider promotes social, physical, and emotional well-being through companionship, self-education, and satisfying leisure activities. Adult day services that are provided for more than three adults require licensure by the Virginia Department of Social Services (VDSS).
Adult Exploitation	The illegal use of an incapacitated adult or his resources for another's profit or advantage.
Adult Foster Care	Room and board, supervision, and special services to an adult who has a physical or mental condition or an emotional or behavioral problem. 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 in his own home for up to three (3) adults who are unable to remain in their own home because of a physical or mental condition or an emotional or behavioral problem. Care provided for more than three (3) adults requires licensure by the VDSS.
Adult Neglect	A condition in which an adult 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.
Adult Services	Services that are provided to adults 60 years of age and older and to adults 18 years of age and older who are impaired.
Assistant	Any individual who is responsible to assist an adult services approved provider in caring for adult clients. Assistants shall meet the same requirements as the provider.

<u>Term</u>	<u>Definition</u>
Chore Provider	A provider who performs non-routine, heavy home maintenance tasks for adult clients unable to perform such tasks for themselves. Chore services include 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.
Client	Any adult who needs supervision and/or services and seeks assistance in meeting those needs from a local department of social services (LDSS).
Companion Provider	A provider who assists adult clients unable to care for themselves without assistance and where there is no one available to provide the needed services without cost in activities such as light housekeeping, companionship, shopping, meal preparation, transportation, household management, and activities of daily living (ADLs).
Department	The Virginia Department of Social Services or VDSS.
Home-Based Services	Companion, chore, and homemaker services that allow individuals to attain or maintain self-care and are likely to prevent or reduce dependency.
Homemaker Services	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.
In-Home Provider	An individual who provides care in the home of the adult client needing supervision and/or services. In-home providers include companion, chore, and homemaker providers.
Instrumental Activities of Daily Living (IADLs)	Meal preparation, housekeeping/light housework, shopping for personal items, laundry, or using the telephone. An adult client's degree of independence in performing these activities is part of determining the appropriate level of care and services.
Local Board	The local board of social services representing one or more counties or cities.
Local Department (LDSS)	The local department of social services of any county or city in this Commonwealth.

<u>Term</u>	<u>Definition</u>
Local Department-Approved Provider	A provider that is not subject to licensure and is approved by an LDSS to provide services to VDSS clients.
Out-of-Home Provider	An individual who provides care in the individual's own home to adult clients who enter the home for purposes of receiving needed supervision and/or services.
Personal Care Services	The provision of non-skilled services including assistance in the activities of daily living, and may include instrumental activities of daily living related to the needs of the adult client, to maintain the adult client's health and safety in their home.
Responsible Person	An individual designated by or for an adult client who is authorized to make decisions concerning the adult client and/or to receive information about the adult client.

5.3 LDSS-approved providers

([22 VAC 40-771-20](#)). This regulation applies to providers approved by a local department and does not apply to facilities or organizations licensed by a licensing or regulatory agency.

The local department is not required to accept provider applications for any type of service when the local department has a sufficient number of providers for that service to meet the client population needs or does not offer the type of service.

Prior to approving an out-of-home provider located in another jurisdiction, the local department shall seek written permission from the local department where the provider will provide services.

Local departments may use an approved provider from another jurisdiction without performing another approval study when the local department obtains written permission and a copy of the approval documents from the local department which conducted the approval study.

This guidance is applicable to the following providers who are approved by the LDSS:

- Out-of-Home Providers
 - Adult day services providers
 - Adult foster care providers

- In-Home Providers
 - Companion providers
 - Chore providers
 - Homemaker providers

5.3.1 Mixed programs

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.

5.3.2 Subcontracted providers

This guidance is applicable to individual providers who are subcontracted by the LDSS, such as home health care providers who are subcontracted by the LDSS to perform home-based care services.

5.4 Requirements for providers and their households

The following guidance applies to providers of adult services and their households.

5.4.1 Age

(22 VAC 40-771-30). All local department-approved adult services homemaker providers shall be at least 18 years of age.

All local department-approved adult services chore and companion providers shall be at least 16 years of age. If the local department chooses to approve a chore or companion provider who is at least 16 years of age but less than 18 years of age, the local department shall determine that the provider is competent and able to provide the service.

Any assistant to a local department-approved in-home provider for adult services shall be at least 16 years of age.

5.4.2 Criminal records

(22 VAC 40-771-30). The provider and any assistant, the spouse of the provider, or other adult household members who come in contact with adults in care shall identify any criminal convictions and consent to a criminal record search.

A new criminal record background check shall be required at the time of renewal.

The following persons shall be prohibited from being approved as providers of services to adults:

- The provider.
- The assistant.
- The spouse of the provider.
- Other adult household members who come in contact with adults in care.

if either of the following applies:

- They are convicted of crimes listed in [§ 63.2-1719](#); or
- They have been convicted of any other felony or misdemeanor that, in the judgment of the LDSS, jeopardizes the safety or proper care of adults.

[\(22 VAC 40-771-30\)](#). Conviction of a crime listed in [§ 63.2-1719](#) of the Code of Virginia will result in the revocation of the provider's approval unless an allowable variance is granted by the local department.

When the provider and any assistant, and for adult foster care, spouse of the provider, or other adult household members who come in contact with adults in care has been convicted of a felony or misdemeanor not listed in [§ 63.2-1719](#) of the Code of Virginia, the local department may approve the provider, if the local department determines that the conviction does not jeopardize the safety or proper care of the adult.

5.4.2.1 Application

The [Application for Department Approved Provider](#) requires the provider to identify any criminal convictions.

5.4.2.2 Central Criminal Records Exchange – all providers

Virginia State Police maintain criminal history record information for arrests and convictions in Virginia. Section [19.2-389](#) authorizes the LDSS to request criminal history for all agency approved providers of Adult Services 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. The [SP-230 and instructions](#) are available on the Virginia State Police website.

SP-230 may be downloaded as a PDF document or an electronic form may be submitted directly from the website. The cost for each Central Criminal Records Exchange search is \$15.00. The payment for criminal records checks is made through the Administrative Budget Line 854.

The LDSS should consider establishing a payment account with the State Police to use the electronic submission form.

A statewide criminal record check shall be performed on the provider, any assistant, the provider's spouse, and all other adult household members who have contact with adults receiving adult foster care services. This shall be done regardless of the response to the criminal records question on the Application. These checks should be repeated at the time of renewal.

5.4.2.2.1 Local police records

Local police have access to criminal history record information. The LDSS should explore what criminal record information is available through the local police. Information, if available, may be on local convictions only, on statewide convictions, or on convictions from other states. In exploring this question with local police, the LDSS should establish a process for obtaining criminal history information in the event an emergency placement or provider approval is needed.

5.4.2.2.2 Criminal record information from other states

If not available through the local police, criminal record information on arrests and convictions occurring in other states may be obtained from the state where the provider or household member resided if the other state's law allows information to be disseminated.

5.4.2.2.3 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-24](#) 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 are \$37.00 for an employee or \$26.00 for a volunteer.*

5.4.2.2.4 LDSS Adult Protective Services (APS) check

The LDSS shall check their APS records to determine if there have been any substantiated reports on any of the following persons:

- The provider or applicant.
- The spouse of the provider.
- Any adult living in a home where LDSS approved provider services are rendered and who have any contact with adults receiving care.
- Any employee (for out-of-home care).

- Any prospective employee (for out-of-home care).
- Agents involved in the day-to-day operation (for out-of-home care).

LDSS staff shall use this information to determine the potential risk to individuals receiving care and use it as a basis for approval or denial.

5.4.2.3 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 [§ 63.2-1719](#). It does not contain information on certain offenses such as driving a motor vehicle while intoxicated; disorderly conduct; trespassing; and class III and IV misdemeanors (such as gambling, slander, drunk in public, etc.).

5.4.2.4 Determining when criminal convictions jeopardize adults

- If the following persons have been convicted of any offense enumerated in [§ 63.2-1719](#), they shall be prohibited from being approved as an LDSS-approved provider of services to adults. See [Appendix J](#) for the list of barrier crimes.
 - The provider.
 - The spouse of the provider.
 - The assistant.
 - Any employee or prospective employee.
 - Agents involved in the day-to-day operation.
 - Any adult living in a home who comes into contact with the adult receiving care.

- The LDSS will need to exercise judgment in the approval or denial of providers where convictions of other felonies and misdemeanors 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.

5.4.2.5 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.

5.5 Interviews, references, employment history, and assessment

The sections below describe interviews, references, employment history, and assessments for providers of adult services.

5.5.1 Interviews – all providers

([22 VAC 40-771-30](#)). The provider shall participate in interviews with the local department.

5.5.1.1 Out-of-home providers

At least one interview with an out-of-home provider shall occur in the provider's home (where care is to be provided) at the time of the initial approval and at renewal. If 24-hour care will be provided, all household members should be interviewed.

5.5.1.2 In-home providers

At least one interview with an in-home provider shall be face-to-face at the time of initial approval and at renewal. For in-home providers used by the LDSS, the LDSS representative will interview the provider face-to-face as often as necessary, but at least semi-annually to monitor the provider.

5.5.2 References – all providers

([22 VAC 40-771-30](#)). 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.

5.5.2.1 Application

The provider shall list at least two (2) references on the Application for Department Approved Provider.

5.5.2.2 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 contained in [Appendix C](#).

5.5.3 Employment history – all providers

([22 VAC 40-771-30](#)). The provider shall provide information on the provider's employment history.

5.5.3.1 Application

The provider shall list previous employment on the Application for Department Approved Provider.

5.5.3.2 Follow-up

The LDSS shall check employment that is relevant to the type of care to be provided at initial approval. The LDSS may wish to check other employment to assess the prospective provider on characteristics identified below. The LDSS may check employment by telephone, face-to-face interview, or request it in writing.

5.5.3.3 Additional requirements

The LDSS may perform competency testing to ensure that the individual is able to meet the demands of providing the services for which he or she is applying to provide.

5.5.4 Assessment of provider – all providers

(22 VAC 40-771-30). 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.
- d. Able to communicate and follow instructions sufficiently to ensure adequate care, safety and protection for adults.

5.5.4.1 Adult foster care and adult day services providers

(22 VAC 40-771-30). For adult foster care and adult day services, 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.

5.5.4.2 Additional requirement for adult foster care providers

(22 VAC 40-771-30). 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 his own family and has the knowledge, skills, and abilities to care for adults, including, but not limited to:

- 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 in care.
- 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

finger nails, arranging for haircuts as needed, care of needs associated with menstruation or occasional bladder or bowel incontinence.

f. Provision of generic personal toiletries including soap and toilet paper.

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 LDSS and consistent with licensing regulations.

j. General supervision for safety education.

The purpose of this assessment is to determine that the provider is not relying on the payment made for the foster care adult to be 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.

5.5.4.3 Homemaker providers

([22 VAC 40-771-30](#)). 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.

5.6 Training – all providers

([22 VAC 40-771-30](#)). 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.

5.7 Medical requirements – all providers

([22 VAC 40-771-30](#)). 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 charged to services if not covered by any other insurance program.

5.7.1 Tuberculosis

([22 VAC 40-771-30](#)). The provider; for out-of-home care, the assistant, the provider's spouse, and all other adult household members who come in contact with adults in care shall submit a statement from the local health department or licensed physician that he 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 VDSS internal website 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 charged to services if not covered by any other insurance program.

If the individual named within this section 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.

A tuberculosis test is not required for a provider who is an in-home provider who is a relative or friend of the adult living in the adult's home. In this case, the provider may only provide care for the adult for whom he or she is approved to provide care, and the adult's name shall be noted on the compliance form.

5.8 Updated information

([22 VAC 40-771-30](#)). All local department approved providers shall keep the local department informed of changes in the household that may affect approval of the provider.

5.9 Requirements for care

The following sections describe the requirements for all providers of adult care.

5.9.1 Non-discrimination – all providers

([22 VAC 40-771-40](#)). The provider shall provide care that does not discriminate on the basis of race, ethnicity, sex, national origin, age, religion, disability or impairment.

5.9.2 Supervision – all providers

([22 VAC 40-771-40](#)). The provider shall have a plan for seeking assistance from police, firefighters, 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 and that the adult's health, safety, and well-being are protected.

5.9.2.1 Substitute care and supervision

([22 VAC 40-771-40](#)). If extended absence of the provider is required, the local department shall approve any substitute arrangements the provider wishes to make. An extended absence shall be defined as greater than one day.

- The LDSS shall approve substitute arrangements prior to the provision of services by the substitute provider. The approval may include contact with the substitute.
- The substitute provider shall meet the requirements of this section as appropriate.

5.9.3 Food – adult foster care and adult day services providers

This section does not require that the provider supply all food. In adult day services, the adult may bring food. In adult foster care or adult day services, the individual may eat elsewhere.

(22 VAC 40-771-40). The following standards apply to food provided to adult clients by adult day services and adult foster care providers:

1. Adults in care shall receive nutritionally balanced meals and snacks appropriate to the length of time in care each day and the daily nutritional needs of each adult.
2. Adults in care shall receive special diets if prescribed by a licensed physician 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 adult foster care shall receive a minimum of three well-balanced meals a day ([22 VAC 40-25-30](#)).

5.10 Transportation – all providers

The following information is taken from state regulation [22 VAC 40-771-40](#):

Persons who transport adults in adult day services or adult foster care may include:

- The provider;
- The assistant in out-of home services;
- Spouse of the provider;
- Volunteer, or
- Any other agent involved in the day-to-day operation.

The provider or the person transporting adults in adult day services or adult foster care shall:

- Have a valid driver's license.
- Have automobile liability insurance.
- Ensure the vehicle transporting the adults has a valid license and inspection sticker.

- Ensure that all passengers use safety belts in accordance with requirements of Virginia law.

In addition:

- Minimum liability insurance coverage in Virginia applies.
- An "uninsured motorist" can operate a vehicle in Virginia and have no insurance coverage. This does not meet the insurance requirement.
- Transportation costs of any provider are not a reimbursable cost through Budget Line 833. If it can be determined that the adult in care will be neglected or at risk of being neglected without transportation assistance and transportation is a part of the service plan, Budget Line 895 (APS) funding could be used after all Adult Protective Services procedures are followed.

5.11 Medical care – all providers

(22 VAC 40-771-40). The provider shall have the name, address, and telephone number of each adult's physician and responsible person easily accessible.

The provider shall be able to meet the identified needs of the adult before accepting the adult for care and in order to continue to provide services to the adult.

The provider shall seek emergency medical care as needed and immediately report all major or serious injuries and accidents to the individual's responsible person and the LDSS.

5.11.1 Medical care – adult foster care and adult day services providers

(22 VAC 40-771-40). The adult foster care and adult day services provider shall:

1. Ensure that the adult receives prescription drugs only in accordance with an order signed by a licensed physician or authentic prescription label and, with the responsible person's written consent, as appropriate;
2. Document all medications taken by adults in care, including over-the-counter medications;
3. Ensure that the adult in care receives nonprescription drugs only with the adult's or responsible person's written consent, as required;
4. Keep medications separate from food except those items that shall be refrigerated;
5. Report all major injuries and accidents to the adult's responsible person immediately;

6. Have authorization for emergency medical care for each adult in care; and
7. Have first aid supplies easily accessible in case of accidents.

5.11.2 Additional requirement for adult foster care providers

([22 VAC 40-771-40](#)). Admission or retention 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 adult services worker or by the adult's physician.

5.12 Activities – adult foster care and adult day services

([22 VAC 40-771-40](#)). The adult day services and adult foster care provider shall provide recreational and other planned activities appropriate to the needs, interests, and abilities of the adults in care.

5.13 Abuse, neglect, and exploitation reporting – all providers

([22 VAC 40-771-40](#)). All providers of adult services 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 regulation 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.

5.14 Rights of adults in care

Adults in the care of LDSS approved providers have extensive rights specified by regulation. Each individual in care, 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. The out-of-home providers (Adult Foster Care and Adult Day Care) shall make available in an easily accessible place a copy of these rights and responsibilities. In addition, the out-of-home provider shall include with the rights, the telephone number of the Adult Protective Services Hot Line of the Department as well as the toll-free telephone number of the Virginia Long-Term Care Ombudsman Program and any local ombudsman program serving the jurisdiction. See [Appendix B](#) for a copy of these rights. A [copy](#) is also available online on the VDSS internal website.

5.15 Responsibilities of adults in adult foster care or adult day services

Virginia regulation ([22 VAC 40-771-160](#)) describes the responsibilities of adults in adult foster care or adult day services.

- A. The adult in care shall follow the rules of the provider unless these rules are in violation of adults' rights.
- B. Adults in care, or the local department when appropriate, shall give a two-week written notice of intent to leave the placement.
- C. Adults in care shall notify providers if there are changes in the adult's health status.

5.16 Clothing – adult foster care

([22 VAC 40-771-40](#)). 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.

5.17 Requirements for the home of the out-of-home provider

The next sections describe the physical requirements for the home of the provider of out-of-home adult services.

5.17.1 Physical accommodations

([22 VAC 40-771-50](#)). Physical accommodations requirements include:

1. The home shall have appropriate space and furnishings for each adult receiving care in the home to include:
 - 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 provider and any adult in care shall have access to a working telephone in the home.
6. The home shall be in compliance with all local ordinances. Additional physical accommodations standards for adult foster care ([22 VAC 40-771-50](#)). Additional standards for adult foster care include:
 1. No more than two adults shall share a sleeping room unless they request and consent to sharing such a sleeping arrangement.
 2. There shall be space in the household for privacy outside of the sleeping rooms for the adult to entertain visitors and talk privately.
 3. For adult foster care, at least one toilet, one basin, and one tub or shower for every eight persons living in the home (including the adult in care and any household members).

5.18 Home safety – adult foster care and adult day services

([22 VAC 40-771-50](#)). Home safety requirements include:

1. The home and grounds shall be free from litter and debris and present no hazard to the safety of the adults receiving care.
2. The provider shall permit a fire inspection of the home by appropriate authorities if conditions indicate a need for approval and the LDSS requests it.
3. The provider shall have a written emergency plan that includes, but is not limited to, fire or natural disaster and rehearse the plan at least twice a year. The provider shall review the plan with each new adult placed in the home.
4. Attics or basements used by adults in care shall have two emergency exits. one of the emergency exits shall lead directly outside and may be a door or an escapable window.
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 in a locked cabinet with safety mechanisms activated. The key or combination to the cabinet shall not be accessible to the adult in care. Any glass cabinets used to store any weapons, including firearms, shall be shatterproof.

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 in care who are mentally incapacitated.
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.

A sleeping area can include several bedrooms in the same area. However, a home with bedrooms in two wings would require a smoke detector in each wing.

5.18.1 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 [Appendix G](#) for an example of a request for fire inspection.
- The LDSS may wish to do the following prior to requesting a safety inspection:
 - Determine if there are any overloaded electrical wall outlets.
 - Determine 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 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.

5.19 Sanitation – adult foster care and adult day services

(22 VAC 40-771-50). 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 the adult in care.

5.19.1 Water testing fee

The usual and customary fee for water testing by the State Department of Health applies. This fee may be paid as an administrative cost charged to services. See [Appendix H](#) for an example of a request for sanitation inspection.

5.20 Capacity – adult foster care and adult day services

(22 VAC 40-771-50). 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 day services provider shall not accept more than three adults in the home at any one time. A provider who has more than three adults receiving day services shall be licensed by the Department.
3. 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. A provider who accepts more than three adults for these purposes shall be licensed as an assisted living facility by the Department.

5.20.1 Capacity of home providing more than one type of care

- The LDSS shall evaluate each situation individually.
- The following point system is suggested for determining capacity in a home providing more than one type of care:
 - Adult day services or adult foster care = 4 points
 - Day care child:
 - Infant = 3 points
 - Child aged 2 and over = 2 points

- Foster care child:
 Infant = 6 points
 Child aged 2 and over = 3 points
- Each provider or assistant can handle 12 points.

Examples:

- Adult Foster Care and Children
 - 1 Adult = 4
 - 2 Children 2 & over = 6
 - Total = 10 (= 1 provider)
- Adult Day Services and Children
 - 2 Adults = 8
 - 2 Children 2 & over = 4
 - Total = 12 (= 1 provider)
- Mixed Programs
 - 1 Foster Care Adult = 4
 - 2 Foster Care Children 2 & over = 6
 - 2 Day Care Child 2 & over = 4
 - Total = 14 (= 2 providers)
- Mixed Programs
 - 2 Foster Care Adults = 8
 - 1 Foster Care Infant = 6
 - 1 Foster Care Child 2 & over = 3
 - 2 Day Care Children 2 & over = 4
 - 1 Day Care Infant = 3
 - Total = 24 (= 2 providers)

5.21 Record requirements for the out- of- home provider

([22 VAC 40-771-60](#)). Record requirements for adult foster care and adult day services providers:

- A. The provider shall maintain written legible information on each adult in care.
- B. Information on the adult in care shall include:

1. Identifying information on the adult in care;
 2. Name, address, and home and work telephone numbers of responsible persons;
 3. Name and telephone number of person to be called in an emergency when the responsible person cannot be reached;
 4. Name, address, and home and work telephone numbers of persons authorized to pick up the adult in care;
 5. Name of persons not authorized to call or visit the adult in care;
 6. Date of admission and discharge of the adult in care;
 7. Daily attendance records, where applicable. Daily attendance records are required for adult day services;
 8. Medical information pertinent to the health care of the adult in care;
 9. Correspondence related to the adult in care as well as other written adult information provided by the local department; and
 10. Placement agreement between the provider and the adult and his responsible person, where applicable.
- C. Adult records are confidential and shall not be shared without the approval of the adult in care or responsible person.
- D. The local department and its representatives shall have access to all records.
- E. The Department and its representative shall have access to all records.

5.21.1 Confidentiality

- When the adult leaves the home, the LDSS may request that certain information be returned to the LDSS, the adult, or his representative in order to accompany the individual to his or her next placement.
- After the adult leaves, the provider may wish to keep information needed for the provider's purposes such as copies of unpaid invoices or other information for income taxes.

5.22 Provider approval – all providers

([22 VAC 40-771-30](#)). 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.

5.22.1 Approval period

([22 VAC 40-771-70](#)). The approval period for a provider may be up to 24 months when the provider meets the standards. In the case of adult day services and adult foster care, the home shall also meet the standards.

5.22.2 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. This form can be found on the VDSS internal website.
- 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.

5.22.3 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 out-of-home provider (i.e., adult day services and adult foster care). This form may be found on the VDSS internal website.

5.22.4 Certificate of Approval

A [Certificate of Approval](#) should be issued to the adult services provider when the provider is approved. This form may be found on the VDSS internal website.

5.22.5 Expiration of approval period

The expiration date for the approval period should be set for the last day of the month in which approval is granted and be two (2) years hence unless the approval is emergency, provisional, or suspended.

5.22.6 Notification

The applicant provider or provider shall receive written notification **within 10 working days** regarding action on the application or at renewal. A Certificate of Approval is adequate written notice for approved providers. See [Appendix D](#) for a sample denial letter.

5.23 Allowable variance

State regulation ([22 VAC 40-771-80](#)) describes allowable variances.

- A. The provider may request an allowable variance on a standard if the variance does not jeopardize the safety and proper care of the adult or violate federal, state, or local law and the local department approves the request.
- B. The local department shall consult with the state adult services consultant prior to granting an allowable variance.
- C. The allowable variance shall be in writing with a copy maintained by the local department and the provider.
- D. The local department and the provider shall develop a plan to meet the applicable standard for which the allowable variance has been granted.
- E. 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.

5.23.1 Procedures for requesting a variance

- The provider cannot request a variance without the LDSS' agreement. If the LDSS decides to accept the variance request, the LDSS will assist the provider in preparing the written variance request for review.
- The request 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.
- The request shall be signed by the LDSS director or his designee.
- The AS/APS Regional Program Consultant shall review the variance request and provide technical assistance, if needed.

5.23.2 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.

A copy of the variance request and LDSS' decision will be maintained in the provider's record.

5.24 Emergency approval of a provider

State regulation ([22 VAC 40-771-90](#)) applies to the emergency approval of a provider.

A. Emergency approval of a provider may be granted under the following conditions:

1. The court orders emergency placement; or
2. The adult or his responsible person requests placement or service in an emergency.

B. A representative of the local department shall visit the provider's home to ensure that minimum safety standards are evident and that the provider is capable of providing the care prior to the emergency placement of the adult in adult foster care or adult day services.

C. For an in-home provider, the representative of the local department shall interview the provider to ensure that the emergency provider is capable of providing the needed services.

D. Emergency approval should not exceed 30 days.

E. The provider shall meet all applicable standards if services shall be provided beyond the thirty-day emergency approval or if the emergency approval is extended beyond 30 days.

5.24.1 Criminal history information

The LDSS shall request criminal history information on the provider and household members who may have contact with the adult (see [Section 5.4.2](#)).

5.24.2 Length of time

- Emergency approval should not exceed 30 days.
- A full compliance study shall be initiated immediately if the LDSS plans to use the provider beyond the 30 days.
- If medical, water and sanitation, fire inspection, or criminal record check requirements cannot be determined within the 30-day period, emergency approval could continue up to 45 days as long as other requirements are met.

It shall not exceed 45 days. Appropriate documentation shall be made in the provider record explaining why the emergency approval exceeded 30 days.

5.24.3 Denial of approval

Emergency approval may be denied by the LDSS if the provider, and in the case of adult foster care or adult day services, the 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.

5.24.4 Notification

The approval or denial of the emergency application shall be in writing and given to the adult and the prospective provider. See [Appendix E](#) for an example of an emergency approval or denial letter.

5.25 Provider monitoring

State regulation ([22 VAC 40-771-100](#)) describes procedures for monitoring of providers.

- A. For adult day services or adult foster care providers, the local department representative 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 home-based care providers, the local department representative shall interview the provider face-to-face as often as necessary, but at least semi-annually, to monitor the performance of the provider.
 - C. Provider monitoring shall include interviews with adults receiving care from the provider.
 - D. The adult in care or his responsible person shall have access to all provider monitoring reports completed by the local department 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 monitoring can be performed by the staff person who approved the provider, a staff person who facilitated the adult-provider relationship, or another LDSS staff person designated by the appropriate LDSS supervisor.
 - Monitoring visits shall be documented on the Compliance Form for Department Approved Provider or in a provider narrative maintained in the provider's record.

5.26 Renewal process

([22 VAC 40-771-110](#)). The local department shall reapprove the provider prior to the end of the approval period if the provider continues to meet the standards. In the case of adult day services or adult foster care providers, the home also shall continue to meet the standards.

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.

5.27 Provider responsibilities

A provider in good standing is an LDSS approved provider who:

- 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.

In determining whether the provider has good standing, a number of factors, including but not limited to the following, are considered. The provider should:

- Have 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.
- Comply with the required performance of job duties.
- Have the necessary facilities, organization, experience, technical skills, and financial resources to fulfill the terms of the requirements of the position, as needed.

- Have 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 APS allegation shall be used as a basis for revocation of the approval of the provider or denial of the applicant.
- Have satisfactory monitoring assessments completed by the LDSS indicating that quality work is performed according to the vendor agreement with the LDSS.
- For in-home providers, provide documentation of time worked and be able to verify that services were provided to the adult as agreed. For out-of-home providers, be able to verify that services were provided to the adult in care pursuant to the adult foster care/adult day care agreement between the provider and the LDSS.

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.

5.28 Inability of the provider to meet requirements

([22 VAC 40-771-120](#)). If the provider cannot meet the standards for adult services approved providers, 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.

5.28.1 Provisional approval

([22 VAC 40-771-120](#)). The local department may grant provisional approval if noncompliance does not jeopardize the safety or proper care of the adults in care. Provisional approval shall not exceed three months.

5.28.2 Suspension of approval

([22 VAC 40-771-120](#)). The local department may suspend approval if noncompliance may jeopardize the safety and proper care of the adults in care. Suspension shall not exceed three months. During the suspension, the provider can give no care to adults referred by the local department.

5.28.3 Revocation of approval

(22 VAC 40-771-120). If the provider is found to be out of compliance with the standards set forth herein and cannot meet standards within three months and a variance is not granted, the approval shall be revoked.

The local department shall immediately revoke its approval if noncompliance jeopardizes the health, safety and proper care of the adults in care. Adults in adult foster care and adult day services shall be removed within five calendar days from the date of the decision.

5.28.4 Notification of action

(22 VAC 40-771-120). 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 [Appendix F](#) for a sample letter.

5.29 Relocation of the out- of-home provider – adult foster care and adult day services

The following sections describe the circumstances when an out-of-home provider moves.

5.29.1 Within the approving jurisdiction

(22 VAC 40-771-130). If the out-of-home provider moves, 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 days after relocation to avoid disruption of services to the adult in 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.

5.29.2 Outside of the approving jurisdiction

(22 VAC 40-771-130). If an out-of-home provider moves outside of the locality that approved the provider, the local department in the new place of residence may accept the provider approval of the initial local department based upon the recommendation of the initial local department or may initiate the approval process itself.

The receiving LDSS shall visit to determine compliance with requirements for the home as soon as possible but **no later than 30 days** after relocation to avoid a disruption in services to the adult(s) in care.

5.30 Right of review

([22 VAC 40-771-140](#)). The provider shall have the right to request that the decision of the LDSS be reviewed by the local director of social services.

The provider shall request the review within 10 calendar days from the effective date of the Notice of Action.

5.30.1 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.

5.31 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.

LDSSs may accept the provider approval of another LDSS. Other LDSS shall notify and obtain prior approval of the initial approving LDSS for each adult who needs to be placed or served.

5.32 LDSS record-keeping

The LDSS shall maintain a separate file 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.

5.32.1 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, adult foster care, 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.

5.33 Department data system

LDSS approved providers should be entered into *ASAPS* or local data system when they are approved.

5.34 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.

5.35 The LDSS as the adult's fiscal agent

In an agreement reached between the VDSS 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 VDSS/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.

5.35.1 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 internal website.

5.35.2 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 VDSS internal website.

5.35.3 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.

5.35.4 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.

5.35.5 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.

5.35.6 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.

5.36 Fraud

([22 VAC 40-771-30](#)). Any provider who causes the local department to make an improper payment by withholding information or providing false information may 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 assistance or benefits by means of a willful false statement or who knowingly fails to notify of a change in circumstances that could affect eligibility for assistance. 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. The LDSS shall have a tracking system in place to ensure that claims are established and satisfied.

5.37 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 VDSS internal website.

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.

5.38 Appendix B: Rights of adults in care

Adults in the care of LDSS approved providers shall have the rights and responsibilities specified in this section. The provisions of this section shall not be construed to restrict or abridge any right that any adult has under the law. The provider shall establish policies and procedures to ensure that adults in care are aware of the following rights:

- To be fully informed, prior to the beginning of the provision of services, of his rights and of all rules and expectations governing his conduct and responsibilities; the adult and, if appropriate, his responsible persons shall acknowledge, in writing, receipt of this information, which shall be filed in his record.
- To be fully informed, prior to the beginning of the provision of services, of services available and of any related charges, if any; this shall be reflected by the adult's written acknowledgment of having been so informed, which shall be filed in his record.
- Unless a conservator of such person has been appointed, to be free to manage his personal finances and funds; to be entitled to access to personal account statements reflecting financial transactions made; and, when receiving adult foster care, to be given at least a quarterly accounting of financial transactions made on his behalf.
- To be afforded confidential treatment of his personal affairs and records and to approve or refuse their release to any individual outside the home except as otherwise provided in law and except in case of his transfer to another setting.
- When receiving adult foster care or adult day services, to be transferred or discharged only when provided with a statement of reasons, or for nonpayment for his stay, and to be given advance notice of **at least 30 days**; upon notice of discharge or upon giving reasonable advance notice of his desire to move, the adult shall be afforded reasonable assistance to ensure an orderly transfer or discharge; such actions shall be documented in his record; the LDSS that made the placement shall be given advance notice of **at least 30 days** for any transfer or discharge.
- An adult receiving adult foster care or adult day services may be discharged immediately if his physical or mental health conditions or his behavior places himself or others at risk of serious bodily harm or injury; the discharge shall be to a setting which will ensure the protection of the adult's health, safety and welfare; the LDSS which made the placement shall be notified of the emergency discharge as soon as practicable but **no later than 24 hours** after the emergency discharge.

- In the event a medical condition should arise while he is under the care of the provider, to be afforded the opportunity to participate in the planning of his program or care and medical treatment and the right to refuse treatment.
- When receiving care from an adult foster care or adult day services provider, to not be required to perform services for the home except as voluntarily contracted pursuant to an agreement for services that states the terms of consideration or remuneration and is documented in writing and retained in his record.
- To be free to select health care services from reasonably available resources.
- To be free from mental, emotional, physical, sexual, and financial abuse or exploitation; to be free from forced isolation, threats, or other degrading or demeaning acts against him; and, when receiving care from an adult foster care or adult day services provider, to not have his known needs neglected or ignored by the provider.
- To be treated with courtesy, respect, and consideration as a person of worth, sensitivity, and dignity.
- To be free to voice grievances and recommend changes in policies and services, free of coercion, discrimination, threats, or reprisal.
- When receiving care from an out-of-home LDSS-approved provider, to be permitted to retain and use his personal clothing and possessions as space permits unless to do so would infringe upon rights of other adults.
- To be encouraged to function at his highest mental, emotional, physical, and social potential.
- To receive and send uncensored, unopened mail.
- To refuse medication unless there has been a court finding of incapacity.
- To choose which services are included in the service agreement and to receive all physician-prescribed treatments. Adults also have the right to refuse services, if doing so does not endanger the health or safety of other adults.
- To be free of physical, mechanical, or chemical restraint except in the following situations and with appropriate safeguards, including training for the provider on the use of restraints:
 - As necessary to respond to unmanageable behavior in an emergency situation that threatens the immediate safety of the adult or others.

- As medically necessary, as authorized in writing by a physician, to provide physical support to a weakened adult.
- To be free of prescription drugs except where medically necessary, specifically prescribed, and supervised by the attending physician.
- To be accorded respect for ordinary privacy in every aspect of daily living, including but not limited to the following:
 - In the care of his personal needs except as assistance may be needed.
 - In any medical examination or health-related consultations that the adult may have at the home.
 - In communications, in writing, or by telephone.
 - During visitations with other persons.
 - When receiving care from an out-of-home provider, in the adult's room or portion thereof; adults shall be permitted to have guests or other adults in their rooms unless to do so would infringe upon the rights of other adults; staff may not enter an adult's room without making their presence known except in an emergency or in accordance with safety oversight requirements included in regulations of the State Board of Social Services.
 - When receiving care from an out-of-home provider, in visits with his spouse; if both are adults of the home they are permitted, but not required, to share a room unless otherwise provided in the adult's agreements.
- Is permitted to meet with and participate in activities of social, faith-based, and community groups at his discretion unless medically contraindicated as documented by his physician in his medical record.

If the adult is unable to fully understand and exercise the rights and responsibilities contained in this section, the LDSS shall require that a responsible person, of the adult's choice when possible, designated in writing in the adult's record, be made aware of each item in this section and the decisions that affect the adult or relate to specific items in this section; an adult shall be assumed capable of understanding and exercising these rights unless a physician determines otherwise and documents the reasons for such determination in the adult's record.

The out-of-home provider shall make available in an easily accessible place a copy of these rights and responsibilities and shall include in them the name and telephone number of the Adult Protective Services Hotline of the VDSS as well as the toll-free telephone number for the Virginia Long-Term Care Ombudsman Program and any state ombudsman program serving the area.

The out-of-home provider shall make its policies and procedures for implementing this section available and accessible to adults, relatives, agencies, and the general public.

Each out-of-home provider shall provide appropriate staff training to implement each adult's rights included in this section.

Adults in care have the right to be fully informed in advance about recommended care and treatment and of any recommended changes in that care or treatment.

Adults in care have the right to freedom from searches of personal belongings without the adult or responsible person's permission, unless the care provider has reason to suspect that the adult possesses items that are illegal or prohibited in the out-of-home provider setting and the adult is present during the search.

When receiving care from an out-of-home provider, adults have the right to be notified before the adult's room or roommate is changed.

When receiving care from an out-of-home provider, adults have the right to communicate privately and without restriction with any other adult who does not object to the communications.

Adult Protective Services Hotline (888) 832-3858
State Long-Term Care Ombudsman (804) 565-1600

Local Adult Protective Services _____

Local Ombudsman Program _____

(Signature)

(Date)

(Signature)

(Date)

(Service Worker)

(Date)

(Telephone Number)

5.39 Appendix C: Sample letter – reference/employment verification

Dear _____ (reference or employer):

_____ (provider's name) has applied to our local

department to be _____ (type of provider) and has given your name as a reference (or employer). We would appreciate your answering the following questions. Your comments are necessary to assist our local department to determine this individual's ability, skill, and experience in providing care to adults.

We appreciate your time and assistance. If you have any questions, please call me at _____ (telephone number). A stamped, self-addressed envelope is enclosed for your convenience. Thank you very much.

Sincerely,

(Service Worker)

1. How long have you known this person?
2. Explain how you came to know this person.
3. What abilities, skills, and/or experiences does this person have to provide care to adults?
4. Is this person:

Physically and mentally capable of providing care to adults?

yes no Comment: _____

Able to have positive and constructive relationships with adults?

yes no Comment: _____

Able to relate to adults with respect, courtesy, and understanding?

yes no Comment: _____

Capable of handling emergencies with dependability and good judgment?

yes no Comment: _____

Able to communicate and follow instructions sufficiently to assure an adult's safety and protection?

yes no Comment: _____

Your signature _____

5.40 Appendix D: Sample letter – denial of application or renewal

Date: _____

Dear _____:

This is to notify you that our local department has taken the following action:

- Denied your application or renewal as a (type of provider) because:

If you have any questions, please call me at (telephone number). If you are not satisfied with the action of the local department, you have the right to request a review of the department's decision by the director of the local department. The request for review shall be made within 10 days from the date of this notice. The local director's decision is final.

Sincerely,

(Service Worker)

(Title)

5.41 Appendix E: Sample letter – emergency approval or denial

Date: _____

Dear _____:

This is to notify you that our local department has taken the following action:

- Approved you as a (type of provider) on an emergency basis. Your approval period is from (date) to (date). In order to be considered for full approval, you will need to meet the following requirement(s) (specify requirement(s) to be met):

- Denied your application as a (type of provider) because:

If you have any questions, please call me at (telephone number). If you are not satisfied with the action of the local department, you have the right to request a review of the department's decision by the director of the local department. The request for review shall be made within 10 days from the date of this notice. The local director's decision is final.

Sincerely,

(Service Worker)

(Title)

5.42 Appendix F: Sample letter – provisional, suspension, or revocation of approval

Date: _____

Dear _____:

This is to notify you that our local department has taken the following action regarding your status as a (type of provider) until (date).

Provisional approval Suspension of approval Revocation of Approval

The reason for this action is that you do not meet the following requirements (specify requirements):

If you have any questions about this, please call me at (telephone number). If you are not satisfied with the action of the local department, you have the right to request a review of the department's decision by the director of the local department. The request for review shall be made within 10 days from the date of this notice. The local director's decision is final.

Sincerely,

(Service Worker)

(Title)

5.43 Appendix G: Sample letter – request for fire inspection

DATE:

TO: Fire Inspection Authority

FROM: (Worker name, agency, telephone number, and address)

SUBJECT: REQUEST FOR FIRE INSPECTION

The following individual(s) has applied to be a
_____ (type of provider).

We request that you inspect the home to determine compliance with the applicable fire safety code and provide us a report of your findings.

Thank you.

Name of Provider/Applicant:
Address:
Directions to Home:

5.44 Appendix H: Sample letter – request for sanitation inspection

DATE:

TO: Health Department

FROM: (Worker name, agency, telephone number, and address)

SUBJECT: REQUEST FOR SANITATION INSPECTION

The following individual(s) has applied to be _____ (type of provider). The home has a private water supply (and/or sewage disposal system). We request that you inspect this home to determine if it meets the rules and regulations governing "semi-public restaurants serving 12 or less recipients of service" and provide us a report of your findings.

Please request the State Health Department to bill our agency for the fee to test water. The address is as follows:

Agency Name/Address

Thank you.

Name of Provider/Applicant:
Address:
Directions to Home:

5.45 Appendix I: 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:

35. 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

36. 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 35 of subsection A shall be limited to the convictions on file with the Exchange for any offense specified in [§ 63.2-1719](#).

([§ 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 an offense as defined in [§ 63.2-1719](#). 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 a barrier crime as described in [§ 63.2-1719](#).

5.46 Appendix J: Code of Virginia – barrier crimes

The following terms are defined in [§ 63.2-1719](#) of the Code of Virginia.

As used in this section, "barrier crime" means:

- A conviction of murder or manslaughter as set out in Article 1 ([§ 18.2-30](#) et seq.) of Chapter 4 of Title 18.2;
- Malicious wounding by mob as set out in [§ 18.2-41](#);
- Abduction as set out in subsection A of [§ 18.2-47](#);
- Abduction for immoral purposes as set out in [§ 18.2-48](#);
- Assaults and bodily woundings as set out in Article 4 ([§ 18.2-51](#) et seq.) of Chapter 4 of Title 18.2;
- Robbery as set out in [§ 18.2-58](#);
- Carjacking as set out in [§ 18.2-58.1](#);
- Threats of death or bodily injury as set out in [§ 18.2-60](#);
- Felony stalking as set out in [§ 18.2-60.3](#);
- Sexual assault as set out in Article 7 ([§ 18.2-61](#) et seq.) of Chapter 4 of Title 18.2;
- Arson as set out in Article 1 ([§ 18.2-77](#) et seq.) of Chapter 5 of Title 18.2;
- Drive-by shooting as set out in [§ 18.2-286.1](#);
- Use of a machine gun in a crime of violence as set out in [§ 18.2-289](#);
- Aggressive use of a machine gun as set out in [§ 18.2-290](#);
- Use of a sawed-off shotgun in a crime of violence as set out in subsection A of [§ 18.2-300](#);
- Pandering as set out in [§ 18.2-355](#);
- Crimes against nature involving children as set out in [§ 18.2-361](#);
- Incest as set out in [§ 18.2-366](#);

- Taking indecent liberties with children as set out in [§ 18.2-370](#) or [§ 18.2-370.1](#);
- Abuse and neglect of children as set out in [§ 18.2-371.1](#);
- Failure to secure medical attention for an injured child as set out in [§ 18.2-314](#);
- Obscenity offenses as set out in [§ 18.2-374.1](#);
- Possession of child pornography as set out in [§ 18.2-374.1:1](#);
- Electronic facilitation of pornography as set out in [§ 18.2-374.3](#);
- Abuse and neglect of incapacitated adults as set out in [§ 18.2-369](#);
- Employing or permitting a minor to assist in an act constituting an offense under Article 5 ([§ 18.2-372](#) et seq.) of Chapter 8 of Title 18.2 as set out in [§ 18.2-379](#);
- Delivery of drugs to prisoners as set out in [§ 18.2-474.1](#);
- Escape from jail as set out in [§ 18.2-477](#);
- Felonies by prisoners as set out in [§ 53.1-203](#);
- Or an equivalent offense in another state. In the case of child welfare agencies and foster and adoptive homes approved by child-placing agencies, "barrier crime" shall also include convictions of burglary as set out in Article 2 ([§ 18.2-89](#) et seq.) of Chapter 5 of Title 18.2 and any felony violation relating to possession or distribution of drugs as set out in Article 1 ([§ 18.2-247](#) et seq.) of Chapter 7 of Title 18.2, or an equivalent offense in another state.

"Offense" means a barrier crime and, in the case of child welfare agencies and foster and adoptive homes approved by child-placing agencies:

- A conviction of any other felony not included in the definition of barrier crime unless five years have elapsed since conviction.
- A founded complaint of child abuse or neglect within or outside the Commonwealth. In the case of child welfare agencies and foster and adoptive homes approved by child-placing agencies, convictions shall include prior adult convictions and juvenile convictions or adjudications of delinquency based on a crime that would be a felony if committed by an adult within or outside the Commonwealth.

6

CONFIDENTIALITY

TABLE OF CONTENTS

- 6.1 Legal basis**
- 6.2 Definitions**
- 6.3 Ownership of client records**
- 6.4 Virginia Freedom of Information Act**
- 6.5 Intra-department disclosures**
- 6.6 Inter-department disclosures**
- 6.7 Government Data Collection and Dissemination Practice Act**
- 6.8 Disclosure of information without an individual's consent**
- 6.9 Disclosure to outside sources/obtaining information from outside sources**
- 6.10 Consent process**
- 6.11 Client's right to access client information**
 - 6.11.1 Access rules
 - 6.11.2 Exceptions
- 6.12 Rights of data subject**
 - 6.12.1 Informing an individual
- 6.13 Judicial proceedings**
- 6.14 Penalties for unlawful use or disclosure of information**
 - 6.14.1 Injunctive relief; civil penalty; attorneys' fees
 - 6.14.2 Confidential records and information concerning social services; penalty
- 6.15 Appendix A: Forms**

6

CONFIDENTIALITY

6.1 Legal basis

The legal basis for this chapter is § [63.2-104](#) 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), § [32.1-127.1:03](#) 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 and/or the Department's Regulations [22 VAC 40-910](#), General Provisions for Maintaining and Disclosing Confidential Information of Public Assistance, Child Support Enforcement and Social Services Records.

(§ [63.2-104](#) of the Code of Virginia). The records, information and statistical registries of the department, local departments and of all child-welfare agencies concerning social services to or on behalf of individuals shall be confidential information, provided that the commissioner, the board and their 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.

6.2 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).

<u>Term</u>	<u>Definition</u>
Agent	Any individual authorized to act on behalf of or under the direction of the commissioner of the Virginia Department of Social Services (VDSS) or State Board of Social Services for the sole purpose of accessing confidential client records in the administration of public assistance, child support enforcement, or social services programs.
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.
Department	The Virginia Department of Social Services (VDSS).
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.

6.3 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.

6.4 Virginia Freedom of Information Act

The Virginia Freedom of Information Act (FOIA) (§ [2.2-3700 et seq.](#) 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.

(§ [63.2-104](#) of the Code of Virginia). If a request for a record or information concerning applicants for and recipients of social services 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.

Record requests can be complex and it is recommended that the LDSS work with 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. However, all FOIA requests require a response which could include:

- The record; or
- A written explanation of why the requested records are not available or may not be released, including a citation of §§ [63.2-104](#) and [2.2-3705.5 14](#) of the Code of Virginia and any other specific regulations that may apply.

Responses to a FOIA request shall occur **within five (5) 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 which may be helpful to the public and to the LDSS.

6.5 Intra-department disclosures

([22 VAC 40-910-100](#)). The Commissioner of the Virginia Department of Social Services, the State Board of Social Services and their agents shall have access to all social services client records pursuant to § [63.2-104](#) of the code of Virginia.

([22 VAC 40-910-20](#)). The Commissioner of the Virginia Department of Social Services, the State Board of Social Services and their agents do not have to obtain consent from the client to obtain or review client records

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.

6.6 Inter-department disclosures

The LDSS may furnish information regarding an individual to other local social service agencies without a release from the individual when the disclosure is for purposes directly related to the administration of the programs.

6.7 Government Data Collection and Dissemination Practice Act

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 Disclosure of information without an individual's consent

([22 VAC 40-910-20](#)). Client records may be released without the client's written permission under the following conditions:

- 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](#).

The Commissioner of the Virginia Department of Social Services, the State Board of Social Services and their agents shall have the discretion to release nonidentifying statistical information. A client's written permission is not required in order to release nonidentifying statistical information.

The Commissioner of the Virginia Department of Social Services, the State Board of Social Services and their agents do not have to obtain consent from the client to obtain or review client records.

6.9 Disclosure to outside sources/obtaining information from outside sources

([22 VAC 40-910-100](#)). Social services client records must be confidential and can only be released to persons having a legitimate interest in accordance with federal and state laws and regulations pursuant to § [63.2-104](#) of the Code of Virginia. Section [63.2-104](#) of the Code of Virginia does not apply to the disclosure of adoption records, reports and information. The disclosure of adoption records, reports and information is governed by § [63.2-1246](#) of the Code of Virginia.

With certain exceptions found in the Adult Services/APS program chapters, 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.

6.10 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. Whenever a person or organization that is not performing one or more of the

functions delineated in [22 VAC 40-910-80 C](#) or does not have a legitimate interest pursuant to [22 VAC 40-910-100](#) requests client information, the person or organization must obtain written permission from the client or the legally responsible person for the release of the client information unless one of the conditions delineated in this subsection exists. A client's authorization for release of client information obtained by the department, agency or provider also satisfies this requirement.

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 DSS internal website.

6.11 Client's right to access client information

([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.

6.11.1 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.

6.11.2 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.

6.12 Rights of data subject

The Government Data Collection and Dissemination Practices Act provides certain rights to all individuals for whom an LDSS maintains a case record.

(§ [2.2-3806](#) of the Code of Virginia). A. Any agency maintaining personal information shall:

1. Inform an individual who is asked to supply personal information about himself whether he is legally required, or may refuse, to supply the information requested, and also of any specific consequences that are known to the agency of providing or not providing the information.
2. Give notice to a data subject of the possible dissemination of part or all of this information to another agency, nongovernmental organization or system not having regular access authority, and indicate the use for which it is intended, and the specific consequences for the individual, which are known to the agency, of providing or not providing the information. However documented permission for dissemination in the hands of the other agency or organization shall satisfy the requirement of this subdivision. The notice may be given on applications or other data collection forms prepared by data subjects.
3. Upon request and proper identification of any data subject, or of his authorized agent, grant the data subject or agent the right to inspect, in a form comprehensible to him:
 - a. All personal information about that data subject except as provided in subdivision 1 of § [2.2-3705.1](#), subdivision 1 of § [2.2-3705.4](#), and subdivision 1 of § [2.2-3705.5](#).
 - b. The nature of the sources of the information.
 - c. The names of recipients, other than those with regular access authority, of personal information about the data subject including the identity of all persons and organizations involved and their relationship to the system when not having regular access authority, except that if the recipient has obtained the information as part of an ongoing criminal investigation such that disclosure of the investigation would jeopardize law-enforcement action, then no disclosure of such access shall be made to the data subject.

4. Comply with the following minimum conditions of disclosure to data subjects:

a. An agency shall make disclosures to data subjects required under this chapter, during normal business hours, in accordance with the procedures set forth in subsections B and C of [§ 2.2-3704](#) for responding to requests under the Virginia Freedom of Information Act ([§ 2.2-3700](#) et seq.) or within a time period as may be mutually agreed upon by the agency and the data subject.

b. The disclosures to data subjects required under this chapter shall be made (i) in person, if he appears in person and furnishes proper identification, or (ii) by mail, if he has made a written request, with proper identification. Copies of the documents containing the personal information sought by a data subject shall be furnished to him or his representative at reasonable charges for document search and duplication in accordance with subsection F of [§ 2.2-3704](#).

c. The data subject shall be permitted to be accompanied by a person of his choosing, who shall furnish reasonable identification. An agency may require the data subject to furnish a written statement granting the agency permission to discuss the individual's file in such person's presence.

5. If the data subject gives notice that he wishes to challenge, correct, or explain information about him in the information system, the following minimum procedures shall be followed:

a. The agency maintaining the information system shall investigate, and record the current status of that personal information.

b. If, after such investigation, the information is found to be incomplete, inaccurate, not pertinent, not timely, or not necessary to be retained, it shall be promptly corrected or purged.

c. If the investigation does not resolve the dispute, the data subject may file a statement of not more than 200 words setting forth his position.

d. Whenever a statement of dispute is filed, the agency maintaining the information system shall supply any previous recipient with a copy of the statement and, in any subsequent dissemination or use of the information in question, clearly note that it is disputed and supply the statement of the data subject along with the information.

e. The agency maintaining the information system shall clearly and conspicuously disclose to the data subject his rights to make such a request.

f. Following any correction or purging of personal information the agency shall furnish to past recipients notification that the item has been purged or corrected whose receipt shall be acknowledged

6.12.1 Informing an individual

Whenever an individual requests an explanation of or challenges the accuracy of information contained in LDSS records, he or she shall be fully informed of the above noted procedure.

The worker should be aware of the individual's right to privacy and should limit information to that which is essential in determining eligibility and providing services. Unless privacy or policy regulations require collateral investigation and collection of information, all information needed should be secured from the individual whenever possible.

To ensure that an individual understands his or her rights, the worker shall read and discuss the consent forms with the individual upon initial contact and at subsequent times when appropriate.

6.13 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. When appearing in court, the LDSS representative who is subpoenaed to testify or submit records shall advise the court of the federal and state laws and regulations pertaining to confidentiality and request that the court not require disclosure. If the court orders that information or records be disclosed, the LDSS representative shall comply with the order.

6.14 Penalties for unlawful use or disclosure of information

The service worker should contact his or her supervisor if there are any concerns about releasing confidential information.

6.14.1 Injunctive relief; civil penalty; attorneys' fees

(§ [2.2-3809](#) of the Code of Virginia). Any aggrieved person may institute a proceeding for injunction or mandamus against any person or agency that has engaged, is engaged, or is about to engage in any acts or practices in violation of the provisions of this chapter. The proceeding shall be brought in the district or circuit court of any county or city where the aggrieved person resides or where the agency made defendant has a place of business.

In the case of any successful proceeding by an aggrieved party, the agency enjoined or made subject to a writ of mandamus by the court shall be liable for the costs of the action together with reasonable attorneys' fees as determined by the court.

In addition, if the court finds that a violation of subsection A of § [2.2-3808](#) was willfully and knowingly made by a specific public officer, appointee, or employee of any agency, the court may impose upon such individual a civil penalty of not less than \$250 nor more than \$1,000, which amount shall be paid into the State Literary Fund. For a second or subsequent violation, such civil penalty shall be not less than \$1,000 nor more than \$2,500. For a violation of subsection A of § [2.2-3808](#) by any agency, the court may impose a civil penalty of not less than \$250 nor more than \$1,000, which amount shall be paid into the State Literary Fund. For a second or subsequent violation, such civil penalty shall be not less than \$1,000 nor more than \$2,500.

6.14.2 Confidential records and information concerning social services; penalty

(§ [63.2-104](#) of the Code of Virginia). It shall be unlawful for any officer, agent or employee of any child-welfare agency; for the Commissioner, the State Board or their agents or employees; for any person who has held any such position; and for any other person to whom any such record or information is disclosed to disclose, directly or indirectly, any such confidential record or information, except as herein provided or pursuant to § [63.2-105](#). Every violation of this section shall constitute a Class 1 misdemeanor.

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 [Adult Services forms page](#) 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.