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## INTRODUCTION

### 1.1 Definitions

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

<b>Term</b>	<b>Definition</b>
<b>Adult</b>	An individual 18 years of age or older, or under the age of 18 if legally emancipated (§ 51.5-144 of the Code of Virginia).
<b>Adult</b>	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). <b>Note:</b> This definition is used during the provision of Adult Protective Services.
<b>Adult Abuse</b>	The willful infliction of physical pain, injury, or mental anguish or unreasonable confinement of an adult as defined in § 63.2-1603 (§ 63.2-100 of the Code of Virginia).
<b>Adult Exploitation</b>	The illegal, unauthorized, improper, or fraudulent use of an adult as defined in § 63.2-1603 or his funds, property, benefits, resources or other assets for another's profit, benefit, or advantage, including a caregiver or person serving in a fiduciary capacity, or that deprives the adult of his rightful use of or access to such funds, property, benefits, resources, or

Term	Definition
	other assets. “Adult exploitation” includes (i) an intentional breach of a fiduciary obligation to an adult to his detriment or an intentional failure to use the financial resources of an adult in a manner that results in neglect of such adult; (ii) the acquisition, possession, or control of an adult’s financial resources or property through the use of undue influence, coercion, or duress; and (iii) forcing or coercing an adult to pay for goods or services or perform services against his will for another’s profit , benefit, or advantage if the adult did not agree or was tricked, misled, or defrauded into agreeing, to pay for such goods or services or perform such services. (§ 63.2-100 of the Code of Virginia).
<b>Adult Foster Care</b>	Room and board, supervision, and special services to an adult who has a physical or mental condition. Adult foster care may be provided by a single provider for up to three adults (§ 51.5-144 of the Code of Virginia).
<b>Adult Neglect</b>	An adult as defined in § 63.2-1603 is living under such circumstances that he is not able to provide for himself or is not being provided services necessary to maintain his physical and mental health and that the failure to receive such necessary services impairs or threatens to impair his well-being. However, no adult shall be considered neglected solely on the basis that such adult is receiving religious nonmedical treatment or religious nonmedical nursing care in lieu of medical care, provided that such treatment or care is performed in good faith and in accordance with the religious practices of the adult and there is a written or oral expression of consent by that adult (§ 63.2-100 of the Code of Virginia).
<b>Adult Services</b>	Services that are provided by local departments of social services to an adult with an impairment (§ 51.5-144 of the Code of Virginia).
<b>Adult with an impairment</b>	An adult whose physical and mental capacity is diminished to the extent that he needs counseling or supervisory assistance or assistance with activities of daily living or instrumental activities of daily living (§ 51.5-144 of the Code of Virginia).
<b>Auxiliary Grants</b>	<del>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</del>

Term	Definition
	<del>benefits except for excess income (§ 63.2-100 of the Code of Virginia).</del>
<b>Department</b>	The Department for Aging and Rehabilitative Services (§ 51.5-116 of the Code of Virginia).
<b>Incapacitated Person</b>	Any adult who is impaired by reason of mental illness, intellectual disability, physical illness or disability, advanced age or other causes to the extent that the adult lacks sufficient understanding or capacity to make, communicate, or carry out responsible decisions concerning his well-being. This definition is for the purpose of establishing an adult's eligibility for APS and such adult may or may not have been found adjudicated incapacitated by a court (22 VAC 30-100-10).
<b>Local Department</b>	The local department of social services of any county or city in the Commonwealth (22 VAC 30-130-10).
<b>Virginia Uniform Assessment Instrument or UAI</b>	The department–designated assessment form. It is used to record information about the adult's level of service needs (22 VAC 30-130-10).

## 1.2 Organization of the department

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

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

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

LDSS are the setting for direct contact with individuals requesting services. LDSS can assist individuals through benefits and services programs. LDSS determine eligibility for participation in service and benefits programs, authorize payments to individuals and

vendors for services, and provide direct services to individuals. LDSS use federal, state, and local funds to deliver services.

### **1.3 ~~Adult Protective Services Division programs~~**

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~~DARS administers the following programs through the APS Division:~~

- ~~• Adult Services (AS)~~
- ~~• Adult Protective Services (APS)~~
- ~~• Auxiliary Grants (AG)~~

### **1.4 Mission of Adult Protective Services **APS** Division programs**

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The mission of the APS Division 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 **AS****

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

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

### **1.6 Purpose of Adult Protective Services **APS****

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

APS consists of the identification, receipt, and investigation of ~~complaints and reports of~~ adult abuse, neglect or exploitation (or the risk thereof) ~~as related to~~ **of** 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 **and stop further maltreatment**.

## 1.7 Distinction between AS and APS

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

## 1.8 Philosophy of AS

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The following principles are inherent to the provision of AS:

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

- Coordination and combination of formal and informal support systems provide the most effective delivery system.

## **1.9 Philosophy of APS**

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

- Proper protection of adults may require an APS worker to advocate for the right of the capable adult to make his or her own choices even when the community or family may oppose these choices.
- The least restrictive and least intrusive intervention necessary to protect the adult and stabilize the situation is the most appropriate.
- The adult has the right to make decisions on his or her own behalf until he or she delegates that responsibility voluntarily or the court grants that responsibility to another individual.
- Adult abuse, neglect, and exploitation are social problems and their resolution, for the most part, should be sought through the provision of social services and medical services.

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

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

## **1.10 Documentation and record retention**

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

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



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

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

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

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

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

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

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

## **1.11 Legal basis – Code of Virginia**

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

### **1.11.1 Responsibility of the Department for AS**

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

### **1.11.2 Homemaker, companion, or chore services**

Section 51.5-146 the Code of Virginia authorizes the provision of companion, chore, or homemaker services that will allow individuals to attain or maintain self-care and are likely to prevent or reduce dependency. Such services shall be provided to the extent that federal or state matching funds are made available to each locality.

### **1.11.3 Authority to provide adult foster care services**

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

### **1.11.4 Criminal history check for agency approved providers of services to adults**

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

### **1.11.5 Screenings, ALF assessment, and other relevant Code sections**

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

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

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

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

The ~~long-term services and supports~~ **LTSS** screening team that includes a nurse, social worker, or other assessor (i.e. family services specialist) designated by the Department, who is an employee of the Department of Health or the local department of social services and a physician who is employed or engaged by the Department of health.

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

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

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

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

### 1.11.6 Establishment of APS Unit

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

### 1.11.7 Adult Protective Services

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

### 1.11.8 AG Program

~~Section 51.5-160 of the Code of Virginia requires an adult who is applying for AG to be evaluated by a case manager or qualified assessor to determine his or her need for care.~~

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

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

### **1.11.10 Community services boards; local government departments; and behavioral health authorities; powers and duties**

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

*(§ 51.5-138 of the Code of Virginia). The governing body of each county or city, or a combination thereof, shall designate a lead agency and member agencies to accomplish the coordination of local long-term care services and supports. The agencies shall establish a long-term care coordination committee composed of, but not limited to, representatives of each agency. The coordination committee shall guide the coordination and administration of public long-term care services and supports in the locality. The membership of the coordination committee shall be comprised of, but not limited to, representatives of the local department of public health, the local department of social services, the community services board or community mental health clinic, the area agency on aging, the local nursing home pre-admission screening team, and representatives of*

*housing, transportation, and other appropriate local organizations that provide long-term care services. A plan shall be implemented that ensures the cost-effective utilization of all funds available for long-term care services and supports in the locality. Localities are encouraged to provide services and supports within each category of service in the continuum and to allow one person to deliver multiple services, when possible.*

## 1.12 Legal basis – department **Department** regulations

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

- 22 VAC 30-80 — Auxiliary Grants Program
- 22 VAC 30-100 Adult Protective Services
- 22 VAC 30-110 Assessment in Assisted Living Facilities
- 22 VAC 30-120 Adult Services Approved Providers
- 22 VAC 30-130 Adult Services Standards

## 1.13 Service Appeals

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Pursuant to § 51.5-147 of the Code of Virginia an applicant for or recipient of home-based and adult foster care services may appeal the local board's decision in granting, denying, changing, or discontinuing services within 30 days after receiving written notice of the decision. An applicant or recipient aggrieved by the failure of the local board to make a decision within a reasonable time may also appeal to the Commissioner.

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

## 1.14 APS Division Program report

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Each year the APS Division compiles an annual report of statistical data on each of its programs. The report is located the "Publications" page under the "About Us" heading on the DARS public site: [vadars.org](http://vadars.org).

## 1.15 APS Minimum Training Standards

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

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

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

### 1.15.1 APS on-call workers

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

## **Appendix A: Division Information on the web**

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

### **1.15.2 Manuals, documents, and forms**

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

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

### **1.15.3 Other DSS forms**

Other DSS forms are also located on the DSS intranet.

### **1.15.4 PeerPlace information**

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

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

### **1.15.5 Medicaid provider manuals and forms**

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

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

#### **~~1.15.6 DARS Adult Reporting and Tracking System (DARTS)~~**

~~LDSS workers may access “view-only” historical records from the previous case management system (ASAPS) via DARTS. Workers may search for historical ASAPS cases by the adult’s name, Social Security Number, or the adult’s ASAPS ID.~~



# 2

## ADULT PROTECTIVE SERVICES

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# 2

## ADULT PROTECTIVE SERVICES

### 2.1 Introduction

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

Protective services also include the following:

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

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

### 2.2 Legal basis

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

## 2.3 Charge to LDSS

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(§ 63.2-1605 of the Code of Virginia). Each local board, to the extent that federal or state matching funds are made available to each locality, shall provide, pursuant to regulations and subject to supervision of the Commissioner for Aging and Rehabilitative Services, adult protective services for adults who are found to be abused, neglected or exploited and who meet one of the following criteria: (i) the adult is 60 years of age or older or (ii) the adult is 18 years of age or older and is incapacitated. The requirement to provide such services shall not limit the right of any individual to refuse to accept any of the services so offered, except as provided in § 63.2-1608.

## 2.4 Definitions

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

<b><u>Term</u></b>	<b><u>Definition</u></b>
<b>Abuse</b>	The willful infliction of physical pain, injury, or mental anguish or unreasonable confinement of an adult as defined in 63.2-1603 of the Code of Virginia.
<b>Adult</b>	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.
<b>Adult Protective Services or APS</b>	Services provided by the local department that are necessary to protect and adult as defined in § 63.2-1603 of the Code of Virginia from abuse, neglect, or exploitation.
<b>APS Case Management Information System</b>	The computer system that collects and maintains information on APS reports, investigations, and service provision. The system is the official state automated system for APS.
<b>Agent</b>	A person granted authority to act for a principal under a power of attorney, whether denominated an agent, attorney-in-fact, or otherwise. The term includes an original agent, co-agent,

<u>Term</u>	<u>Definition</u>
	successor agent, and a person to which an agent's authority is delegated (64.2-1600 of the Code of Virginia).
<b>Aggravated Sexual Battery</b>	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 dangerous weapon (§ 18.2-67.3 of the Code of Virginia).
<b>Annual Report</b>	The report required to be filed by a guardian pursuant to § 64.2-2020. (§ 64.2-2000 of the Code of Virginia).
<b>Collateral</b>	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.
<b>Commissioner</b>	The Commissioner of the Department.
<b>Complaining Witness</b>	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).

<b><u>Term</u></b>	<b><u>Definition</u></b>
<b>Conservator</b>	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.” <i>“Conservator” includes (i) a local or regional program designated by the Department for Aging and Rehabilitative Services as a public conservator pursuant to Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5 or (ii) any local or regional tax-exempt charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code to provide conservatorial services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person. If a tax-exempt charitable organization has been designated by the Department for Aging and Rehabilitative Services as a public conservator, it may also serve as a conservator for other individuals.</i> (§ 64.2-2000 of the Code of Virginia).
<b>Department or DARS</b>	The Department for Aging and Rehabilitative Services.
<b>Director</b>	The director or his designated representative of the local department of social services of any city or county in the Commonwealth.
<b>Disorder</b>	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).
<b>Disposition</b>	The determination by the local department of whether or not adult abuse, neglect, or exploitation has occurred.
<b>Documentation</b>	Information and materials, written or otherwise, concerning allegations, facts, and evidence.
<b>Exploitation</b>	The illegal, unauthorized, improper, or fraudulent use of an adult as defined in § 63.2-1603 of the Code of Virginia or the adult’s funds, property, benefits, resources or other assets for another’s profit, benefit, or advantage, including a caregiver or person serving in a fiduciary capacity, or that deprives the adult of his rightful use of or access to such funds, property, benefits,

**Term**

**Definition**

resources, or other assets. “Adult exploitation” includes (i) an intentional breach of a fiduciary obligation to an adult to his detriment or an intentional failure to use the financial resources of an adult in a manner that results in neglect of such adult; (ii) the acquisition, possession, or control of an adult’s financial resources or property through the use of undue influence, coercion, or duress; and (iii) forcing or coercing an adult to pay for goods or services or perform services against his will for another’s profit, benefit, or advantage if the adult did not agree or was tricked, misled, or defrauded into agreeing, to pay for such goods or services or perform such services.

**Emergency**

(i) An adult is living in conditions that present a clear and substantial risk of death or immediate and serious physical harm to himself or others or (ii) an adult has been, within a reasonable period of time, subjected to an act of violence, force, or threat or been subjected to financial exploitation. (§ 63.2-1603 of the Code of Virginia).

**Family Abuse**

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

**Family or Household Member**

- The person’s spouse, whether or not he or she resides in the same home with the person;
- The person’s former spouse, whether or not he or she resides in the same home with the person;
- The person’s parents, stepparents, children, stepchildren, brothers, sisters, half-brothers, half-sisters, grandparents, and grandchildren, regardless of whether such persons reside in the same home with the person;

**Term**

**Definition**

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

**Financial  
Institution Staff**

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

**Guardian**

A person appointed by the court who is responsible for the personal affairs of an incapacitated person, including responsibility for making decisions regarding the person's support, care, health, safety, habilitation, education, therapeutic treatment, and, if not inconsistent with an order of involuntary admission, residence. Where the context plainly indicates, the term includes a "limited guardian" or a "temporary guardian." ~~The powers and duties of the guardian are defined by the court and are limited to matters within the areas in which the person in need of a guardian has been determined to be incapacitated.~~ *The term includes (i) a local or regional program designated by the Department for Aging and Rehabilitative Services as a public guardian pursuant to Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5 or (ii) any local or regional tax-exempt charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code to provide guardian services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person. If a tax-exempt charitable organization has been designated by the Department for Aging and Rehabilitative Services as a public*

<u>Term</u>	<u>Definition</u>
	<i>guardian, it may also serve as a guardian for other individuals.</i> (§ 64.2-2000 of the Code of Virginia).
<b>Guardian Ad Litem</b>	An attorney appointed by the court to represent the interest of the adult for whom a guardian or conservator is requested.
<b>Incapable of Making an Informed Decision</b>	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).
<b>Incapacitated Person</b>	Any adult who is impaired by reason of mental illness, intellectual disability, physical illness or disability, advanced age, or other causes to the extent that the adult lacks sufficient understanding or capacity to make, communicate, or carry out responsible decisions concerning his or her well-being. For the purpose of establishing an adult's eligibility for APS, such adult may or may not have been adjudicated incapacitated by a court.
<b>Intimate Parts</b>	The genitalia, anus, groin, breast, or buttocks of any person, <i>or the chest of a child under the age of 15</i> (§ 18.2-67.10 of the Code of Virginia).
<b>Involuntary Protective Services</b>	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.
<b>Lacks Capacity to Consent</b>	A preliminary judgment of a local department of social services that an adult is unable to consent to receive needed services for reasons that relate to an emotional or psychiatric condition, intellectual disability, developmental disability, or other reasons that impair the adult's ability to recognize a substantial risk of death or immediate and serious harm to himself. The lack of capacity to consent may be either permanent or temporary. The local department shall make a preliminary judgment that the adult lacks capacity to consent before petitioning the court for



<u>Term</u>	<u>Definition</u>
	authorization to provide protective services on an emergency basis pursuant to § 63.2-1609 of the Code of Virginia.
<b>Legally Incapacitated</b>	That a person has been adjudicated incapacitated by a circuit court because of a mental or physical condition that renders him, either wholly or partially, incapable of taking care of himself or his estate.
<b>Legitimate Interest</b>	A lawful, demonstrated right to access the requested information pursuant to §51.5-122 of the Code of Virginia.
<b>Local Department</b>	Any local department of social services in the Commonwealth of Virginia.
<b>Mandated Reporters</b>	Those persons identified in §63.2-1606 of the Code of Virginia who are required to report to APS when such persons have reason to suspect that an adult is abused, neglected, or exploited or is at risk of abuse, neglect, or exploitation.
<b>Mental Anguish</b>	A state of emotional pain or distress resulting from verbal or behavioral actions of an alleged perpetrator. The intent of the action is to threaten or intimidate, to cause sorrow or fear, to humiliate, change behavior or ridicule the adult. There must be observable or documented evidence that it is the alleged perpetrator's action that has caused the adult's emotional pain or distress.
<b>Neglect</b>	<p>An adult as defined in § 63.2-1603 of the Code of Virginia is living under such circumstances that he is not able to provide for himself or is not being provided services necessary to maintain his physical and mental health and that the failure to receive such necessary services impairs or threatens to impair his well-being. However, no adult shall be considered neglected solely on the basis that such adult is receiving religious nonmedical treatment or religious nonmedical nursing care in lieu of medical care, provided that such treatment or care is performed in good faith and in accordance with the religious practices of the adult and there is a written or oral expression of consent by that adult.</p> <p>Neglect includes the failure of a caregiver or another responsible person to provide for basic needs to maintain the adult's physical</p>

**Term**

**Definition**

and mental health and well-being, and it includes the adult's neglect of self. Neglect includes:

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

<b><u>Term</u></b>	<b><u>Definition</u></b>
<b>Notification</b>	Informing designated and appropriate individuals or agencies of the local department's action and the individual's rights.
<b>Preponderance of Evidence</b>	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.
<b>Principal</b>	An individual who grants authority to an agent in a power of attorney (§ 64.2-1600 of the Code of Virginia).
<b>Public Conservator</b>	<del>A person who is provided through (i) a local or regional program designated by the Department for Aging and Rehabilitative Services as a public conservator pursuant to Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5 or (ii) any local or regional tax-exempt charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code to provide conservator services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person (§ 64.2-2000 of the Code of Virginia).</del>
<b>Public Guardian</b>	<del>A person provided through (i) local or regional program designated by the Department for Aging and Rehabilitative Services as a public guardian pursuant to Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5 or (ii) any local or regional tax-exempt charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code to provide guardian services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person (§ 64.2-2000 of the Code of Virginia).</del>
<b>Report</b>	An allegation made in writing or orally by any person that an adult is suspected of being abused, neglected, or exploited, or at risk of being abused, neglected, or exploited. The report shall be made to the local department or to the APS hotline.
<b>Responsible Person</b>	An individual who is authorized by state law to make decisions concerning the adult and to receive information about the adult.
<b>Serious Bodily Injury or Disease</b>	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

<u>Term</u>	<u>Definition</u>
	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).
<b>Service Plan</b>	A written plan of action to address the service needs of an adult in order to protect the adult, to prevent future abuse, neglect, or exploitation, and to preserve the autonomy of the adult whenever possible.
<b>Sexual Abuse</b>	An act committed with the intent to sexually molest, arouse, or gratify any person, where: <ul style="list-style-type: none"><li>• The accused intentionally touches the complaining witness's intimate parts or material directly covering such intimate parts;</li><li>• 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</li><li>• 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).</li></ul>
<b>Sexual Battery</b>	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).
<b>Uniform Assessment Instrument or UAI</b>	The department's designated assessment form (22 VAC 30-110-10).
<b>Unreasonable Confinement</b>	The use of physical or chemical restraints, isolation, or any other means of confinement when there is no emergency and for reasons other than the adult's safety or well-being or the safety of others.
<b>Valid Report</b>	The local department has evaluated the information and allegations of the report and determined that the local department

Term

Definition

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

## 2.5 Adult Protective Services intake

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### 2.5.1 Accepting reports

APS intake includes the receipt of reports concerning the abuse, neglect, or exploitation of adults received by LDSS, evaluated for appropriateness against the criteria for a valid report, and either sent 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. Circumstances that fall within the purview of other licensing, regulatory, or other legal authority shall be referred to those entities at the time the report is received. However, such a referral does not negate the LDSS responsibility to investigate a report that is determined to be valid.

(§ 63.2-1605 of the Code of Virginia). The local department shall refer any appropriate matter and all relevant documentation to the appropriate licensing, regulatory, or legal authority for administrative action or criminal investigation.

### 2.5.2 Timeframe for entering reports into PeerPlace

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

Once an APS report is in the agency's PeerPlace queue, it has been received by the local department.

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

## 2.5.3 Source of reports

### 2.5.3.1 Mandated reporters

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

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

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

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

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

- **Board of Nursing:** Registered Nurse (RN); Licensed Nurse Practitioner (LNP); Licensed Practical Nurse (LPN); Clinical Nurse Specialist; Certified Massage Therapist; Certified Nurse Aide (CNA); Medication Aides.
- **Board of Medicine:** Doctor of Medicine and Surgery, Doctor of Osteopathic Medicine; Doctor of Podiatry; Doctor of Chiropractic; Interns and Residents; University Limited Licensee; Physician Assistant; Respiratory Therapist; Occupational Therapist; Radiological Technologist; Radiological Technologist Limited; Licensed Acupuncturists; Certified Athletic Trainers.
- **Board of Pharmacy:** Pharmacists; Pharmacy Interns; Permitted Physicians; Medical Equipment Suppliers; Restricted Manufacturers; Humane Societies; Physicians Selling Controlled Substances; Wholesale Distributors; Warehousemen, Pharmacy Technicians.
- **Board of Dentistry:** Dentists and Dental Hygienists Holding a License, Certification, or Permit Issued by the Board.

- **Board of Funeral Directors and Embalmers:** Funeral Establishments; Funeral Services Providers; Funeral Directors; Funeral Embalmers; Resident Trainees; Crematories; Surface Transportation and Removal Services; Courtesy Card Holders.
- **Board of Optometry:** Optometrist.
- **Board of Counseling:** Licensed Professional Counselors; Certified Substance Abuse Counselors; Certified Substance Abuse Counseling Assistants; Certified Rehabilitation Providers; Marriage and Family Therapists; Licensed Substance Abuse Treatment Practitioners.
- **Board of Psychology:** School Psychologist; Clinical Psychologist; Applied Psychologist; Sex Offender Treatment Provider; School Psychologist – Limited.
- **Board of Social Work:** Registered Social Worker; Associate Social Worker; Licensed Social Worker; Licensed Clinical Social Worker
- **Board of Long-Term Care Administrators:** Nursing Home Administrator; ALF Administrator.
- **Board of Audiology and Speech Pathology:** Audiologists; Speech-Language Pathologists; School Speech-language Pathologists.
- **Board of Physical Therapy:** Physical Therapist; Physical Therapist Assistant.

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

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

3. Any emergency medical services provider certified by the Board of Health pursuant § 32.1-111.5, unless such provider immediately reports the suspected abuse, neglect or exploitation directly to the attending physician at the hospital to which the adult is transported, who shall make such report forthwith;

4. Any guardian or conservator of an adult;

5. Any person employed by or contracted with a public or private agency or facility and working with adults in an administrative, supportive or direct care capacity;
6. Any person providing full, intermittent, or occasional care to an adult for compensation, including but not limited to, companion, chore, homemaker, and personal care workers;
7. Any law-enforcement officer;
8. Any person who engages in the practice of behavior analysis as defined in § 54.1-2900.

#### **2.5.3.1.1 Requirements of employers of mandated reporters**

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

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

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

#### **2.5.3.1.2 Training for mandated reporters**

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

Mandated reporters of adult abuse, neglect, or exploitation may learn more about their mandated reporting responsibilities by taking the free, e-learning course “DSA Mandated Reporters: Recognizing Adult Abuse, Neglect, and Exploitation in Virginia” available in the Virginia Learning Center and on the DARS public site. The same e-learning titled “ADS5055: Recognizing Adult Abuse, Neglect, and Exploitation in Virginia,” is available on the VDSS public site.



### 2.5.3.1.3 Duplicate reports from mandated reporters

A mandated reporter has fulfilled the statutory responsibility to report suspected abuse, neglect, and exploitation to APS when the following information has been provided to the LDSS 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).

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

### 2.5.3.1.4 Exceptions to immediate reporting requirement for mandated reporters

(§ 63.2-1606 of the Code of Virginia). If a person required to report under this section receives information regarding abuse, neglect or exploitation while providing professional services in a hospital, nursing facility or similar institution, then he may, in lieu of reporting, notify the person in charge of the institution or his designee, who shall report such information, in accordance with the institution's policies and procedures for reporting such matters, immediately upon his determination that there is reason to suspect abuse, neglect or exploitation.

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

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

Findings of abuse, neglect, or exploitation by the medical facilities inspectors shall be 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.

#### **2.5.3.1.5 Civil penalty for failure to report**

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

(22 VAC 30-100-70). A. The commissioner may impose civil penalties when it is determined that a mandated reporter failed to report suspected adult abuse, neglect, or exploitation pursuant to §63.2-1606 of the Code of Virginia.

B. Civil penalties for law-enforcement officers shall be determined by a court of competent jurisdiction at its discretion.

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

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

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

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

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

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

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

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

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

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

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

#### **2.5.3.1.6 Reconsideration of final decision to impose civil penalty**

Reconsideration of the final decision imposing a civil penalty is conducted in accordance with § 2.2-4023.1 of the Code of Virginia. The Commissioner's review on reconsideration shall not include testimony, statements, or documentary submissions that were not included in the director's intent to

request imposition of a civil penalty or presented to the Commissioner or the designee prior to the issuance of the final decision. (22 VAC 30-100-80).

#### **2.5.3.1.7 Appeal of imposition of civil penalty**

Any mandated reporter has the right to appeal the decision to impose a civil penalty in accordance with § 2.2-4026 of the Code of Virginia and pursuant to Part 2A of the Rules of the Supreme Court of Virginia. (22 VAC 30-100-80).

#### **2.5.3.2 Financial institution staff**

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

#### **2.5.3.3 Voluntary reports**

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

#### **2.5.3.4 Anonymous reports**

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

#### **2.5.3.5 Self-reports**

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



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

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

Local law-enforcement agencies shall provide local departments ~~and the adult protective services hotline~~ with a preferred point of contact for referrals.

~~Local law enforcement shall provide the APS hotline and the local department with a preferred point of contact for these referrals.~~ The APS worker shall contact the local law-enforcement agency to coordinate the investigation. If the law-enforcement agency declines to participate in the APS investigation, the APS worker shall continue the investigation without the participation of the law-enforcement agency. A law enforcement agency's decision not to investigate has no bearing on whether the APS investigation proceeds.

#### **2.5.3.8.2 Additional guidance on suspected adult financial exploitation**

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

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

- Credit cards
- Bank accounts

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

#### **2.5.3.8.3 Reports of deaths that are results of abuse and neglect**

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

#### **2.5.3.8.4 Domestic violence reports**

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

The 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. If the report is valid, the APS worker should coordinate with DV professionals during the investigation.

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

Medicaid policy states that eligibility workers shall make a report to APS when they suspect that an adult applying for Medicaid (or Medicaid



redetermination) is incapacitated and incapable of understanding the Medicaid eligibility process, and the adult has no authorized representative or substitute family member who is willing and able to apply or sign on his or her behalf. The eligibility worker completes the Eligibility Worker Referral form and forwards it to APS. The referral requests that APS begin an investigation to determine whether the person is abused, neglected, or exploited or at risk of abuse, neglect, or exploitation. If the need for guardianship is identified as a protective service need, the cost of petitioning is reimbursable to the LDSS through the Department of Medical Assistance Services. The APS worker completes the Response to Medicaid Referral form. See Chapter 3, Case Management, Appendix C for additional information on Cost Code 21704, Guardianship Petitions.

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

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

If the guardian fails to submit the report within four months from the last day of the reporting period and *there is reason to suspect that the subject of the annual report is abused, neglected, or exploited or is at risk of abuse, neglect, or exploitation, the worker shall make an APS report.* ~~the well-being of the incapacitated adult is unknown or is in question, then the LDSS shall at its discretion initiate an APS report and proceed with an investigation.~~

#### **2.5.3.8.7 Reports involving resignation of agent**

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

1. To the conservator or guardian, if one has been appointed for the principal, and a co-agent or successor agent;
2. If there is no person described in subdivision 1, to an adult who is a spouse, child or other descendant, parent, brother or sister of the principal;

3. If none of the foregoing persons is reasonably available, another person reasonably believed by the agent to have sufficient interest in the principal's welfare; or

4. If none of the foregoing persons is reasonably available, the adult protective services unit of the local department of social services for the county or city where the principal resides or is located.

## **2.5.4 Rights of persons who report**

### **2.5.4.1 Immunity**

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

### **2.5.4.2 Malicious reports**

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

### **2.5.4.3 Protecting the identity of the reporter**

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

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

(22 VAC 30-100-50). The identity of the person who reported the suspected abuse, neglect or exploitation shall be held confidential unless the reporter authorizes the disclosure of his identity or disclosure is ordered by the court.

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

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

#### **2.5.4.4 Information to be given to the reporter**

The 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).

(§ 63.2-1606 of the Code of Virginia). Upon request, any person required to make the report shall make available to the adult protective services worker and the local department investigating the reported case of adult abuse, neglect or exploitation any information, records or reports which document the basis for the report. All persons required to report suspected adult abuse, neglect or exploitation shall cooperate with the investigating adult protective services worker of a local department and shall make information, records and reports which are relevant to the investigation available to such worker to the extent permitted by state and federal law.

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

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

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

### 2.5.5 Confidentiality

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

## 2.6 Intake

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The primary purpose of the intake interview with the reporter is to explore 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.

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

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

- Name and location of the adult and directions to the adult's place of residence or location.
- Names and relationships of other members of the household.
- Age of the adult.
- Alleged incapacity of the adult (see the definition of "incapacitated person" in Section 2.4 of this chapter).
- Name and address of caregiver, if any.
- The circumstances that describe the abuse, neglect, or exploitation, or the reason(s) the reporter suspects the adult is at risk of abuse, neglect, or exploitation.
- The amount of the financial loss if the report alleges financial exploitation. Losses may include but are not limited to, ~~property, credit cards, bank accounts, and other resources and assets.~~ **all or some of the items listed in Section 2.5.3.8.2.**
- Whether there is imminent danger to the adult or others and if the circumstances may require an immediate response by the LDSS.

- Identity of person(s) who witnessed the incident, their addresses and telephone numbers.
- Any information about previous abuse, neglect, or exploitation of the adult.
- The name, address, and relationship of any other person(s) or agencies who might be concerned or have knowledge of the adult.
- Name of the adult's physician(s) and pharmacies.
- Known medication(s) and/or treatment(s).
- Identity and relationship of the alleged perpetrator.
- Living arrangement of the adult (e.g., in own home, lives with spouse, lives with alleged perpetrator, lives alone, etc.).
- Name, address, and phone number of person reporting if the reporter is willing to give this information.
- Source of the reporter's information.
- Any other information that might be helpful in establishing the cause of the suspected abuse, neglect, or exploitation or the risk of abuse, neglect, or exploitation.
- Permission to give the reporter's name and phone number to the appropriate regulatory authority.
- The adult's income and other resources, if known.
- Situations which may affect the safety of the responding APS worker such as the illegal drug dealing or manufacturing at the home or the presence of weapons or vicious animals at the location.

## 2.7 Determining validity of reports

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

## 2.7.1 Characteristics of a valid APS report

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

- Adult is 60 years or older or age 18 to 59 and incapacitated.
- Adult is living and identifiable.
- Circumstances allege abuse, neglect, or exploitation or risk of abuse, neglect or exploitation as defined in ~~§ 63.2-100 of the Code of Virginia and 22 VAC 30-100-10.~~
- The LDSS receiving the report is the LDSS of jurisdiction. (22 VAC 30-100-20)

### 2.7.1.1 Definition of adult

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

#### 2.7.1.1.1 Age

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

#### 2.7.1.1.2 Incapacity

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

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

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

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

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

#### **2.7.1.2 Identifiable adult**

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

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

#### **2.7.1.3 Circumstances of abuse, neglect, and exploitation**

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

#### **2.7.1.4 LDSS of jurisdiction**

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

#### **2.7.1.5 When report is received in the wrong jurisdiction**

If the receiving LDSS is not the LDSS of jurisdiction, the LDSS that received the report has the responsibility for ensuring the report is transferred immediately. The supervisor of the receiving agency must be notified at the time of the transfer.



The sending agency's Supervisor/Program Admin or APS Regional Consultant can assist with this task in PeerPlace.

## 2.7.2 Determining jurisdiction

The following order determines which LDSS has jurisdiction.

### 2.7.2.1 Place of residence

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

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

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

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

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

### 2.7.2.2 Outside of the place of residence

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

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

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

### 2.7.2.3 Where abuse, neglect, or exploitation was discovered

(22 VAC 30-100-20). Where the abuse, neglect, or exploitation was discovered if the incident did not occur in the city or county of residence or if the city or county of residence is unknown and the place where the abuse, neglect or exploitation occurred is unknown.

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

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

#### **2.7.2.4 Nonresident in the Commonwealth**

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

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

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

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

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

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

## **2.8 Documenting an APS report in PeerPlace**

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PeerPlace is the system of record to document the receipt and investigation of APS reports. Prior to entering APS report information, PeerPlace shall be searched to determine if the individual has a PeerPlace client profile.

### **2.8.1 When the individual does not have a PeerPlace client profile**

In the APS Program, the worker shall create a client profile, register the individual, and enter the APS report using the APS/Investigation tab in the client registration.

### **2.8.2 When the individual has a PeerPlace client profile**

If the adult has a PeerPlace client profile created by an agency other than an LDSS and consent = "no," the worker shall select APS Bypass Consent on the Client Consent Screen in order to access the client profile. An individual may have open registrations in multiple programs within PeerPlace at the same time. The APS

Program is the only program where there may be multiple open registrations for a specific client. Each APS registration is a separate APS Report.

### **2.8.3 Reporter's identity**

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

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

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

## **2.9 Determining Validity**

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

### **2.9.1 When the report is not valid**

If a report is ~~determined to be invalid~~ because it does not meet validity criteria, the LDSS shall:

- Inform the reporter of the reasons why the report is not being accepted for APS investigation, if the reporter's identity is known. The reporter should also be informed that the report may be referred to another agency for administrative or criminal investigation if appropriate.
- Document the receipt of the report on the APS/Investigation tab, identify the reason it is not valid on the Determine Report Validity tab in PeerPlace. On the Report Close tab select "Invalid Report" as the report close reason. Document the reason the report is invalid in the registration notes. Then close the registration using the closure code 50 on the Registration Closing tab.
- When appropriate, contact the individual who is the subject of the APS report to offer AS, provide consultation, or/and make direct referrals for other services.
- Refer the situation being reported to other entities as appropriate (i.e., local law enforcement, state or local Ombudsman, other state agencies for possible administrative actions).

- Refer reports that allege that the adult died as a result of abuse, neglect, or exploitation to law-enforcement authorities, the medical examiner, and/or appropriate regulatory agencies.
- Refer the adult to the local DV program when the report alleges DV and the subject of the report is neither 60 or older or incapacitated. When an alleged DV report meets APS report validity criteria, an investigation is initiated.
- Refer endangering situations to regulatory authorities where appropriate. If an adult, who was believed to have been abused, neglected, or exploited while residing in a licensed facility, is no longer in that facility and is no longer at risk when the report is received, regulatory authorities should be notified that a report was received and no protective services investigation will be conducted.
- If the adult alleged to have been abused, neglected or exploited is no longer at risk at the time the report is received, the report will be considered invalid, and no investigation will be conducted.
- If a facility staff person who is alleged to be the perpetrator of abuse, neglect, or exploitation of an adult residing in the facility has been permanently terminated as an employee of the facility at the time the report is received, the report is invalid. However, the situation should be reported to other entities as appropriate. **Note:** If the facility staff person who is alleged to be the perpetrator of abuse, neglect, or exploitation has been suspended or reassigned, the report is considered valid and an investigation shall be conducted.
- If the person alleged to be the perpetrator of abuse, neglect, or exploitation is another patient/resident who has been permanently separated from the alleged victim, and the separation is such as to assure that no further abuse, neglect, or exploitation will occur, the report is considered invalid and no investigation will be conducted. For situations alleging resident-to-resident abuse, see Section 2.22.2 of this chapter.
- Refer the reporter to the APS program in the appropriate state if the reporter indicates that the alleged abuse, neglect, or exploitation occurred in a state other than Virginia. Contact information for State APS units is available on the National Center for Elder Abuse website.

**Note:** Workers may use the Referral for Investigation Form available in PeerPlace under current APS report/investigation tab then selecting the notification letters tab to notify Regulatory or Statutory authority entities (identified in Section 2.26)

## 2.9.2 When the report is valid

Document the receipt of the valid report on the APS Report/Investigation tab, complete validity, and the initiation decision on the Determine Report Validity tab in PeerPlace. On the Report Close tab, select “Sent for Investigation” as the report close reason. This action closes the APS report and opens the APS investigation links, including additional questions in the APS Report/Investigation link as well as the Investigation Initiation Date, Face-to-Face Date. Once a report is “Sent for Investigation” it shall not be reopened.

~~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.~~

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. Therefore, reports received in the APS Program queue in PeerPlace shall be acknowledged forthwith. The LDSS successfully completes this process once they register/inherit reports from the queue.

## 2.10 Initiating the investigation

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

- ~~• Searches historical ASAPS reports in the DARS Data Warehouse (DARTS) to determine if there are any prior APS reports in ASAPS or if the alleged victim received any other services from an LDSS.~~
- Searches PeerPlace to determine if the alleged victim is registered or has been registered in any PeerPlace programs.
- Searches other state operated or local databases to which the worker may have access and may contain information on the alleged victim.
- Contacts the alleged victim, the reporter or friends, neighbors, and service providers **collaterals listed in the report** to obtain additional information.

### 2.10.1 Determining need for an immediate response

(22 VAC 30-100-20). 1. To initiate the investigation, the local department shall gather enough information concerning the report to determine if an immediate response is needed to ensure the safety of the alleged victim. Pertinent information may be obtained from the report, case record reviews, contact with the alleged victim, the reporter, friends, neighbors, service providers, or other sources of information.

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

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

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

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

### 2.10.2 Coordinating with other investigators

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

- Notify the local law-enforcement agency when a report alleges sexual abuse, serious bodily injury as a result of criminal abuse and neglect, suspected

- financial exploitation, or other criminal activity involving abuse or neglect that places the adult in imminent danger of death or serious bodily harm.
- Refer any appropriate matter and all relevant documentation to the appropriate licensing, regulatory, or legal authority for administrative action or criminal investigation. (§ 63.2-1605 of the Code of Virginia).
    - Allegations of maltreatment by a transportation provider should be referred to the disAbility Law Center (dLCV). A referral may also be made to the “CCC Plus Advocates” located in the state Long Term Care Ombudsman office who assist with issues involving Medicaid managed care organization (MCO) non-emergency medical transport providers.
  - Determine the need to include other investigators as participants in planning for how the investigation will be conducted. Joint investigations are encouraged but not required. The form “Referral for Investigation from Adult Protective Services” is used to notify the appropriate agencies of the receipt of an APS report in which the allegation may also fall within the purview of that entity. *When dLCV is selected on the “Referral for Investigation” the referrals to dLCV are made electronically through PeerPlace.*

### 2.10.3 Where the investigation extends across city or county lines

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

### 2.10.4 Conflict of interest

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

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

- Implicate an LDSS employee or relative or spouse of an LDSS employee;
- Implicate a member of the local board or relative or spouse of a member of the local board;
- Implicate other local governmental entities or officials;



- Implicate famous or well-known community members;
- Implicate the LDSS-approved provider of a service (i.e., companion services);  
or
- Present other situations in which LDSS staff may feel compromised or pressured.

If the LDSS believes there is a conflict of interest, the LDSS shall contact a neighboring LDSS for assistance in investigating the report and/or delivering protective services. The LDSS requesting assistance retains financial responsibility for the purchase of services needed during the investigation and/or the delivery of services. The LDSS shall contact the appropriate APS ~~Division~~ Regional Consultant for assistance in assigning investigatory and/or service delivery responsibility to another LDSS.

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

## **2.11 Conducting the investigation**

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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 those services.

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

### **2.11.1 Authority to initiate and conduct investigations**

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

The LDSS has the authority and responsibility to:

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

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

### **2.11.2 Consultation with collaterals**

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

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

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

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

### **2.11.3 Requests to include other individuals in interviews with collaterals**

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

### **2.11.4 Collaterals in facilities**

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

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

### 2.11.5 Authority to gain access

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

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

### 2.11.6 Required visit and private interview

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

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

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

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

### 2.11.7 When the required visit and private interview cannot be completed

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

In some situations, the adult and/or homeowner may refuse to permit an APS worker to enter the home. In other situations, an APS worker may be asked to leave before

the interview is completed. In either situation, the APS worker must respect the homeowner and/or adult's decision.

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

### **2.11.8 Separate interviews with alleged victim and alleged perpetrator**

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

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

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

Written consent is recommended and shall be uploaded to the case record using the Attachments tab under the client registration. The form "Consent for Photography in APS Investigations" is located on the VDSS intranet. APS investigation photography guidelines are available in Appendix [E](#).

### **2.11.10 The alleged perpetrator**

#### **2.11.10.1 Identity of perpetrators**

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

#### **2.11.10.2 Timing of interview with the alleged perpetrator**

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

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

#### **2.11.10.3 Setting for the interview with the alleged perpetrator**

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

#### **2.11.10.4 Interview with the alleged perpetrator who is a minor**

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

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

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

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

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

If the interview with the alleged perpetrator is not conducted or completed, the reason shall be documented in PeerPlace under the Alleged Perpetrator tab.

### **2.11.11 Mandated reporters are required to release information**

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

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

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

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

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

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

(§ 64.2-1614 of the Code of Virginia). The court, upon the hearing on the petition and upon consideration of the interest of the principal and his estate, may dismiss the petition or may enter such order or orders respecting discovery as it may deem appropriate, including an order that the agent respond to all discovery methods that the petitioner might employ in a

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

#### **2.11.13 Financial exploitation discovered during ~~course~~ of the investigation**

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

#### **2.11.14 Transferring an investigation to another LDSS**

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

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

#### **2.11.15 Medical records from Veterans Administration Medical Centers**

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

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

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

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

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

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

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

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



For purposes of actions initiated by financial institutions:

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

## 2.12 APS assessment

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

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

### 2.12.1 The investigation assessment

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

1. Allegations in the report or circumstances discovered during the investigation that meet the definitions of adult abuse, neglect, or exploitation.
2. The extent to which the adult is physically, emotionally, and mentally capable of making and carrying out decisions concerning his health and well-being.
3. How the adult's environment, functional ability, physical and mental health, support system, and income and resources may be contributing factors in the abuse, neglect, or exploitation.

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

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

#### **2.12.1.1 Environment**

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

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

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

### 2.12.1.2 Functional ability

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

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

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

### 2.12.1.3 Physical health

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

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

#### 2.12.1.4 Mental/psychosocial health

While an APS worker's assessment of an adult's psychological functioning cannot take the place of a formal clinical evaluation, it can suggest that a psychiatric condition is present and is contributing to the adult's endangerment. This assessment 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 (e.g., insomnia, nightmares, crying spells, depression, agitation, unusual fears, thoughts, perceptions, delusions, hallucinations, etc.).
- Any major life changes/crises in the past year (e.g., death of a significant person, loss of income, a move, an illness, divorce, institutional placement, etc.).
- Ability to follow simple instructions, ability to manage financial affairs, appropriate responses to questions.
- Self-endangering behavior of the adult (e.g., suicidal behavior, refusal of medical treatment, gross self-neglect, wandering, aggressive acts against which others may retaliate, etc.).
- The APS worker's evaluation regarding the adult's ability to make responsible, rational, and informed decisions as well as the ability to understand the probable consequences of his or her decisions.

#### Guidelines for determining capacity to consent

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

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

- Ability to communicate a choice

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

- Ability to understand relevant information

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

- Ability to compare risks and benefits of available options

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

- Ability to comprehend and appreciate the situation

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

#### **2.12.1.5 Support system**

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

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

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

#### **2.12.1.6 Income and resources**

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

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

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

#### **2.12.2 Investigation Documentation**

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

## 2.13 Disposition and application

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(22 VAC 30-100-40). After investigating the report, the local department shall review and evaluate the facts collected and make a disposition as to whether the adult is in need of protective services and, if so, what services are needed.

### 2.13.1 Documentation of disposition and time frame for making dispositions

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

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

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

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

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

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

#### 2.13.1.1 “Needs protective services and accepts”

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

- a. A review of the facts shows a preponderance of evidence that adult abuse, neglect, or exploitation has occurred or is occurring; and
  - (1) The adult consents to receive services pursuant to § 63.2-1610 of the Code of Virginia; or
  - (2) Involuntary protective services are ordered pursuant to § 63.2-1609 or Article 1 (§ 64.2-2000 et seq.) of Chapter 20 of Title 64.2 of the Code of Virginia; or
- b. A review of the facts shows a preponderance of evidence that the adult is at risk of abuse, neglect, or exploitation and needs protective services in order to reduce that risk; and
  - (1) The adult consents to receive services pursuant to § 63.2-1610 of the Code of Virginia: or
  - (2) Involuntary protective services are ordered by the court pursuant to § 63.2-1609 or Article 1 (§ 64.2-2000 et seq.) of Chapter 20 of Title 64.2 of the Code of Virginia.

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

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

### **When the adult has the capacity to consent to receive services**

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

If the adult needs protective services and agrees to accept services, a service application will be completed (see Chapter, 3 Case Management, Section 3.20.1 regarding notice of action on an application). A service plan will be developed and service delivery initiated.

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



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

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

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

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

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

#### **2.13.1.2 “Needs protective services and refuses”**

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

- a. A review of the facts shows a preponderance of evidence that adult abuse, neglect or exploitation has occurred or is occurring or the adult is at risk of abuse, neglect and exploitation; and
- b. The adult refuses or withdraws consent to accept protective services pursuant to § 63.2-1610 of the Code of Virginia.

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

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

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

If the capable adult refuses to accept all of the services offered, then the disposition of needs protective services and refuses shall be entered in PeerPlace. See Chapter 8, Right to Review for additional information on notification to alleged perpetrator.

### 2.13.1.3 “Need for protective services no longer exists”

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

A review of the facts shows a preponderance of evidence that adult abuse, neglect, or exploitation has occurred. However, at the time the investigation is initiated, or during the course of the investigation, the adult who is the subject of the report ceases to be at risk of further abuse, neglect, or exploitation due to circumstances or actions that have occurred or have been initiated by the adult or an entity or person other than the local department.

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

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

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

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

#### 2.13.1.4 “Unfounded”

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

A review of the facts does not show a preponderance of evidence that abuse, neglect or exploitation occurred or that the adult is at risk of abuse, neglect or exploitation.

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

If the APS worker is unable to complete the investigation, the disposition should be unfounded. ~~An investigation may not be able to be completed if the subject of the APS report cannot be located.~~

~~If there is no preponderance of evidence of abuse, neglect, or exploitation, the disposition should be unfounded.~~

If the disposition is unfounded, protective services are not offered. AS may be offered if the adult is eligible for services and agrees to the service delivery. After the APS Program registration is closed, if the adult was referred to and accepted AS, a new registration shall be opened in the AS Program of Peer Place.

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

#### 2.13.1.5 “Invalid”

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

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

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

If the disposition is invalid, the investigation will immediately cease, and other potential investigators and jurisdictions must be notified as appropriate. The worker shall enter a disposition in PeerPlace and follow registration closure

procedures. The following are examples of investigations that were determined to be invalid after the investigation was initiated.

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

### **2.13.2 Reopening a closed investigation**

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

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

### **2.13.3 Overdue investigation dispositions**

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

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

## 2.14 Time frames for notifications

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### 2.14.1 Notification to reporter

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

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

### 2.14.2 Notification to alleged perpetrator

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

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

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

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

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

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

### 2.14.4 Notification to local or regional adult fatality review team

The Code of Virginia does not mandate the creation of local and regional Adult Fatality Review Teams (AFRTs). Therefore, AFRTs do not operate in all jurisdictions. AFRTs

are designated in 22 VAC 30-100-50 as having a legitimate interest in confidential information when such information is relevant and reasonably necessary for the fulfillment of their legal responsibilities. LDSS shall provide information to a local or regional AFRT upon request. The APS ~~Division~~ Regional Consultant shall provide technical assistance to the LDSS about the manner in which the LDSS shall transmit information to a regional or local AFRT.

#### **2.14.5 Notification to law enforcement and medical examiner**

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

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

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

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

#### **2.14.6 Agencies or programs with a legitimate interest**

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

## 2.15 Post investigation service provision

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

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

### 2.15.1 Application for services

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

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

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

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

### 2.15.2 Opening a case for protective services

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

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

## 2.16 Service planning and service delivery

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### 2.16.1 The service plan

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

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

### 2.16.2 Completing the UAI

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

### 2.16.3 Service plan requirements

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

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

- When the disposition is needs protective services and accepts, the client registration shall have an active service plan that addresses the protective service needs of the adult. The APS worker shall develop a service plan within 15 days of the date that the adult agrees to accept services. The service plan shall be entered into PeerPlace using the Service Needs tab in the APS Report/Investigation. Once the service needs are identified, click create service plan. Complete the service plan under the Service Plan Summary tab in the client registration.



- When there are multiple APS registrations with needs protective services and accepts dispositions for one client at the same time, only one service plan is required to be created and activated.
- The details in the service plan will vary according to the individual's situation and will be based on the investigative findings, the assessment, and the adult's preferences.
- The LDSS shall not purchase services (e.g., homemaker, chore, or emergency shelter or food) unless these services are identified on the adult's service plan.
- If **Budget Line (BL)** 895 is used to purchase services to remediate abuse, neglect, or exploitation, it shall be documented in the service plan. The worker shall select BL 895 in the funding source section of the service plan. The worker will select the service type and provider of the service purchased.

#### 2.16.4 Participation of the adult

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

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

#### 2.16.5 Participation of the adult's representative

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

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

### **2.16.6 Incapacitated adult with no representative**

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

### **2.16.7 Review of available resources**

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

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

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

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

### **2.16.8 Community-based services**

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

## 2.16.9 Alternative living arrangements

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

### 2.16.9.1 When the adult consents to an alternative living arrangement

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

### 2.16.9.2 Voluntary admission to a state facility

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

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

### 2.16.9.3 Placement when the adult lacks capacity to consent

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

## 2.16.10 Protective services ordered by the court

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

- An emergency order for adult protective services (§ 63.2-1609 of the Code of Virginia);

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

### **2.16.11 Purchased services**

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

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

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

### **2.16.12 The least restrictive level of intervention**

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

### **2.16.13 Components of the service plan**

All APS service plans shall include the following components:

- Goal(s).
- Unmet need(s).

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

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

#### **2.16.13.1 Goals**

The following are goals for APS:

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

#### **2.16.13.2 Unmet needs**

An unmet need is an identified need that is not being met in a way that assures the safety and well-being of the adult. Unmet needs on the APS service plan auto-populate from the identified service needs in the APS investigation sections in PeerPlace once the worker clicks create service plan in the service needs tab.

### 2.16.13.3 Objectives

- Objectives reflect the desired outcome of service delivery. Objectives and services selected should be relevant to the goal.
- Each objective shall state clearly WHAT will be achieved to accomplish the goal(s).
- Objectives should be:
  - Identified to eliminate or diminish identified need(s).
  - Supportive of the goal(s) selected.
  - Stated in terms of measurable results to be achieved or desired outcome(s).
  - As behaviorally specific as possible.
  - Updated as the adult's situation changes.
    - Example of an objective: To assist client in obtaining medical care to manage health issues.

### 2.16.13.4 Tasks required

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

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

- Example of a service type: Transportation
- Example task: Worker will assist adult in securing transportation to medical appointments.
- Example Provider: Yellow Cab
- Example funding source: 89501 Adult Protective Services

- Example hours per week: 4
- Example rate of pay: \$15.00

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

#### **2.16.13.5 Start and target dates**

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

#### **2.16.13.6 Date resolved**

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

#### **2.16.13.7 Evaluation of services**

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

## **2.17 Implementation of the service plan**

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(22 VAC 30-100-60). Implementation of the service plan is the delivery of the services necessary to provide adequate protection to the adult. The services may be delivered directly, through purchase of service, through informal support, or through referral. The continuous monitoring of the adult’s progress and the system’s response is part of the implementation.

Implementation is:

- Delivery of the services needed to provide adequate protection to the adult.
- Continuous monitoring of the adult’s progress towards reaching the service plan goals; and

- Revising the objectives and tasks in response to progress or lack of progress

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

- ~~Make contact with~~ Contact the adult to clarify any issues around service delivery (what services, provided by whom, for how long, etc.).
- Initiate delivery of those services identified in the service plan.
- Monitor the progress made toward meeting the objectives and time frames set forth in the service plan and reassess and revise the service plan as appropriate.
- Make a face-to-face, home visit, office visit, or phone to/from contact with the adult, the legal representative, or the designated primary caregiver at least monthly and more frequently as needed to monitor progress and assure protection of the adult. The APS worker should verify by observation or personal interview that the adult is receiving the planned services. If the monthly contact with the adult does not occur, the reason(s) should be documented in the Notes tab under client registration.
- At a minimum, six months after the implementation of the service plan, evaluate the need for ongoing protective services and determine if the adult may be served by another program (e.g., AS) or if the case needs to be closed.

## 2.18 Judicial proceedings

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

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

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



### 2.18.1 Access to provide protective services

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

### 2.18.2 Order to enjoin interference

(§ 63.2-1610 of the Code of Virginia). No person shall interfere with the provision of adult protective services to an (i) adult who requests or consents to receive such services, or (ii) for whom consent has been lawfully given. 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.

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

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

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

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

- The following information should be provided to the LDSS attorney:
  - The name, address, and interest of the petitioner.
  - The name, age, and address of the adult in need of protective services.

- The nature of the emergency, including the nature of any acts of violence, force, or threat, or financial exploitation; the date and location of any acts of violence, force, or threat or financial exploitation.
- If the 24-hour notice will seriously jeopardize the adult's welfare, clearly explain in the petition why the notice should be waived.
  - Written notice will be given to the alleged perpetrator if the petition alleges the adult has been subjected to an act of violence, force, or threat or financial exploitation.
- The nature of the adult's incapacity.
- Evidence of the adult's incapacity and lack of capacity to consent.
- Facts showing attempts to obtain the adult's consent and the outcomes of attempts.
- The specific authority requested and rationale for the request.
- The proposed adult protective services.
- If the adult who is subject of the emergency order is indigent, the department should request that the costs of the proceeding be borne by the Commonwealth (see Section 2.19.1.2).

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

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

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

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

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

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

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

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

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

- Financial exploitation by the alleged perpetrator (§ 63.2-1609 of the Code of Virginia)

At the conclusion of the hearing:

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

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

- Services provided during the emergency guardianship or conservatorship period.
- The status of the adult.
- Any plan for ongoing protection of the adult.

#### **2.18.4 Judicial authorization of treatment and detention of certain persons**

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

- (§ 37.2-1101 of the Code of Virginia). 1. That there is no legally authorized person available to give consent;
- 2. That the person for whom treatment is sought is incapable of making an informed decision regarding treatment or is physically or mentally incapable of communicating such a decision;

3. That the person who is the subject of the petition is unlikely to become capable of making an informed decision or of communicating an informed decision within the time required for decision; and
4. That the proposed course of treatment is in the best interest of the person and is medically and ethically appropriate with respect to (i) the medical diagnosis and prognosis and (ii) any other information provided by the attending physician of the person for whom treatment is sought. However, the court shall not authorize a proposed treatment that is contrary to the provisions of an advance directive executed by the person pursuant to § 54.1-2983 or is proven by a preponderance of the evidence to be contrary to the person's religious beliefs or basic values or to specific preferences stated by the person before becoming incapable of making an informed decision, unless the treatment is necessary to prevent death or a serious irreversible condition. The court shall take into consideration the right of the person to rely on nonmedical, remedial treatment in the practice of religion in lieu of medical treatment.

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

Any person may file a petition for the appointment of a guardian or conservator with the circuit court of the county or city in which the adult resides or is located or in which the adult resided immediately prior to becoming a patient in a hospital or admission to in a nursing facility, state mental health facility, assisted living facility or any other similar institution. If the petition is for the appointment of a conservator for a nonresident with property in the state, the petition may be filed in the city or county in which the adult's property is located. (See Chapter 7, Guardianship and Conservatorship for procedures for petitioning for a guardian and/or conservator.)

### **2.18.6 Appointment of a guardian**

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

### **2.18.7 Appointment of a conservator**

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

- Manage property or financial affairs;

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

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

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

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

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

- A guardian for the patient. (This shall not be construed to require the appointment of a guardian in order that a treatment decision can be made.); or
- The patient's spouse except where a divorce action has been filed and the divorce is not final; or
- An adult child of the patient; or

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

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

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

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

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

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

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

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

#### **2.18.9.1 Additional requirements for admission**

- Advance directive agent

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

- Guardian

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

A person admitted to a facility pursuant to this section shall be discharged no later than 10 calendar days after admission unless, within that time, the person's continued



admission is authorized under other provisions of law (§ 37.2-805.1 of the Code of Virginia).

### **2.18.10 Involuntary admission**

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

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

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

Criteria for commitment include:

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

(a) Cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or

(b) Suffers serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, and

(ii) Requires involuntary inpatient treatment.

### **2.18.11 Mental Health Emergency Custody and Involuntary Temporary Detention Orders**

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

(§ 37.2-808 of the Code of Virginia). When considering whether there is probable cause to issue an emergency custody order, the magistrate may, in addition to the petition, consider (1) the recommendations of any treating or examining physician or psychologist licensed in Virginia, if available, (2) any past actions of the person, (3) any past mental health

treatment of the person, (4) any relevant hearsay evidence, (5) any medical records available, (6) any affidavits submitted, if the witness is unavailable and it so states in the affidavit, and (7) any other information available that the magistrate considers relevant to the determination of whether probable cause exists to issue an emergency custody order.

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

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

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

(§ 37.2-809 of the Code of Virginia). (i) The person has been personally examined within the previous 72 hours by an employee or designee of the local community services board or (ii) there is a significant physical, psychological, or medical risk to the person or to others associated with conducting such evaluation.

#### 2.18.12 Preliminary protective order in cases of family abuse

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

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

### **2.18.13 Emergency protective orders authorized in certain cases**

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

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

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

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

### 2.18.15 Criminal abuse and neglect of vulnerable adults

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

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

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

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

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

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

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

independently provide for his daily needs or safeguard his person, property, or legal interests.

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

### 2.18.16 Financial exploitation of vulnerable adults

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

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

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

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

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

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

## **2.19 Reimbursement for legal services**

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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 APS.

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

### **2.19.1 Payment for emergency order proceedings**

#### **2.19.1.1 When cost is borne by the subject of the petition**

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

#### **2.19.1.2 When cost is borne by the Commonwealth**

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

### **2.19.2 Payment for guardianship proceedings**

#### **2.19.2.1 When cost is borne by the petitioner**

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

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

### **2.19.2.2 When cost is borne by the Commonwealth**

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

### **2.19.3 Payment for guardians ad litem and other attorney fees**

#### **2.19.3.1 When cost is borne by the petitioner**

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

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

#### **2.19.3.2 When cost is borne by the Commonwealth**

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

#### **2.19.3.3 Payment for guardianship proceeding for Medicaid referrals**

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

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

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

### **2.19.4 Payment for psychological and physical examination**

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

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

### **2.19.5 Reimbursement for cost of providing protective services**

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

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

#### **2.19.5.1 Involuntary adult protective services**

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

#### **2.19.5.2 Voluntary adult protective services**

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

## **2.20 Reassessment**

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### **2.20.1 Reassessment**

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



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

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

#### **2.20.1.1 Continue APS**

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

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

#### **2.20.1.2 Registered in AS Program**

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

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

#### **2.20.2 Closing the ongoing APS case**

The ongoing APS case should be closed when:

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

- The adult dies.

#### **2.20.2.1 Procedure for closure**

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

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

### **2.21 Investigations in long-term care facilities, acute-care facilities, and other group care facilities**

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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 (e.g., adult day services, senior centers, day treatment centers, sheltered workshops, and school systems).

Reports of suspected abuse, neglect, or exploitation of adults perpetrated by employees of agencies providing home-based care to adults (e.g., hospices, home care

organizations) shall be investigated according to procedures outlined in Section 2.5 to Section 2.20.

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

## 2.22 Accepting facility reports

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(§ 63.2-1605 of the Code of Virginia). The local department shall refer any appropriate matter and all relevant documentation to the appropriate licensing, regulatory, or legal authority for administrative action or criminal investigation.

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

### 2.22.1 Person-specific reports

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

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

### 2.22.2 Resident-to-resident reports

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

- One or more individuals received injuries that required medical attention from a physician or a nurse; or
- Sexual abuse of one resident by another; or
- One resident profited financially at the expense of another resident; or
- Abuse, neglect, or exploitation of a resident at the hands of another resident is on-going; or
- Facility staff has not taken action to stop and/or address the abuse, neglect, or exploitation of the individual.

### **2.22.3 When the perpetrator resident continues to reside in the facility**

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

### **2.22.4 Incident reports**

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

### **2.22.5 Injuries of unknown origin**

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

### **2.22.6 Sexual abuse and sexual assault in 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.

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

If there is a report of suspected abuse, neglect, or exploitation about an individual who resides in a facility, while that individual is away from the facility (e.g., during a home visit), procedures in Section 2.7.2 shall be followed to determine which LDSS has responsibility for the investigation.

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

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

## **2.23 Facility reports that do not meet validity criteria**

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

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

### **2.23.1 Reports that address the general conditions of a facility**

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

“Referral for Investigation from Adult Protective Services” may be used for the referral/summary.

## **2.24 Responsibility of the APS worker in facility investigations**

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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.

## **2.25 Coordination with investigators with related responsibilities in facility investigations**

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

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

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

## **2.26 Investigators with regulatory or statutory authority responsibilities in facility investigations**

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### **2.26.1 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.

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

### **2.26.2 The Department of Health, Office of Licensure and Certification**

The Office of Licensure and Certification (OLC) 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.

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

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

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

#### **2.26.4 The Office of the State Long-Term Care Ombudsman**

The Office of the State Long-Term Care Ombudsman is located within the Virginia Department for Aging and Rehabilitative Services. 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 in the investigation.

#### **2.26.5 The disAbility Law Center of Virginia**

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

#### **2.26.6 The Department of Health Professions**

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

#### **2.26.7 Office of the Attorney General, Medicaid Fraud Control Unit**

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



or home. ~~Joint investigations with APS are acceptable. Referrals are strongly encouraged.~~

### **2.26.8 Local law enforcement**

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

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

Local law-enforcement agencies shall provide local departments ~~and the adult protective services hotline~~ with a preferred point of contact for referrals.

## **2.27 Information sharing in facility investigations**

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

### **2.27.1 Sharing information when coordinating a joint investigation**

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

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

- Name, address, age, race, and gender of the adult who is the subject of the report.

- Name, address, age, race, and gender of the person who is alleged to have perpetrated the abuse, neglect, or exploitation, if this person's identity is known.
- Description of suspected incident(s) of abuse, neglect, or exploitation.
- Description of any alleged medical (physical and/or mental/cognitive) conditions of the adult who is the subject of the report.

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

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

### **2.27.2 Information sharing when a joint investigation is not planned**

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

### **2.27.3 Assurances that information will be held confidential**

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

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

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

#### **2.27.4 Confidential information collected by the investigatory team**

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

#### **2.27.5 Confidential information not collected by the investigatory team**

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

### **2.28 Preparing for the facility investigation**

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

#### **2.28.1 Availability of records**

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

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

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

#### **2.28.2 Sources of information available within a facility**

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

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

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

### **2.28.3 DBHDS incident reports**

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

## **2.29 Persons to inform when a facility report will be investigated**

### **2.29.1 Facility administrator/director/superintendent/person in charge**

Before entering a facility to investigate, the APS worker shall make a good faith effort to contact the facility administrator, director, superintendent, or other person 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 (e.g., interview individuals residing in an assisted living facility at another location; interview facility staff in their homes; interview students or school personnel in their homes).

### **2.29.2 When the person in charge cannot be located**

When an APS worker arrives at a facility to investigate a report and no person on the premises is in charge, the APS worker should take reasonable steps to locate a person in charge to 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.

### **2.29.3 Notification when no person is in charge**

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

### **2.29.4 Legally appointed guardians/conservators**

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

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

### **2.29.5 Responsible person**

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

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

## 2.30 Facility Investigation

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

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

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

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

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

## 2.31 Conclusion of a facility investigation

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

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

be shared with agencies or persons with a legitimate interest as specified in Section 2.36.2.

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

## **2.32 Notifications and Reports in facility investigations**

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### **2.32.1 Notifications**

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

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

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

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

### **2.32.2 Reports**

The APS worker sends the report to:

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

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

### **2.33 Identification of service needs and service planning in facility investigations**

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

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

### **2.34 Monitoring and follow-up in facility investigations**

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

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

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

### **2.35 Confidentiality in all APS cases**

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



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

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

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

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

## **2.36 Release of information in all APS cases**

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

**Exception:** Such assurances are not required of:

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

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

(22 VAC 30-100-50). The following agencies have licensing, regulatory, and legal authority for administrative action or criminal investigations, and they have a legitimate interest in confidential information when such information is relevant and reasonably necessary for the fulfillment of their licensing, regulatory and legal responsibilities:

1. Department of Behavioral Health and Developmental Services;
2. disAbility Law Center of Virginia;
3. Office of the Attorney General, including the Medicaid Fraud Control Program;
4. Department for Aging and Rehabilitative Services;
5. Department of Health, including the Office of Licensure and Certification and the Office of the Chief Medical Examiner;
6. Department of Medical Assistance Services;
7. Department of Health Professions;
8. Department of the Blind and Vision Impaired;
9. Department of Social Services, including the Division of Licensing Programs;
10. The Office of the State Long-Term Care Ombudsman and Local Ombudsman;
11. Law-enforcement agencies;
12. Medical examiners;
13. Adult Fatality Review Teams;
14. Commonwealth's attorneys; and
15. Any other entity deemed appropriate by the Commissioner or director that demonstrates a legitimate interest.

The local department shall disclose all relevant information to representatives of the agencies identified (above) except the identity of the person who reported the abuse, neglect or exploitation unless the reporter authorizes the disclosure of his identity or the disclosure is ordered by the court.

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

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

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

### **2.36.2 Other individuals or agencies with legitimate interest**

(22 VAC 30-100-50). Local departments may release information to the following persons when the local department has determined the person making the request has legitimate interest in accordance with §51.5-122 of the Code of Virginia and the release of information is in the best interest of the adult:

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

### 2.36.3 Specific confidential information that may be disclosed

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

- (22 VAC 30-100-50). 1. Name, address, age, race, and gender of the adult who is the subject of the request for information;
2. Name, address, age, race, and gender of the person who is alleged to have perpetrated the abuse, neglect, or exploitation;
3. Description of the incident of abuse, neglect, or exploitation;
4. Description of the adult's medical conditions to the extent known;
5. Disposition of the APS report; and
6. The protective services needs of the adult.

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

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

### 2.36.4 Assurances to the LDSS

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

- (22 VAC 30-100-50). 1. The purpose for which information is requested is related to the adult protective services goal in the services plan for adult;
2. The information will be used only for the purpose for which it is made available and;
3. The information will be held confidential by the department or individual receiving the information except to the extent that disclosure is required by law

### 2.36.5 Methods of obtaining assurances

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

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

#### **2.36.5.1 Notification that information has been disclosed**

(22 VAC 30-100-50). When information has been disclosed pursuant to this section, notice of the disclosure shall be given to the adult who is the subject of the information or to his legally appointed guardian. If the adult has given permission to release the information, further notification shall not be required.

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

#### **2.36.6 Other circumstances mandating disclosure of confidential information**

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

##### **2.36.6.1 When disclosure is ordered by the court**

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

### 2.36.6.2 Notification to reporter

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

### 2.36.6.3 Request for private information

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

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

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

## 2.37 Multidisciplinary teams (MDTs)

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

Community-based MDTs shall:

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

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

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

## 2.38 Appendix A: APS forms

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

### **Acknowledgment of Mandated Reporter Status**

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

### **Assurances of Confidentiality**

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

### **Consent to Exchange Information**

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

### **Consent for Photography for APS Investigation**

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

### **Eligibility Worker Referral**

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

### **Referral for Investigation from APS**

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

### **Report of Guardian for Incapacitated Person**

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

### **Request for Records from a Financial Institution**

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



**Request to Impose Civil Penalty**

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

**Response to Medicaid Referral**

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

## 2.39 Appendix B: Preponderance of evidence

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

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

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

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

## **2.40 Appendix C: Letter of understanding**

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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).

Section 51.4-122 of the Code of Virginia states: The records, information, and statistical registries of the Department and local departments of social services concerning adult services and adult protective services provided to or on behalf of individuals shall be confidential information, provided that the Commissioner and his agents shall have access to such records, information, and statistical registries, and that such records, information, and statistical registries may be disclosed to any person having a legitimate interest in accordance with state and federal law and regulation.

It shall be unlawful for the Commissioner, his agents or employees, any person who has held any such position, or any other person to whom any confidential record or information is disclosed to disclose, directly or indirectly, such confidential record or information, except as herein provided. Every violation of this section shall constitute a Class 1 misdemeanor.

If a request for a record or information concerning applicants for and recipients of adult services provided pursuant to Article 4 (§ 51.5-144 et seq.) or adult protective services provided pursuant to Article 5 (§ 51.5-148) is made to the Department or a local department by a person who does not have a legitimate interest, the Commissioner or local director shall not provide the record or information unless permitted by state or federal law or regulation.

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

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 30-100-50.

## 2.41 Appendix D: Sample letter of intent to impose civil penalty

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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 Department for Aging and Rehabilitative 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 date 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:

Department for Aging and Rehabilitative Services

8004 Franklin Farms Drive

Richmond VA 23229

Sincerely,

(Director)

(Name of Local Department)

(Address)

## 2.42 Appendix E: APS investigation photography guidelines

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

### Photographs taken during investigations

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

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

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

### **Cases going to court**

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

### **Equipment**

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

### **How to take photographs-rule of 3<sup>1</sup>**

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

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<sup>1</sup> Adapted with permission from Montana APS.

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

# 3

## CASE MANAGEMENT

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# 3

## ADULT SERVICES CASE MANAGEMENT

### 3.1 Case management

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

### 3.2 Definitions

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~~Most of the~~ The following terms are defined in state regulation 22 VAC30-130, Adult Services Standards, *unless indicated otherwise*. ~~When used in this chapter, they shall have the following meaning, unless the context clearly indicates otherwise:~~

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

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

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

### 3.3 Confidentiality

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

### 3.4 Adult services intake

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

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

*Upon determining that the request for assistance or services is not an APS report, there is no valid APS report, the worker proceeds with the Adult Services (AS) intake process. The initial contact may be made by telephone, office visit, and/or through a referral from another agency. Services provided may include information and referral, initial screening and assessment, crisis intervention, and assistance with emergency needs if indicated by the case situation or assessment.*

#### 3.4.1 Information and referral

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

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

### 3.4.1.1 Information

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

### 3.4.1.2 Referral

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

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

## 3.5 Services and activities

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

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

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

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



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

### 3.5.1 Optional services

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

## 3.6 AS Application for adult services

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

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

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

- LDSS shall accept all applications.

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

### **3.6.1 Service application initiated by the individual**

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

### **3.6.2 LDSS-initiated service application**

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

~~Service applications are not required when the only service provided is the annual ALF reassessment, LTSS screening, or guardian report review. If additional services are requested beyond the reassessment, screening or guardianship report review, a signed service application shall be obtained.~~

### **3.6.3 Date of application**

The date of application is one of following:

- The day the completed and signed Service Application is received by the LDSS.

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

#### 3.6.4 When a new application is needed

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

### 3.7 Determining eligibility for home-based services **HBS**

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

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

#### 3.7.1 Timeframe to determine eligibility

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

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

#### 3.7.2 Service population and criteria

~~Adult Services (e.g., companion, chore, or homemaker services are provided to adults with an impairment. See Section 3.2 for AS definition.~~

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

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

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

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

~~See Chapter 2 for APS criteria.~~

### 3.8 Financial eligibility for HBS

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

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

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

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

- Universal Access

- Income Maintenance
- Eligibility Based on Income

### 3.8.1 Universal access

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

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

### 3.8.2 Income maintenance

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

#### 3.8.2.1 Verification of receipt of income maintenance

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

### 3.8.3 Eligibility based on income

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

shall verify and document the adult's income in the department-designated case management system.

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

Eligibility in this category is determined by measuring the gross income and the number in the family unit against the State Median Income (SMI) chart. The APS Division announces the updated Federal Fiscal Year (FFY) SMI by a broadcast each year prior to September 1. The SMI chart is available in PeerPlace and the VDSS intranet. The local board selects the percentage cut-off point used and records this decision in the board minutes.

### **3.8.3.1 Verification of income eligibility and determination of monthly income**

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

### **3.8.3.2 Family size and income**

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

household for whom the family claims financial responsibility for tax purposes.

### **3.9 AFC**

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

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

#### **3.9.1 Local-only funding eligibility**

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

#### **3.9.2 AG eligibility**

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

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

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

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

*AFC providers shall provide each AG recipient and his authorized representative with a written list of the goods and services that shall be covered by the AG including a clear statement that the facility shall not charge an individual or the individual's*

family or authorized representative additional amounts for goods or services included on such list. This statement shall be signed by the AG recipient or authorized representative as acknowledgment of receipt and shall be made available to the department upon request. (22 VAC 30-80-45).

### **3.9.3 Private pay**

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

## **3.10 Facilitating the AFC admission**

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

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

### **3.10.1 Medical examination - AFC**

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

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

## **3.11 LDSS Coordination with CSB for AFC**

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



### **3.12 Auxiliary Grant Supportive Housing (AGSH)**

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

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

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

### **3.13 Registering cases in PeerPlace**

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

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

#### **3.13.1 Opening a case**

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

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

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

#### **3.13.1.1 Documenting the opening of a case in PeerPlace**

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

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

#### **3.13.2 Effective dates and annual redetermination dates**

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

See Section **3.24** for information on redetermination of eligibility.

### **3.14 Fraud**

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The LDSS shall explain to individuals applying for **AS** the importance of providing accurate and thorough information and of notifying the LDSS of changes during service delivery. Anyone who causes the LDSS to make an improper vendor payment by

withholding information or by providing false information may be required to repay the amount of the improper payment. Section 63.2-522 of the Code of Virginia deems any person guilty of larceny who obtains assistance or benefits by means of a willful false statement or who knowingly fails to notify the LDSS of a change in circumstances that could affect eligibility for assistance. Individuals deemed guilty of larceny, upon conviction, are subject to penalties as specified in the § 18.2-95 of the Code of Virginia.

### 3.15 Assessment process

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#### 3.15.1 Basis

The assessment process is a mutual process between the service worker and the adult that begins at intake. Completing the assessment is the first step in service planning. The purpose of assessment is to determine whether the adult is in need of services, and, if so, to identify what services are needed. ~~Assessment is an ongoing process and 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~~ **also documents** ~~the 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. The assessment is completed utilizing the UAI and documented in the notes section of the PeerPlace case management system. This~~ **Assessment** ~~may include observations, client and collateral statements, noted behaviors, formal assessment tools, professional consultations, and supporting documents. These activities will be reflected in the completed service plan. Information contained in the UAI, notes, and service plan should be consistent.~~ Assessment is an ongoing process and should take place throughout the entire case management process and is essential to service planning.

#### 3.15.2 The **UAI** Virginia Uniform Assessment Instrument (UAI)

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

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

- The **entire** UAI shall be completed when the adult is being assessed for HBC, AFC, or adult day services purchased by the LDSS.
- ~~Adult foster care is being provided by an LDSS approved provider~~
- ~~In an APS case if~~ If the APS investigation disposition is “needs and accepts” and services are provided, then the **entire** UAI shall be completed.
- The UAI shall be completed in accordance with the Department of Medical Assistance Services (DMAS) regulations and guidance for all Medicaid LTSS Screenings. Medicaid LTSS screenings are entered into the eMLS system. LDSS workers who are part of a screening team are not required to enter the UAI into PeerPlace as long as the individual is seeking a screening only and not receiving other services (e.g. homemaker or adult protective services). However, the LDSS worker is still required to register the adult in the **AS** program in PeerPlace. A brief case note should document that the individual’s UAI is located in eMLS as well as the eMLS Assessment Tracking Number (ATN). **Note: Do not enter case documentation for screenings for individuals under age 18 (child screenings) into PeerPlace.** The LDSS may establish their own method to track child screenings.
- Pages 1 through 4 and 12 shall be completed when:
  - The client is registered in the AS Program, the LDSS is **not** purchasing any services, and is **only** assisting the adult with issues such as SSI or Social Security applications or other non-purchased service activities; or
  - The client is registered in the AS Program and the LDSS is **only** addressing a short-term crisis, including arranging for or making a utility or rental payment.
- The UAI shall be completed for ALF assessments per guidance in the ALF Assessment Manual. For ALF assessments, the UAI is used for the initial assessment and one reassessment. The UAI shall be entered into PeerPlace. A PeerPlace UAI may be copied for purposes of the ALF reassessment and then updated.

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

### 3.15.3 Assessment areas

There are five assessment areas of the UAI.

#### 3.15.3.1 Physical environment (section 1 of UAI)

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

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

#### 3.15.3.2 Functional status (section 2 of UAI)

An assessment of the individual's ability to manage activities of daily living (ADLs) and instrumental activities of daily living (IADLs) shall be made when assessing an individual's need for services. Some areas to consider when assessing functional capacity include:

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

#### 3.15.3.3 Physical health assessment (section 3 of the UAI)

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

- The individual's current medical condition, including any diagnosis or prognosis available, and any services being used.

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

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

The worker's assessment of an individual's psychological functioning cannot take the place of a formal clinical evaluation. However, the worker's findings may suggest that a psychiatric ~~problem~~ **condition** is present and contributing to the individual's need for services. This assessment can also provide the worker with documentation for recommending a more complete assessment by health professionals to rule out organic and/or physical causes of psychological symptoms. Some areas to consider when assessing psychosocial status include:

- Evidence that the individual is lonely, isolated, or lacking stimulation.
- The individual's perceived emotional or behavioral condition(s).
- Any manifestations of emotional, mental, or behavioral ~~problems~~ **conditions** (e.g., insomnia, nightmares, crying spells, depression, agitation, unusual fears, thoughts, or perceptions, delusions, hallucinations, etc.).
- Any major life change/crisis in the year (e.g., death of a significant person, divorce, loss of income, a move, an illness, institutional placement, etc.).
- A suspected untreated mental illness where the individual likely needs, but is not receiving, psychotropic medications or other appropriate treatment.

- Use of any psychotropic medication(s), who prescribed them, and for what purpose.
- The individual's orientation to person, place, and time as well as memory and judgment capacity.

### 3.15.3.5 Support systems (sections 1, 4, and 5 of the UAI)

The support systems assessment includes an assessment of the individual's family and community support system. It is important that the worker identify those family, friends, neighbors, faith-based, and other voluntary groups and formal supports that comprise the individual's social network. Some areas to consider when assessing support system(s) include:

- Any strong dynamics among family members/caregiver(s)/formal support systems as related to the care of the individual.
- Frequency and quality of contacts from informal and formal support systems.
- Social contacts and activities the individual has in the community and changes in the pattern of these contacts.

## 3.16 The service plan

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(22VAC30-130-50). If an adult is determined eligible for home-based services, the local department shall develop a service plan, enter the plan into the department-designated case management system, and review the plan at least annually.

- A variety of interventions including referral to public assistance and other resources, case management, and other programs may be provided depending on the adult's needs. (22 VAC 30-130-50).
- The services or activities may be provided directly by local department staff or volunteers, purchased from local department approved providers or contracted vendors, or provided through referral to other community resources. (22 VAC 30-130-50).

A service plan includes the services to be provided, resources to be used to meet the presenting or immediate **need** ~~problem~~ area(s), and an identification of initial target dates. The service plan may be printed from PeerPlace. It is recommended that the adult or the responsible person sign a completed service plan.

### 3.16.1 Service plan requirements

- Within 15 days of the date of eligibility, the worker shall enter the service plan in PeerPlace.

(22VAC30-130-50). A service plan shall not be required when the only intervention or activity provided by the local department is screening for long-term services and supports, public pay assisted living facility annual assessment, or review of an annual guardian report.

- The details in the service plan will vary according to the individual's situation and will be based on the assessment of the individual's strengths and needs.
- The local department, the adult, and the adult's family, the responsible person, or other social supports, if applicable, shall collaborate to evaluate progress toward meeting the goals and objectives of the service plan. (22 VAC 30-130-50).
- The local department shall document progress toward meeting service plan goals and objectives at least quarterly in the department-designated case management system. (22 VAC 30-130-50).
- For any services for which a payment is made on behalf of an adult, the service, service provider, and payment authorization shall be documented in the service plan. Any local department hard copy records documenting the provision of AS shall be made available to the department upon requests. (22 VAC 30-130-50).
- The service plan shall address the long-term and short-term needs of the adult. Components of the plan include:
  - Goal(s).
  - Unmet need(s).
  - Objective(s).
  - Task(s) (e.g., services to be provided, service-related activities, resources to be used).
  - Target dates are estimated dates for task completion.



- Dates resolved indicate when the objectives are met and closes out the services.
- Evaluation of services once tasks are completed.

Goals and objectives are developed after the ~~AS assessment (UAI)~~ is completed and a determination made regarding the services needed and the adult's preferences.

### **3.16.2 Goals, unmet needs, objectives, tasks, and target dates**

#### **3.16.2.1 Goals**

The following are goals for **AS** cases:

- To assist the individual to remain in his or her own home as long as possible provided that this is the most appropriate plan of care.
- To restore or retain the individual's independent functioning to the greatest extent possible.
- To assist in arranging out-of-home placement when that is appropriate and the individual or the guardian consents.

The goal "other" may be selected as appropriate.

See Chapter 2 for service plan goals for APS cases.

#### **3.16.2.2 Unmet needs**

An unmet need is an identified need that is not currently being met in a way that assures the safety and well-being of the adult. Unmet needs appear in section 5 (Assessment Summary) of the UAI. Unmet needs identified on the UAI should be in the service plan.

#### **3.16.2.3 Objectives**

- Objectives reflect the desired outcome(s) of service delivery. Objectives and services selected should be relevant to the goal.
- Each objective shall state clearly WHAT will happen to accomplish the goal(s).
- Objectives should be:

- Identified by the individual or representative and worker to eliminate or diminish identified unmet need(s).
- Supportive of the goal(s) selected.
- Stated in terms of measurable result(s) to be achieved or desired outcome(s).
- As behaviorally specific as possible.
- Updated as the individual's situation changes.
  - Example of an objective: The client will obtain medical care to manage health issues.

#### 3.16.2.4 Tasks

Tasks describe the actual provision of services, identifying HOW to achieve each objective, WHO will be involved in accomplishing each objective, WHERE services will be provided, and WHEN services will be provided. Tasks shall be specific and measurable. All service types shall be selected from the drop-down menu in the PeerPlace service plan. Services definitions are available on the APS Division site on the DSS intranet.

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

- Example of a service: Transportation.
- Example task: Worker will assist client in securing transportation to medical appointment.
- Example Provider: Yellow Cab
- Example funding source: 83306 Adult Services - Prevention Services
- Example hours per week: 4
- Example rate of pay: \$10.00

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

### 3.16.2.5 Start and target dates

The service plan shall include dates for services to start and target dates for achievement of objectives. Target dates should be realistic. Target dates for ongoing tasks such as HBS should not exceed the redetermination date.

### 3.16.2.6 Date resolved

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

### 3.16.2.7 Evaluation of services

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

- Example: AS prevention funds were utilized to pay for cab fare for client's medical appointment with Dr. Smith on 3/3/22. Client received needed medical treatment and updated prescriptions.

### 3.16.2.8 Sample Service plan

The guide "AS Service Plans in PeerPlace" located on the PeerPlace page on DSS intranet contains example screen shots of service plans.

After you have added all the Unmet Needs and supporting Services, you can print the Service Plan. Click on one of the links under the **Print Options** section of the Service Plan Summary screen. **DO NOT use the Print icon at the top of the screen.**

## ~~3.17 Resource appraisal and selection~~

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~~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 intranet:~~

~~Long-Term Care Services ————— Chapter 4  
Adult Services Approved Providers ——— Chapter 5~~

~~The Local Finance Guidelines Manual is also available on the VDSS intranet:~~

~~Purchase of Services~~ ————— ~~Local Finance Guidelines Manual,~~  
~~Section 5.20—Purchase of~~  
~~Services~~

### 3.18 Service delivery

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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.

#### 3.18.1 Direct services

Direct services are those services provided, arranged, monitored, and/or referred by the LDSS staff as outlined in the service plan.

#### 3.18.2 Referrals

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

#### 3.18.3 Purchased services

Purchased services are ~~those services~~ purchased for adults by LDSS for adults from approved providers, including department-approved providers and providers with whom the LDSS contracts. A Purchase of Services Order is available on the VDSS intranet. *The Local Finance Guidelines Manual, Section 5.20-Purchase of Services, is also available on the DSS intranet.*

*Adult Services Approved Providers, Chapter 5, addresses the approval process for locally approved homemaker, chore, and companion providers and AFC providers.*

#### 3.18.4 Ongoing service planning and delivery

Following the initiation of the service plan, the assessment is to continue on a mutual basis between the individual and worker to document further service needs as a basis for the setting of long-range service objectives, the selection of services to fulfill those objectives, and the choices of resources to be used.

### 3.19 Waiting lists

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If LDSS funds are inadequate to maintain the level of service to adults ~~of an optional service or service mandated to the extent funds are available~~, LDSS should maintain a waiting list. A date-based methodology (e.g., date in which application is received) is just one example of how an LDSS may organize its wait list. The LDSS shall uniformly

apply wait list criteria to all individuals requesting the service. The LDSS should review the waiting list at least annually.

The service worker should indicate on the service plan if the service request is not available, and the individual is on a waiting list. If the worker selects waiting list “yes” on the service plan, the worker does not close the service plan. If the worker closes the service plan, the wait-listed service will not be counted or identified when running reports.

### 3.20 Required contacts

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For **AS** and **APS**, contact includes communication with the adult, the adult’s legal representative or the adult’s designated primary caregiver. More frequent contact should occur as needed. All contacts should be documented in the appropriate PeerPlace screen.

- Adult Services: Contacts and case actions shall be documented in the **AS** client registration notes.
- APS Investigations: Contacts and case actions shall be documented in the APS investigation notes.
- Ongoing APS: Contacts and case actions shall be documented in the APS client registration notes.

The worker shall make timely, regular contacts with providers to monitor the provision of services and the well-being of the individual. The worker should verify by observation or personal interview that the adult is receiving the planned services and identify any changes in his or her situation. Required provider monitoring contacts should be documented on the Compliance Form for Agency Approved Providers (See Chapter 5 Section 5.25). Ideally provider monitoring contacts are documented in the PeerPlace provider screens.

#### 3.20.1 Types of contact

To meet the requirement for appropriate contact with the adult, the contact shall occur with the adult, the adult’s legal representative, or the adult’s designated primary caregiver shall be in the form of face-to-face, home visit, office visit, phone to/from. ~~DARS considers it~~ **it is** best practice that face-to-face contact with the adult be in-person.

All contacts, including other types of contacts such as fax to/from and email to/from shall also be documented in the appropriate PeerPlace program registration notes. Contacts should be conducted for the purpose of determining the individual’s progress toward achieving objectives stated in the service plan.

The following table identifies who is considered a legal representative or designated primary caregiver:

<b>Legal Representative</b>	<b>Designated Primary Caregiver</b>
Power of Attorney, guardian, and conservator	Father, mother, daughter, son, spouse, wife, and husband

### **3.20.2 Monthly versus quarterly contacts**

PeerPlace automatically assigns the intensity level of service plans and is dependent on the PeerPlace program. Services identified as “intense” require monthly contact. Services identified as a “less intense” require quarterly contact. The worker may make more frequent contact depending on the individual’s situation. Services listed in APS program service plans are designated as “intense.” Services listed in AS program service plans (e.g., homemaker or LDSS monitoring) are designated as “less intense.”

### **3.20.3 Collateral contacts**

Collateral contacts with other interested parties, vendors of service, other community providers/agencies, volunteers working with the individual, and the court may include face-to-face, telephone conversations, and written or email correspondence.

### **3.20.4 Written correspondence**

Written correspondences, including letter to/from, fax to/from, and email to/from and collateral contacts do not count as monthly or quarterly contacts.

### **3.20.5 Regular quarterly contact not required**

Regular quarterly contacts are not required for ALF Reassessments only and Guardianship only cases.

### **3.20.6 When a contact is not made as required**

The case record shall specify why a required contact was not made (e.g., the adult could not be located). Document efforts made to complete the required contact and gather information to locate the client including the communication method or number of attempts.

### **3.21 Case Documentation**

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All documentation should follow professional guidelines, be completed in a timely manner, use professional voice, and include relevant details required for the LDSS record.

The record may be part of an audit or court proceedings and provides evidence that mandated requirements have been completed. The record informs AS and APS assessment and service planning.

#### **3.21.1 Timeframe for documentation**

Documentation should occur on the day contact is made or within 24-48 hours but no later than 7 days after the contact. The LDSS is encouraged to utilize transcription services, if available, to assist with documentation.

### **3.22 Attachments**

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Documents such as faxes, history and physicals, physician notes, service applications, invoices, purchase orders, legal documents, advanced directives, and financial statements should be uploaded to the attachments section in the client registration of PeerPlace.

### **3.23 Monitoring**

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Monitoring is the process by which the service worker maintains contact with the individual, support systems, and service provider(s) to ensure the efficient and effective delivery of services relating to the achievement of the stated objectives. The monitoring function shall begin upon delivery of service(s) and shall be continuous. The LDSS will be responsible for the monitoring of service delivery whenever it uses a vendor or non-agency provider to offer services to an individual.

Monitoring contacts are documented in the client registration notes. Every contact should be documented. Documentation should include who was contacted, the details of the client's environment, functioning, physical, and emotional well-being, resources, and supports. Include the client or responsible party's evaluation of the services being delivered as part of the service plan.

### **3.24 Redetermination**

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ASAPS Financial Eligibility shall be performed at least annually. Redetermination shall be conducted in the same manner as the initial determinations (the adult does not have to sign a new service application). ASAPS Financial Eligibility is required at the annual redetermination before the service plan can be updated. The ASAPS Financial

Eligibility will populate on the service plan screen for completion. Initial ASAPS Financial Eligibility is recorded in the “ASAPS Financial Eligibility” section on the client profile screen in PeerPlace. The effective date and redetermination dates on the ASAPS Financial Eligibility screen in PeerPlace are updated to reflect the updated/new eligibility period.

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

### 3.25 Reassessment

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The service worker shall reassess active cases when there is significant change in the individual’s circumstances, but no less than once every 12 months. A significant change in an individual’s condition occurs when the change is expected to last more than 30 days or appears to warrant a change in the individual’s service plan or level of care. The reassessment shall include an updated UAI and an update of the service plan as appropriate.

Based on the UAI annual reassessment, the worker shall document:

- Service plan updates, with task completion dates, target dates, and evaluation of services adjusted as needed. If the client is receiving ongoing services without change, such as companion services, that extend year to year, the task target completion date should be updated to reflect the extension of the continuing service, while leaving the task start date unchanged. Document in the client registration notes that the service plan has been updated.
  - Example: Previous task start date: 11/1/2020, target completion date: 10/31/2021
  - At reassessment, enter target completion date 10/31/2021 if all other task information remains constant

If the client is receiving ongoing services and there are changes such as a different companion provider, funding source, or rate of pay, enter the date resolved and evaluation of service for the current service plan task. This will close the task. Then create a new task with the updated information and new task start and target dates. Document in the client registration notes that the service plan has been updated.

- A description of the individual’s current situation in the AS registration notes with input from the individual and family, if applicable, to determine if there are needs which should be addressed.



- Whether additional services are needed. If so, the service plan shall be revised accordingly. If services are no longer needed, the service plan and the case shall be closed.

### 3.26 Closure of an AS registration

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The local department shall close the adult's case in the department-designated case management system in the following circumstances, including:

- When the adult dies;
- When the adult with capacity or the adult's responsible person requests closure;
- When the local department is unable to locate the adult and attempts to contact the adult are unsuccessful;
- When the adult is no longer functionally or financially eligible for the service;
- When the local department has no funding to provide HBS;
- When the service or activity identified on the service plan is complete; or
- With the exception of annual guardian report reviews, when the adult relocates to another state. (22VAC30-130-60).
- If a Notice of Action (NOA) is required, the client shall be permitted to exercise appeal options (if appealing is an option) before the registration is closed. If the adult is not entitled to an appeal, the worker shall close the service plan and the registration. Refer to [Section 3.28](#) for further NOA guidance.

#### 3.26.1 Documenting the case closure

Document a closing statement in the registration notes describing client's circumstances at case closure. Include any case closing notifications to the client or responsible party, information and referral, supports in place, relocation information, or notifications to other LDSS at case closure.

### 3.27 Relocation

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If a relocation is temporary, the original jurisdiction keeps the case, and depending on the distance, provides any needed services or requests the new jurisdiction to assist. Service payments are the responsibility of the original jurisdiction in this situation.

A permanent relocation means the individual will be residing in a new locality. When the individual no longer needs services, the LDSS previously providing services shall close

the registration. When services continue to be needed, the individual may apply for AS in the jurisdiction where the individual now resides. Only APS reports can be transferred in the PeerPlace system. An ongoing APS registration cannot be transferred if the adult moves during service provision. Guardianship Report Tracking or ALF reassessment services in the PeerPlace program are not transferable. The Supervisor/Program Admin or APS regional consultant may assist with transferring a record in PeerPlace.

When an individual plans a permanent relocation to a facility in another jurisdiction and the individual will need services in the new jurisdiction, the LDSS involved should assist each other with needs concerning the individual's admission. If services will be needed, the sending LDSS should notify the receiving LDSS of the expected date of the admission, the facility selected, and the services (e.g. ALF reassessment) needed.

The worker in the original jurisdiction may offer to assist in completing a service application for the new jurisdiction if one is needed.

### 3.28 Notice of action

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(22VAC30-130-60). The local department shall notify the adult on a form approved by the department when the local department takes an action regarding home-based services pursuant to § 51.5-147 of the Code of Virginia.

- NOA shall be used for any applicant or recipient of HBS and AFC services as they may appeal an LDSS case action decision pursuant to § 51.5-147 of the Code of Virginia.
- The (NOA) form for Service Programs is available on the VDSS intranet and the DARS website.

#### 3.28.1 Documenting the NOA

Document the NOA in the client registration notes. Response to the NOA shall be documented in the registration notes. Upload the NOA under the attachments link in the PP client registration.

#### 3.28.2 Withdrawal of application

- The individual may withdraw an application. Document the withdrawal in the client registration notes. For special procedures on Adult Protective Services, or APS home based care, see Chapter 2.
- If the withdrawal was done by letter, telephone call, or personal visit, a NOA shall be sent to acknowledge the withdrawal. Upload the withdrawal under the attachments link in the PP client registration.

- The individual should be told that he or she may reapply at any time.

### **3.28.3 Failure to follow through with services or disappearance**

If an individual has submitted an application for **AS**, and then disappears or fails to follow through with the application and eligibility process after 45 days, the LDSS does not need to try to find the individual to ascertain their intent to proceed with the application, unless a valid APS report has been made. If there has been no valid APS report, a NOA terminating the application is sent 45 days after the application was received.

### **3.28.4 NOA for other case actions**

- The NOA shall be mailed or given to the individual or his representative when an HBS or AFC case is approved, reduced, suspended, or terminated.
- Mail the NOA approximately **14 days before** the date the action is to become effective so that the individual has a 10-day notice. See Section 3.28.5 regarding early notification regarding HBS.
- Notices are not required for fluctuations in purchased service payments when the Purchase Order authorization remains the same.

### **3.28.5 Early notice due to reduction in funding for home based services**

If the adult appeals the action within 10 days of the effective date of the NOA, services must continue. The LDSS is encouraged to provide notice earlier than the recommended 14 days before the action becomes effective, particularly when the action is due to lack of or reduction in funding to provide a particular service (e.g., companion services). Providing early notice of the intent to reduce or discontinue services due to funding constraints will provide sufficient time for services to continue during the appeal before funding is exhausted.

### **3.28.6 When notice of action not needed**

The NOA is not issued for screening cases either at the conclusion of the screening or when the registration is closed in PeerPlace. The screening decision letter, issued by the screening team after the screening has been completed, serves as proper notice to the adult. The decision letter contains information about the screening results and appeal rights.

If the LDSS receives reliable information of an individual's death, the LDSS closes the registration. The NOA is not issued upon notification of an adult's death.

### 3.29 Appendix A: Forms

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The following forms may be used for case management purposes. Unless otherwise indicated, these forms are located on the APS Division page on the DSS intranet.

#### **Application for AS**

This form should be used by an individual to apply for **AS** and **APS**. This form is also available in Spanish.

#### **Adult Foster Care Agreement**

*This form is used as an agreement among the individual receiving AFC, the LDSS, and the AFC provider.*

#### **Adult Foster Care Interagency Agreement**

*This form is used when an LDSS is placing an adult in an AFC home in a neighboring jurisdiction.*

#### **Notice of Action-Adult Services & Adult Protective Services Programs**

This form is used to notify an individual about certain actions that have been taken or will be taken on his or her case. This form is also available in Spanish.

#### **Purchase of Services Order**

This form is used to order services from vendors. This form is also used for unscheduled termination of, or change to, an existing POS Order.

#### **Short-Form Attachment**

*This form is used when it is determined that an individual will only need residential level of care in an ALF setting. The attachment is used in conjunction with pages 1-4 of the UAI.*

#### **Uniform Assessment Instrument (UAI)**

*This form is used to assess an individual's need for services including assisted living, HBS, and Medicaid funded services.*

### **3.30 Appendix B: Income eligibility determination**

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Income, not resources, is counted in determining if an individual meets the category of Eligibility Based on Income. All income, except items listed below, is to be counted.

Net income from self-employment, farm or non-farm, is to be counted. This is gross receipts minus expenses. The value of goods consumed by the client and his/her family is not to be counted.

The gross amount in wages or salary received is the figure to be used. However, if the wage earner voluntarily has additional amounts taken out for savings such as bonds, these amounts shall be counted as income.

Do count income from Social Security, but do not count income from Supplemental Security Income (SSI).

#### **Income to be excluded**

- Home produce utilized by the adult for his own consumption.
- The value of food benefits under the Supplemental Nutritional Assistance Program (SNAP).
- The value of supplemental food assistance under the Child Nutrition Act of 1966 (42 USC §§1771 through 1789). This includes all school meals programs; the Women, Infants, and Children program; and the Child Care Food Program.
- The value of foods donated under the U.S. Department of Agriculture Commodity Distribution Program, including those foods furnished through the school meals programs.
- Benefits received under Nutrition Program for the Elderly, Title VII of the Older Americans Act of 1965, as amended (42 USC §§3001 et seq.).
- Grants or loans to any undergraduate students for educational purposes made or insured under any program administered by the U.S. Secretary of Education;
- A scholarship or grant obtained and used under conditions that preclude its use for current living costs;
- Training allowance provided by the department for persons participating in rehabilitative services programs;

- Payment to VISTA volunteers.
- The Veterans Administration educational amount for the caretaker 18 years of age or older when used specifically for educational purposes. Any additional money included in the benefit amount for dependents is to be counted as income.
- Income tax refunds including earned income tax credit, advance payments, and refunds.
- Payments made under the Energy Assistance Program;
- All federal, state, and local government rent and housing subsidies and utility payments;
- Funds distributed to or held in trust for members of any Indian tribe under Public Laws 92-254, 93-134, 94-540, 97-458, 98-64, 98-123, 98-124. Additionally, interest and investment income accrued on such funds while held in trust, and purchases made with such interest and investment income.
- All bona fide loans. The loan may be for any purpose and may be from a private individual as well as from a commercial institution. The amount disregarded is limited to the principal of the loan.
- Monetary gifts for special occasions such as the adult's birthday, holidays, or graduations.
- Withdrawals of bank deposits.
- Payment to vendors for services provided to the adult.
- Lump sum insurance payments.

### 3.31 Appendix C: Expenditures for services

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#### 3.31.1 Funding allocations

Each LDSS receives funding to purchase services needed by an adult to meet the goals of the adult's service plan. LDSS are encouraged to make maximum use of this funding in providing services to adults and shall be aware of the number of cases their allocations will support throughout the year. During ~~the course of~~ the fiscal year, if the LDSS realizes that it has been allocated more funds than are needed to serve adults, the LDSS shall return the funds in a timely manner to the state for reallocation to other LDSS.

#### 3.31.2 LASER

LASER (Locality Automated System for Expenditure Reimbursement) is an automated system used to allocate funding.

#### 3.31.3 Budget lines, cost codes descriptions

Budget lines and cost code descriptions including examples of reimbursable expenses are available on the VDSS intranet.

#### **21704 GUARDIANSHIP PETITIONS**

Provides for the costs of petitioning the court for appointment of a guardian for a Medicaid applicant who is unable to apply for himself or herself.

**Note:** VDSS does not provide a local budget allocation for this cost code, all expenditures entered in 21704 will be funded using 100% state General Funds.

LDSS should complete page two of the Response to Medicaid Referral form located on the VDSS intranet. Expenses shall be itemized, attached to the form, and retained by the LDSS as documentation for reimbursement.

Localities should submit a BRS to request funds to cover the expenditures. The request will be reviewed and acted on by the APSD Director.

#### **Reimbursable examples**

Expenses incurred during a guardianship proceeding for a Medicaid applicant who is unable to apply for himself or herself:

- Evaluation.
- Guardian ad litem legal fees.
- Attorney legal fees.

- Court filing fees.
- Other costs (itemized).

### **ADULT SERVICES (833)**

#### **83301 Adult Services – Home-Based Care -- Chore**

Chore services are the performance of non-routine, heavy home maintenance for adults unable to perform such tasks themselves. Chore services are provided only to adults living in an independent situation who are responsible for maintenance of their own home or apartment and have no one available to provide this service without cost. Chore services include yard maintenance, painting, chopping wood, carrying wood and water, snow removal, and minor repair work in the home.

#### **83303 Adult Services – Home-Based Care--Homemaker**

Homemaker services are provided by an individual or agency provider who gives instruction in, or where appropriate, performs activities to maintain a household. The activities may include personal care, home management, household maintenance, nutrition, consumer education, and hygiene education.

#### **83302 Adult Day Services**

Program funds are used to purchase adult day services from approved/licensed providers for a portion of a 24-hour day. Adult day services assess the needs of participants and offer services to meet those needs. Participants attend on a planned basis. Services include: personal supervision of the adult and activities that promote physical and emotional well-being through socialization.

#### **83304 Adult Services- Home-Based Care--Companion**

Companion services are performed by an individual or an agency provider who assists adults unable to care for themselves without assistance and where there is no one available to provide the needed services without cost. Services may include dressing, bathing, toileting, feeding, household and financial management, meal preparation, and shopping. Companion services shall only be provided to an eligible adult who lives in his or her own home.

#### **83305 Guardianship Services**

Provides for the purchase of guardianship services from a Virginia guardianship program for adults who have been adjudicated incapacitated by a court and no willing or suitable adult is available to serve as a guardian. Services promote the adult's independence; ensure the adult's physical, emotional, medical, and financial needs are met; and prevent destabilization of the adult's living situation. The need



must be documented in the case record service plan. Payments shall not be made to family members or friends of the adult who volunteer to become the adult's guardian.

### **83306 Prevention Services**

Provides for the purchase of goods or services to prevent disruption of or to stabilize the adult's situation, provided that the need is documented in the case record. These services may include the purchase of short-term support until more permanent arrangements can be made. It may also include items such as clothing, food, utilities, or rent when no other resources are available and the lack of these goods and services become life threatening or may result in institutionalization. These services shall only be provided to adults who may need a temporary intervention to prevent an adult protective services response.

## **ADULT PROTECTIVE SERVICES (895)**

### **89501 Adult Protective Services**

This budget line is used to fund the APS program. This funding may be used for reimbursable expenses of providing protective services at the local level.

Protective services to adults consist of the receipt and thorough investigation of reports of abuse, neglect or exploitation of adults and of reports that adults are at risk of abuse, neglect or exploitation.

The purchase of goods or services is appropriate under the following circumstances:

- An APS report has been taken and the investigation has determined that an adult needs protective services and the service to be purchased is part of the service plan to protect the adult from ongoing abuse, neglect or exploitation; or
- An APS report has been taken and the protective services investigation has found an adult to be at risk of abuse, neglect or exploitation and the service to be purchased is part of the service plan to prevent abuse, neglect or exploitation from occurring.

### **Guardianship Fees**

Section 64.2-2020 of the Code of Virginia requires a guardian to complete and submit an annual report, on the incapacitated adult for whom a guardian has been appointed, to the LDSS in the jurisdiction in which the adult resides. Section 64.2-2020 requires that the annual report, when filed, be accompanied by a filing fee of \$5.00. The \$5.00 filing fee that accompanies annual guardianship report shall be

used in the provision of services to protect vulnerable adults and prevent abuse, neglect or exploitation of vulnerable adults.

To record the receipt of guardianship fees, the LDSS should enter the amount collected as a credit, using Account Code 40895 Receipt of Guardianship Fees.

### **Admin Adult Protective Services**

Administrative costs of operating the APS program are included in Services Staff and Operations or Services Staff and Operations pass-Thru (budget lines 855 and 857). Reimbursable examples include on-call coverage for staff who provide coverage for APS on nights, holidays, weekends, and other times outside of regular office hours; costs of staff travel for investigating, for ongoing service delivery, for training/education purposes, or other travel costs related to the APS program; office supplies and equipment dedicated to the operation of the APS program; and costs of community outreach to increase awareness of the problem of adult abuse.

At any point in the budget year, LDSS may request that 895 funding be transferred to BL 855. The two-part request must be entered into the LASER system and approved by the APS Division Director and a DSS budget analyst. **Note:** Though the \$5.00 guardianship fees are entered into BL 895, these fees can't be transferred to 855. The filing fee is considered a credit to the LDSS and credits may not be transferred. The filing fee must remain in BL 895 to support victims of adult abuse, neglect, and exploitation.

### **REIMBURSEMENT THROUGH RANDOM MOMENT SAMPLING (RMS)**

#### **Screenings**

Every individual who applies for or requests a **Medicaid LTSS screening** ~~community or institutional long-term services and supports~~ **shall be screened prior to receiving LTSS.** ~~admission to such community or institutional long-term services and supports to determine his need for long-term services and supports, including nursing facility services as defined in the state plan for medical assistance services. (§ 32.1-330 of the Code of Virginia).~~ LDSS are reimbursed for screenings through the RMS process.

#### **Assisted Living Facility (ALF) Assessments**

LDSS assess **and reassess** individuals receiving AG in ALFs using the UAI to determine the level of care (residential or assisted living). ~~A short or full assessment is completed depending on the adult's condition or level of assistance he needs. LDSS also reassess individuals receiving AG annually to determine if the adult continues to meet the level of care that is required in an ALF.~~ LDSS are reimbursed

~~for allowable expenditures related to ALF assessments and reassessments via DSS local staff and operations funding and RMS.~~

# 4

## LONG-TERM CARE SERVICES

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~~4.11.3 Assessment~~

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# 4

## LONG-TERM CARE SERVICES

### 4.1 Introduction

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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

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#### 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 offered (§§ 63.2-1600 and 51.5-146 of the Code of Virginia).

The local board shall develop a home-based care policy 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 by an Adult Protective Services (APS) Division Regional Consultant prior to board approval. LDSS should review the home-based care policy annually to ensure it reflects the LDSS's mission, the community's needs, and current law, regulations, and guidance.

#### 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. The LDSS shall apply waiting list criteria uniformly to all adults requesting the service. The LDSS should review and update waiting lists at least annually.~~

##### **4.2.3.4 Temporary reduction or termination of SSI**

~~In cases where the Social Security Administration (SSA) 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. Individuals must meet the eligibility requirements in Section 4.2.3. Companion activities include assistance with ADLs, 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 are provided to 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. Chore 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 shall be completed in PeerPlace.~~

##### ~~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 for each adult. 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 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 a Medicaid LTSS simultaneously in order to meet his or her needs, duplication of service activities shall be avoided. The service plan should document 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 the Virginia minimum wage.~~

#### ~~4.2.8.3 Methods of service delivery~~

~~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 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.~~

#### ~~4.2.8.5 Licensing standards~~

~~Home-based services shall be purchased from providers who are approved as meeting the standards in 22 VAC 30-120 and Chapter 5 Adult Services Approved~~

~~Providers or by demonstration of appropriate licensure through a licensing authority.~~

#### ~~4.2.8.6 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 long-term care services and supports), the LDSS cannot deny services to the adult. However, the situation may preclude a provider from entering the home.~~

#### ~~4.2.8.7 Contracting for HBC services~~

~~When an LDSS does not approve its own providers but rather contracts with an entity for chore, companion, or homemaker services the LDSS should consider following:~~

- ~~• The provider's knowledge, skills, and abilities~~
- ~~• Whether the provider possesses any required state and/or local licenses and is bonded and insured, as appropriate~~
- ~~• Whether the provider is capable of performing the particular task(s)~~

#### ~~4.2.9 Receiving Home-Based Care Services and Medicaid Long-term Services and Supports (LTSS)~~

~~Eligibility for home-based care does not necessarily preclude an adult's eligibility for another services through a Medicaid LTSS.~~

~~The LDSS shall not deny or terminate home-based services solely because the adult is eligible for or receiving a Medicaid LTSS. Before an LDSS terminates home-based services, the LDSS shall ensure that the individual will receive the Medicaid LTSS hours necessary to meet the individual's needs. The LDSS may terminate home-based services if the combination of support systems and Medicaid LTSS can meet the adult's assessed needs.~~

~~The LDSS cannot deny home-based services 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 30-120 and Chapter 5.~~

~~If an adult is eligible for other services (such as a Medicaid LTSS), but cannot afford the co-payment or chooses home-based services in lieu of Medicaid LTSS, the LDSS cannot deny services to that adult if he or she meets eligibility requirements for the requested service(s) and funding for services is available.~~

#### ~~4.2.10 The LDSS as the adult's fiscal agent~~

~~See Chapter 5 for information on the relationship between local 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~~

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#### ~~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 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 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)~~

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#### ~~4.4.1 Definition – AFC~~

~~AFC is an optional local 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 AFC admission using the Virginia UAI. The adult shall meet residential level of care criteria at a minimum. AFC may be provided for up to three adults by any one provider. Care provided for more than three adults requires licensure by VDSS as an assisted living facility.~~

~~The provision of an AFC program shall be approved by the local board of social services before services can be provided. There shall be local board policy addressing the provision of AFC when this option is chosen. A facility cannot be referred to as an AFC home unless it has been approved by the LDSS. Approved AFC providers are bound by the department-approved provider standards located in Chapter 5 and regulations (22 VAC 30-120).~~

~~The LDSS shall only approve AFC homes in which it will make placements. The LDSS may not approve AFC homes for placements by other agencies. LDSS may collaborate with community services boards (CSB) regarding the provision of AFC. See Section 4.4.7 for additional information.~~

#### ~~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 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. A sample "Interagency Agreement" is available on the VDSS intranet.~~

~~Refer to Chapter 5 for additional information on recruitment, screening, and approval.~~

##### ~~4.4.3.2 Assessment using the UAI~~

~~The service worker conducting the assessment shall follow ALF assessment guidance for conducting the AFC assessment. The assessment shall be updated at least annually. 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 an AFC provider; or~~
- ~~• Require a higher level of care such as nursing facility.~~

##### ~~4.4.3.3 Facilitating the admission~~

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

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

~~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 AFC Provider 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 VDSS intranet.~~

~~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 healthcare provider 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. See Chapter 5 Adult Services Providers for additional information.~~

#### ~~4.4.3.5 Ongoing contact~~

~~The placing LDSS will maintain contact with the adult residing in AFC and the provider at least on a quarterly basis. The placing LDSS 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 LDSS responsible for determining AG eligibility~~

~~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.~~

#### ~~4.4.3.7 AG and Medicaid LTSS~~

~~Pursuant to 12 VAC 30-120-920, individuals who are receiving AG are not eligible for Medicaid LTSS.~~

#### ~~4.4.4 Medical examination – AFC~~

~~Each adult in an AFC home shall submit a medical statement from a licensed physician, a local health department, licensed nurse practitioner or licensed physician assistant 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 AG Rate – AFC~~

~~The following services are included in the AG rate paid to the AFC provider:~~

##### ~~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 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 Third-party payments on behalf of individuals receiving AG~~

~~An AFC provider may accept payment by a third party for services provided to an individual receiving AG. These payments are not to be counted as income when determining eligibility for AG.~~

~~Pursuant to § 51.5-160 of the Code of Virginia, third-party payments shall be made:~~

- ~~Directly to the AFC provider by the third party on behalf of the individual receiving AG;~~
- ~~Voluntarily by the third party, and not in satisfaction of a condition of admission, stay, or provision of proper care and services to the individual receiving AG; and~~

- ~~For specific goods and services provided to the individual receiving AG other than food, shelter, or specific goods or services required to be provided by the AFC provider as a condition of participation in the AG program.~~

~~The AFC provider shall document all third-party payments received on behalf of an individual receiving AG, including the source and amount of the payment and the goods and services for which these payments are to be used.~~

~~Documentation shall be provided to the Department upon request. AFC providers shall provide each individual receiving AG with a written list of goods and services that are covered by the grant and a statement that the AFC provider may not charge an individual receiving AG or the individual's family additional amounts for goods or services included on such list.~~

#### ~~4.4.6.3 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 intranet.~~

~~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.~~

#### ~~4.4.6.4 Coordinating the adult's eligibility for AG~~

~~For an adult to be eligible for an AG payment, the following shall occur:~~

- ~~Both the service worker and the eligibility worker shall coordinate efforts to determine the adult's eligibility to reside in AFC. 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 admission. 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 adult's admission to the AFC. The service worker shall~~

~~provide verification of the adult's admission to the eligibility worker. The eligibility worker shall approve the case and determine the amount of the AG payment.~~

- ~~• See Section 4.4.3.7 for information about AG and Medicaid LTSS eligibility.~~

#### ~~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 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 intellectual disability in the AFC home.~~

~~The LDSS is responsible for approving the AFC home and following 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.~~

#### ~~4.4.8 AFC option as an option for youth transitioning from child foster care~~

~~LDSS often struggle arranging service for foster care youth who will continue to need support as they transition out of child foster care (CFC). Locating an appropriate living arrangement for a young adult with special needs may be difficult, as most adult long-term care facilities focus on the elderly individuals with significant medical and nursing needs. An AFC program may be an appropriate option to meet the needs of these foster youth in transition.~~

~~Section 63.2-905.1 of the Code of Virginia, allows for independent living services as part of the foster care services to be provided to any child 14 years of age or older. Though permanency is the goal for youth in foster care, planning needs to occur for youth who may not achieve permanency. If an AFC setting is being explored, developing an appropriate post foster care plan for a youth includes collaboration among CFC workers, eligibility workers, and adult services social workers to coordinate an individual's seamless transition from CFC services to an AFC setting. In some situations, the youth may be in need of legal representation such as guardianship. The CFC worker should assess the need for legal representation early in the youth transition planning and begin consultation with the AS worker in obtaining it. CFC workers would need to assess the youth's interest in living in an AFC home and consult the youth's family members as to their opinion regarding the suitability of an AFC setting for the youth. A review of the youth's appropriateness for AFC would~~

~~include an evaluation of the youth's potential eligibility for SSI and/or Social Security Disability Insurance (SSDI), AG eligibility and the extent to which the youth needs assistance with activities of daily living (ADLs) and instrumental activities of daily living (IADLs).~~

~~For additional information on AFC for youth aging out of CFC, see Appendix B.~~

## **~~4.5 Assisted Living Facility (ALF) assessment~~**

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### **~~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 located on the VDSS intranet for complete information.~~

~~For information on assessment of private pay individuals, see the Assisted Living Facility Private Pay Assessment Manual on the VDSS intranet.~~

### **~~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 conditions, 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 (AG) individuals in ALFs~~**

~~Employees of the following entities 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.~~
- ~~Acute care hospitals. Note: initial assessments only.~~
- ~~Independent physicians who have a signed provider agreement with DMAS to conduct ALF assessments. 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.~~

~~Pursuant to 22 VAC 30-110-90, the LDSS is the assessor of last resort if there is no other assessor willing or able to perform the assessment or reassessment, unless the individual is receiving services from a CSB or BHA.~~

~~In order to ensure that the adult is being admitted to/residing in an ALF that is licensed by VDSS and has a valid AG provider agreement with DARS, service workers shall review the list of ALFs that accept AG at the time of the assessment or reassessment. If the adult is being admitted to or residing in a facility that does not appear on the list, the assessor shall contact the DARS AG Program Consultant or the AG Program Manager immediately. The list is available on the VDSS intranet and the DARS public site.~~

#### **~~4.5.5 Assessors for private pay individuals in ALFs~~**

~~Unless a private pay 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 VDSS intranet, 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 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 intranet. 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. 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.~~

#### ~~4.5.7 When to complete a UAI for individuals residing in an ALF~~

- ~~• The UAI shall be completed 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 and:
  - ~~○ With the approval of a Virginia APS worker for public pay individuals; or~~
  - ~~○ With the approval of a Virginia APS worker or a physician for private pay individuals.~~~~
- ~~• The UAI 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 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 ALF Assessment Manual for more specific information on prohibited conditions.~~

#### ~~4.5.9 Possible results from an ALF assessment~~

- ~~A recommendation for ALF care;~~
- ~~Referral to a Screening Team to determine if the individual is appropriate for Medicaid LTSS;~~
- ~~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 management ALF assessments~~

~~An individual who needs an annual reassessment shall be registered in the Adult Services Program in PeerPlace within three days of the completed ALF assessment. A service plan is not required if the LDSS is only conducting an annual reassessment and no other services are needed.~~

## **4.6 Auxiliary Grant Supportive Housing**

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

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

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

## **4.7 Screenings for Medicaid LTSS**

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~~Individuals who are Medicaid eligible or will be Medicaid eligible within 180 days of placement and who are seeking Medicaid long-term services and supports (LTSS) shall be screened within 30 days of the individual's request for a screening to determine their need for the service (§ 32.1-330 of the Code of Virginia).~~

~~Additionally, pursuant to § 32.1-330.4 of the Code of Virginia, screenings are required for individuals who are applying for Programs for All-Inclusive Care for the Elderly (PACE) whether or not the individual is eligible for Medicaid.~~

~~All screening paperwork, including the UAI, shall be entered into the DMAS electronic system, (*eMLS*). *eMLS* is the system of record for LTSS and the LDSS is not required to retain screening documents outside of *eMLS*. Screening teams shall follow DMAS screening regulations and guidance in the DMAS Manual, Screening for Medicaid LTSS, Chapter IV. The Manual is available on the DMAS website under the Provider Services tab.~~

~~All authorized screeners who conduct screenings shall complete the DMAS online screening training and receive a certificate with a unique certification number. When prompted, the screener shall enter the certification number in *eMLS*. Screeners, who have not completed the training and did not received a unique certification number, will be unable to submit screenings in *eMLS*.~~

#### ~~4.7.1 Community-Based screening team~~

##### ~~4.7.1.1 Composition of the team~~

~~The team shall consist of a nurse, and a social worker or other Department-designated assessor, and a physician, who are employees of either the local health department (LHD) or LDSS. Per DMAS “other Department-designated assessor” means qualified LDSS employees including family services specialists and others who have been certified to administer the UAI and conduct screenings.~~

~~DMAS has a contract with the Virginia Department of Health to administer child screenings in Virginia. LDSS may opt in or out of completing child screenings with the LHD. Additionally, LDSS may change the original opt in or opt out decision as long as a 30-day notice is provided to the LHD.~~

~~The team composition has not changed for adult screenings.~~

##### ~~4.7.1.2 Managing screening requests~~

~~LDSS are encouraged to establish a protocol to manage individuals' requests for screenings. LDSS may determine the manner in which they will track screening requests and may collaborate with the LHD to track requests. LDSS may utilize the screening request log in PeerPlace adult services program. LDSS should consider tracking the following information:~~

- ~~• Name of and contact information for individual who needs the screening.~~
- ~~• Date and time of the request.~~
- ~~• Name of the LDSS employee who received the request.~~
- ~~• Name of and contact information for individual who made the request.~~
- ~~• Date the screening is scheduled to occur.~~
- ~~• Date the screening was completed.~~

##### ~~4.7.1.3 Responsibilities of the team~~

~~The team is responsible for screening individuals in the individual's residence such as private home, apartment, assisted living facility, nursing facility, or jail. The screening team is responsible for screening individuals who request LTSS once the individual relocates to the jurisdiction of the screening team.~~

~~Screening teams are not required to conduct screenings in certain circumstances. The Screening for Medicaid LTSS, Chapter IV, manual provides information as to when teams are exempted from conducting screenings.~~

~~If the individual is not already Medicaid eligible or has not applied for Medicaid, the individual should be referred to the LDSS so that eligibility for Medicaid can be determined. However, the screening team shall not require that the individual apply for Medicaid or have Medicaid before a screening occurs.~~

#### ~~4.7.2 Screenings by nursing facility staff~~

~~If an individual who applies for or requests Medicaid LTSS is receiving skilled nursing services not covered by Medicaid in an institutional setting following discharge from an acute hospital, DMAS shall require qualified staff of the skilled nursing facility to conduct the screening in accordance with the requirements established by DMAS with the results certified by a physician prior to the initiation of Medicaid LTSS~~

## ~~4.8 The Department of Behavioral Health and Developmental Services (DBHDS) and Community Services Boards (CSB)~~

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### ~~4.8.1 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.~~

### ~~4.8.2 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).~~

#### ~~4.8.3 Admission to a state facility operated by DBHDS~~

~~The LDSS shall refer adults to the local CSB for 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.~~

#### ~~4.8.4 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.~~

### ~~4.9 Long-term care coordinating committees~~

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

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

services and supports in the locality. Localities are encouraged to provide services and supports within each category of service in the continuum and to allow one person to deliver multiple services, when possible.

## **4.10 Appendix A: Forms**

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The following forms may be used during the provision of Adult Services. Unless otherwise indicated, these forms are located on the VDSS intranet.

### **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.



## **4.11 Appendix B: AFC as option for youth aging out of CFC**

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### **4.11.1 Social Security Disability Determination**

Unless an individual is paying privately for AFC placement, an AG payment may be the only means by which an individual can afford AFC placement. Part of the approval process for AG includes an evaluation as to whether an individual meets an AG covered group of aged, blind or disabled (ABD) as determined by the Social Security Administration (SSA). As disability determinations may take several months until approval, if the youth does not currently receive ABD benefits, the CFC worker should explore the youth's potential eligibility for an AG covered group. SSA recently allowed youth with disabilities who are eligible for Supplemental Security Income (SSI) to file an SSI application up to 180 days before federal foster care payments are expected to end. This change in SSA policy will aid foster care youth with disabilities to make the transition to adult life by helping to ensure that they have income and health benefits in place. For additional information about SSI applications for foster care youth with disabilities see section DI 25201.011 in the Social Security Administration's Program Operations Manual System (POMS).

Additional information about Social Security eligibility and the disability determination process may be found at:

SSI: [http://www.ssa.gov/pgm/links\\_ssi.htm](http://www.ssa.gov/pgm/links_ssi.htm)

SSDI: [http://www.ssa.gov/pgm/links\\_disability.htm](http://www.ssa.gov/pgm/links_disability.htm)

### **4.11.2 AG Eligibility**

CFC workers assisting a youth interested in transitioning to AFC, may need to explore other eligibility requirements for AG, if AG will be the method of payment to the AFC provider. The LDSS eligibility worker is an appropriate resource concerning AG eligibility, including application requirements and income and resources limitations. AG applications may take up to 45 days to process, therefore it is necessary to discuss potential AG eligibility prior to the youth transitioning out of foster care. Additional information about AG eligibility may be found in the AG manual. The form used to apply for AG is the Application for Benefits. The Manual and Application for Benefits are located on the VDSS intranet.

### **4.11.3 Assessment**

Assessment of an individual's level of care using the UAI is needed to determine if AFC is an appropriate placement. As the youth approaches possible transition out of CFC, the CFC worker and adult services worker should discuss the youth's needs and dependencies using the UAI as a guide.

~~Once the individual's ADL and IADL needs are determined, the CFC worker in collaboration with the adult services worker should review potential AFC providers to determine which provider could best meet the needs of the individual. Youth should also have the opportunity to meet potential AFC providers and discuss with which provider he or she would feel most comfortable.~~

#### **4.11.4 Foster Care Parents as AFC Providers**

~~In many cases, the child foster parent(s) may have formed an attachment to the young adult and wish to continue the relationship and become an AFC provider. AFC could offer the opportunity for the individual to remain in a home environment in which he or she is most comfortable. Provided that the LDSS has an active AFC program, the adult services and the CFC workers need to coordinate the process of approving the foster care parent (s) as an AFC provider. If the CFC parent does not want to seek approval as an AFC provider, workers may want to explore the possibility of an extended member of the CFC family (uncles, aunts, grandparents) becoming an AFC provider for the individual who is transitioning out of CFC. See Appendix E for a comparison of the CFC and AFC provider approval process.~~

~~Some individuals may wish to continue in the role as CFC parents while simultaneously seeking approval as an AFC provider. This situation may allow for siblings living in the CFC household to remain together if an older sibling with a disability ages out of CFC services. Adult services workers may work collaboratively on a dual (CFC & AFC) approval process in order to meet the needs of the youth aging out of CFC as well as the needs of his or her siblings who will continue to receive CFC services.~~

# 7

## GUARDIANSHIP AND CONSERVATORSHIP

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# 7

## GUARDIANSHIP AND CONSERVATORSHIP

### 7.1 Definitions

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The following words and terms are defined in **§64.2-2000** of the Code of Virginia unless otherwise specified. ~~as identified below. When used in this chapter, they shall have the following meaning, unless the context clearly indicates otherwise:~~

<b>Term</b>	<b>Definition</b>
<b>Adult</b>	<del>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).</del>
<b>Annual Report</b>	<del>The report required to be filed by a guardian pursuant to § 64.2-2020. (§ 64.2-2000 of the Code of Virginia).</del>

Term	Definition
<b>Conservator</b>	<p>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." <i>"Conservator" includes (i) a local or regional program designated by the Department for Aging and Rehabilitative Services as a public conservator pursuant to Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5 or (ii) any local or regional tax-exempt charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code to provide conservatorial services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person. If a tax-exempt charitable organization has been designated by the Department for Aging and Rehabilitative Services as a public conservator, it may also serve as a conservator for other individuals.</i> (<del>§ 64.2-2000 of the Code of Virginia</del>).</p>
<b>Guardian</b>	<p>A person appointed by the court who is responsible for the personal affairs of an incapacitated person, including responsibility for making decisions regarding the person's support, care, health, safety, habilitation, education, therapeutic treatment, and, if not inconsistent with an order of involuntary admission, residence. Where the context plainly indicates, the term includes a "limited guardian" or a "temporary guardian." <i>The term includes (i) a local or regional program designated by the Department for Aging and Rehabilitative Services as a public guardian pursuant to Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5 or (ii) any local or regional tax-exempt charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code to provide guardian services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person. If a tax-exempt charitable organization has been designated by the Department for Aging and Rehabilitative Services as a public guardian, it may also serve as a guardian for other individuals.</i> (<del>§ 64.2-2000 of the Code of Virginia</del>).</p>

<b>Term</b>	<b>Definition</b>
<b>Guardian Ad Litem</b>	<p>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 30-100-10).</p> <p><i>An attorney appointed by the court to represent the interests of the respondent and whose duties include evaluation of the petition for guardianship or conservatorship and filing a report with the court pursuant to § 64.2-2003.</i></p>
<b>Incapacitated Person</b>	<p>An adult who has been found by a court to be incapable of receiving and evaluating information effectively or responding to people, events, or environments to such an extent that the individual lacks the capacity to (i) meet the essential requirements for his health, care, safety, or therapeutic needs without the 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. (<del>§ 64.2-2000 of the Code of Virginia</del>).</p>
<b>Limited Guardian</b>	<p>A person appointed by the court who has only those responsibilities for the personal affairs of an incapacitated person as specified in the order of appointment.</p>
<b>Public Conservator</b>	<p>A person who is provided through (i) a local or regional program designated by the Department for Aging and Rehabilitative Services as a public conservator pursuant to Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5 or (ii) any local or regional tax-exempt charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code to provide conservatorial services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person (<del>§ 64.2-2000 of the Code of Virginia</del>).</p>
<b>Public Guardian</b>	<p>A person provided through (i) a local or regional program designated by the Department for Aging and Rehabilitative</p>



Term	Definition
	<del>Services as a public guardian pursuant to Article 6 (§51.5-149 et seq.) of Chapter 14 of Title 51.5 or (ii) any local or regional tax-exempt charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code to provide guardian services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person (§ 64.2-2000 of the Code of Virginia).</del>
<b>Respondent</b>	An allegedly incapacitated person for whom a petition for guardianship or conservatorship has been filed. <del>(§ 64.2-2000 of the Code of Virginia).</del>
<b>Significant-Connection State</b>	A state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available (§ 64.2-2105 of the Code of Virginia).

## 7.2 Protecting vulnerable adults through guardianship and/or conservatorship

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### 7.2.1 ~~Basis and purpose~~

~~A guardian or 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 20 (§ 64.2-2000 et seq.) of Title 64.2 of the Code of Virginia.~~

*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.*

*An individual may be appointed to serve as both guardian of the incapacitated adult and conservator of the adult's estate. If this occurs, the individual appointed by the court has authority for both personal and financial decisions and for property management. The court may appoint two individuals to fulfill these duties by naming one as guardian and the other as conservator.*

~~The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act 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 (§§ 64.2-2100 through 64.2-2120 of the Code of Virginia).~~

## ~~7.2.2 Types of protection and responsibilities Appointment of guardian and conservator~~

### ~~7.2.2.1 Guardian~~

~~Guardians are appointed by the circuit court to make decisions about the personal life and affairs of the incapacitated adult. The guardian 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.~~

### ~~7.2.2.2 Conservator~~

~~Conservators are appointed by the circuit court to manage the incapacitated adult's assets such as, paying bills and making financial decisions. 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.~~

### ~~7.2.2.3 Guardians and conservators~~

~~An individual may be appointed to serve as both guardian of the incapacitated adult and conservator of the adult's estate. The individual appointed by the court has authority for both personal and financial decisions and for property management. The court may appoint two individuals to fulfill these duties by naming one as guardian and the other as conservator.~~

### ~~7.2.3 Situations that indicate need for a guardian or conservator~~

~~Section 64.2-2000 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.~~

~~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.~~

### ~~7.2.4 Determining the need for a guardian and/or conservator~~

~~In the petitioning process, the adult is referred to as the respondent. The petitioning party has the responsibility to present clear and convincing evidence to substantiate the need for the appointment of a guardian and/or conservator for the respondent. Evidence **of this need** 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 adult that documents the appropriateness and necessity of guardianship and/or conservatorship. This report is required under § 64.2-2005 of the Code of Virginia. See Section 7.2.5.1 for information on the evaluation report.~~

## 7.2.5 Documenting incapacity

### 7.2.5.1 The comprehensive evaluation

(§ 64.2-2005 of the Code of Virginia). A report evaluating the condition of the respondent shall be filed, ~~under seal,~~ with the court *in a separate confidential addendum and provided within a reasonable time prior to the hearing on the petition,* to the guardian ad litem, the respondent, and ~~all adult individuals and all entities to whom notice is required under subsection C of § 64.2-2004 within a reasonable time prior to the hearing on the petition~~ *any other person or entity that becomes a party to the action.* The report shall be prepared by one or more licensed physicians or psychologists or licensed professionals skilled in the assessment and treatment of the physical or mental conditions of the respondent as alleged in the petition.

Prior to the guardianship or 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 respondent.

*When the LDSS is working with an adult usually during an Adult Protective Services (APS) investigation, and the adult may need a guardian or conservator,* 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 and abilities of the respondent. 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 model form “Physician’s Evaluation of Respondent” is posted on the DSS intranet and may be provided to the physician who is conducting the evaluation. The LDSS may modify this form as needed.

The cost of the evaluation may be charged as part of the costs of the proceedings at the discretion of the court. See Section 7.2.8.8 for information on the cost of proceedings.

#### **7.2.5.2 Role of the service LDSS worker in petition process**

*If the LDSS is involved in the petitioning process,* ~~The service~~ the worker shall ~~examine~~ *evaluate and document* all available information concerning the alleged incapacitated adult’s *ability to make* decisions, ~~making in areas that are critical to the adult. The worker shall document situations in which the adult has been unable to make decisions in his or her own interest, including but not limited to, 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.

#### **7.2.6 Who serves as guardian or 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 **in this role** 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.

The following should be considered when determining the appropriateness of a person to serve as guardian or conservator:

- A relationship with the adult alleged to need a guardian/conservator.
- Geographic accessibility to the alleged incapacitated adult.
- The absence of a conflict of interest.
- A willingness to fulfill the required duties of guardianship or conservatorship.
- Ability to understand the requirements of guardianship or conservatorship, including the submission of required reports.
- Emotional stability.
- Good physical health of the proposed guardian or conservator.

The LDSS may develop its own guidance on whether LDSS employees may serve as guardians or conservators. The Code of Virginia does not prohibit LDSS employees from serving as a guardian or conservator, though the LDSS should carefully evaluate whether it is appropriate for an LDSS employee to be named as a guardian for an incapacitated adult. See Section 7.3.2.7 for procedures regarding the review of the guardian report when an LDSS employee is the guardian.

#### **7.2.6.1 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 adult.

#### **7.2.6.2 Guardians/conservators who are non-residents**

A non-resident adult parent, brother, sister, spouse, child, or other adult descendant of the adult 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 (§ 64.2-1426 of the Code of Virginia).

### **7.2.7 Eligibility for public guardian or conservator**

(§ 64.2-2010 of the Code of Virginia). The circuit court may appoint a local or regional program authorized by the Department for Aging and Rehabilitative Services pursuant to Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5 as the guardian or conservator for any resident of the Commonwealth who is found to be incapacitated if the court finds that (i) the incapacitated person's resources are insufficient to fully compensate a private guardian and pay court costs and fees associated with the appointment proceeding and (ii) there is no other proper and suitable person willing and able to serve in such capacity or there is no guardian or conservator appointed within one month of adjudication pursuant to § 64.2-2015. The court shall use the guidelines for determining indigency set forth in § 19.2-159 in determining the sufficiency of the respondent's estate. If the respondent would be eligible for the appointment of counsel pursuant to § 19.2-159, he shall be eligible for the appointment of a public guardian or conservator pursuant to this section.

There may be circumstances when an LDSS is named as a guardian or the LDSS contracts with another entity to serve as guardian because there are no other suitable individual to serve in this capacity. When these situations occur and it is determined that the incapacitated adult meets criteria to be served by the public guardianship program, the LDSS shall refer the incapacitated adult to the public guardianship program waiting list for consideration of the next available public guardian slot.

Additional information about the Virginia Public Guardianship Program is available on the Department for Aging and Rehabilitative Services [\(DARS\)](#) website.

### **7.2.8 Procedures to petition for appointment of a guardian/conservator**

#### **7.2.8.1 Circuit court in which petitions are to be filed**

The guardianship/conservatorship petition is to be filed in the circuit court of the county or city in which the subject of the petition resides or is located or in which the subject of the petition resided immediately prior to entering a nursing facility, assisted living facility, state mental health facility, or any similar facility. The circuit court in which the proceeding is first commenced may order a

transfer to another locality if it would be in the best interest of the incapacitated adult.

If the petition is for the appointment of a conservator for a non-resident with property in the state, the petition is to be filed in the city or county in which the alleged incapacitated adult's property is located (§ 64.2-2001 of the Code of Virginia).

### **7.2.8.2 Jurisdiction**

A court in the Commonwealth has jurisdiction to appoint a guardian for a respondent if:

- The Commonwealth is the respondent's home state;
- On the date the petition is filed, the Commonwealth is a significant-connection state and;
  - The respondent does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because the Commonwealth is a more appropriate forum; or
  - The respondent has a home state, a petition for appointment is not pending in a court of that state or another significant-connection state, and, before the court makes the appointment:
    - A petition for an appointment is not filed in the respondent's home state;
    - An objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and
    - The court in the Commonwealth concludes that it is an appropriate forum (§ 64.2-2107 of the Code of Virginia).

### **7.2.8.3 Special jurisdiction**

A court of the Commonwealth lacking jurisdiction has special jurisdiction to do any of the following:

- Appoint a guardian in an emergency for a term not exceeding 90 days for a respondent who is physically present in the Commonwealth.



- Issue a conservatorship order with respect to real or tangible personal property located in the Commonwealth; or
- Appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued.

If a petition for the appointment of a guardian in an emergency is brought in the Commonwealth and the Commonwealth was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment (§ 64.2-2108 of the Code of Virginia).

#### **7.2.8.4 Appropriate forum**

A court of the Commonwealth that has jurisdiction to appoint a guardian or issue a conservatorship order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

In determining whether it is an appropriate forum, the court shall consider all relevant factors, including:

- Any expressed preference of the respondent;
- Whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect or exploitation;
- The length of time the respondent was physically present in or was a legal resident of the Commonwealth or another state;
- The distance of the respondent from the court in each state;
- The financial circumstances of the respondent's estate;
- The nature and location of the evidence;
- The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;
- The familiarity of the court of each state with the facts and issues in the proceeding; and

- If an appointment were made, the court's ability to monitor the conduct of the guardian or conservator (§ 64.2-2110 of the Code of Virginia).

#### 7.2.8.5 Who may file a petition?

Any interested person may petition the circuit court to have a guardian, conservator, or both appointed for an alleged incapacitated adult. The petitioner is the person who presents evidence to the court that the respondent is unable to take care of himself or his financial affairs or both and is, therefore, in need of a guardian, conservator or both to perform certain duties. The petitioner's attorney files a petition with the court and is responsible for notifying relatives of the respondent of the guardianship and/or conservatorship hearing (§ 64.2-2002 of the Code of Virginia).

Petitioners are frequently relatives *of the alleged incapacitated adult*. It is appropriate for an LDSS to petition in an APS case *as a result of an emergency order for APS*. ~~when there is no family member or other interested person to file.~~

If the LDSS is petitioning for the appointment of a guardian, the "Request for the Appointment of a Guardian" form may be used by the LDSS to gather relevant information about the respondent that needs to be included in the petition. The LDSS may modify this form as needed or when advised to do so by the LDSS attorney. The form is posted on the DSS intranet.

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

#### 7.2.8.6 Information included in a petition

The filing of a guardianship/conservatorship petition with the clerk of court constitutes the practice of law and shall be performed by an attorney. ~~However, APS workers are frequently expected to gather essential information and complete certain paperwork in preparation for the filing.~~

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 (§ 64.2-2002 of the Code of Virginia).

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

(§ 64.2-2002 of the Code of Virginia). The petition shall state the petitioner's name, place of residence, post office address, and relationship, if any, to the respondent, and, to the extent known as of the date of filing, shall include the following:

1. The respondent's name, date of birth, place of residence or location, post office address, and the sealed filing of the social security number;
2. The basis for the court's jurisdiction under the provisions of Article 2 (§ 64.2-2105 et seq.) of Chapter 21;
3. The names and post office addresses of the respondent's spouse, adult children, parents and adult siblings or, if no such relatives are known to the petitioner, at least three other known relatives of the respondent, including step-children. If a total of three such persons cannot be identified and located, the petitioner shall certify that fact in the petition, and the court shall set forth such finding in the final order;
4. The name, place of residence or location, and post office address of the individual or facility, if any, that is responsible for or has assumed responsibility for the respondent's care or custody;
5. The name, place of residence or location, and post office address of any agent designated under a durable power of attorney or an advance directive of which the respondent is the principal, or any guardian, committee or conservator currently acting, whether in this state or elsewhere, and the petitioner shall attach a copy of any such durable power of attorney, advanced directive, or order appointing the guardian, committee, or conservator, if available;

*5a. The name, location, and post office address of the respondent's primary health care provider, if any;*

6. The type of guardianship or conservatorship requested and a brief description of the nature and extent of the respondent's alleged incapacity;
7. When the petition requests appointment of a guardian, a brief description of the services currently being provided for the respondent's health, care, safety, or rehabilitation and, where appropriate, a recommendation as to living arrangements and treatment plan;
8. If the appointment of a limited guardian is requested, the specific areas of protection and assistance to be included in the order of appointment and, if the

appointment of a limited conservator is requested, the specific areas of management and assistance to be included in the order of appointment;

9. The name and post office address of any proposed guardian or conservator or any guardian or conservator nominated by the respondent, and that person's relationship to the respondent;

10. The native language of the respondent and any necessary alternative mode of communication;

11. A statement of the financial resources of the respondent, that shall, to the extent known, list the approximate value of the respondent's property and the anticipated annual gross income, other receipts, *and debts; contained in a separate confidential addendum, pursuant to § 64.2-2000.1;*

12. A statement of whether the petitioner believes the respondent's attendance at the hearing would be detrimental to the respondent's health, care or safety; and

13. A request for appointment of a guardian ad litem.

#### 7.2.8.7 Time frame for hearing

(§ 64.2-2007 of the Code of Virginia). The court or the jury, if a jury is requested, shall hear the petition for the appointment of a guardian or conservator. The hearing may be held at such convenient place as the court directs, including the place where the respondent is located. The hearing shall be conducted within 120 days from the filing of the petition unless the court postpones it for cause.

#### 7.2.8.8 Cost of proceedings waived or borne by the Commonwealth

If it is alleged under oath that the estate of the alleged incapacitated adult is unavailable or insufficient to pay the fees and costs of the proceedings, the court may waive such fees and costs as prescribed by § 64.2-2008 of the Code of Virginia). Those fees include the fees for the respondent's attorney and the guardian ad litem.

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

The guidelines for determining indigence set forth in § 19.2-159 of the Code of Virginia shall be used by the court in determining the sufficiency of the incapacitated adult's estate. If the incapacitated adult would be eligible for the appointment of counsel pursuant to § 19.2-159, he or she shall be eligible for the appointment of a guardian/conservator pursuant to this section.

#### **7.2.8.9 Reimbursement to petitioner/petitioner required to pay**

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

The court may require the petitioner to pay or reimburse all or some of the respondent's reasonable costs and fees and any other costs incurred if the court finds that the petitioner initiated a proceeding that was in bad faith or not for the benefit of the respondent (§ 64.2-2008 of the Code of Virginia).

#### **7.2.9 Compensation to guardian ad litem, attorney, and evaluator appointed by the court**

The court may allow reasonable compensation from the estate of the incapacitated adult to any guardian ad litem, attorney, or evaluator appointed by the court. Any compensation allowed shall be taxed as costs of the proceeding (§ 64.2-2012 of the Code of Virginia).

#### **7.2.10 Qualification after appointment**

*Pursuant to 64.2-2011 of the Code of Virginia, a guardian or conservator appointed in the court order shall qualify before the clerk. Qualification entails taking an oath, posting of bond, and accepting educational materials provided by the court. Upon qualification, the court issues the guardian or conservator a certificate of qualification. A guardian or conservator cannot serve as a guardian or conservator without qualifying first.*

#### **7.2.11 Periodic review hearings**

*(§ 64.2-2009 of the Code of Virginia). A1. Beginning July 1, 2023, the court shall set a schedule in the order of appointment for periodic review hearings, to be held no later than one year after the initial appointment and no later than every three years thereafter, unless the court orders that such hearings are to be waived because they are unnecessary*

*or impracticable or that such hearings shall be held on such other schedule as the court shall determine.*

*Periodic review hearings are not retroactive to guardianship cases appointed prior to July 1, 2023. A court cannot waive the initial periodic review hearing if the petitioner for guardianship or conservatorship is a hospital, nursing facility, ALF, or other similar institution.*

### 7.2.12 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.

Pursuant to § 64.2-2019 of the Code of Virginia, the guardian has the following responsibilities:

- *Maintaining sufficient contact with the incapacitated adult to know of his or her capabilities, limitations, needs, and opportunities and as needed to comply with the duties pursuant to the order of appointment and this section and any other provision of law. The guardian shall visit the incapacitated adult as often as necessary and at least three times per year, with at least one visit occurring every 120 days. Except as otherwise provided in subsection C1, of the three required visits, at least two visits shall be conducted by the guardian. The guardian shall conduct at least one of such visits in person; the second such visit may be conducted by the guardian via virtual conference or video call between the guardian and incapacitated person, provided that the technological means by which such conference or call can take place are readily available. The remaining visit may be conducted (i) by the guardian; (ii) by a person other than the guardian, including (a) a family member or friend monitored by the guardian or (b) a skilled professional retained by the guardian to perform guardianship duties on behalf of the guardian and who is experienced in the care of individuals, including older adults or adults with disabilities; or (iii) via virtual conference or video call between either the guardian or such family member or friend monitored by the guardian or skilled professional and the incapacitated person, provided that the technological means by which such conference or call can take place are readily available. If a person other than the guardian conducts any such visit, he shall provide a*

*written report to the guardian regarding any visit conducted by such person. A telephone call shall meet the requirements of this subsection only if such technological means are not readily available.*

*C1. If for reasons outside the guardian's control the guardian cannot make an in-person visit to an incapacitated person, then the visit may be conducted in person by an individual designated by the guardian pursuant to subsection C. If either the guardian or such individual designated by the guardian is unable to conduct an in-person visit, then such visit may be conducted virtually through electronic means such as a virtual conference or video call, or, if such technological means are not readily available, by telephone.*

*C2. In the event of a state of emergency or public health crisis in which a facility in which the incapacitated person resides is not allowing in-person visitation, visitation requirements required pursuant to subsection C may be met via a virtual conference or video call between the guardian and incapacitated person, to the extent feasible for the facility to provide the technological means by which such conference or call can take place. A telephone call shall meet the requirements of this subsection only if such technological means are not readily available.*

- Seeking prior court authorization to change the incapacitated adult's residence to another state, to terminate or consent to a termination of the adult's parental rights, or to initiate a change in the adult's marital status.
- To the extent feasible, encouraging the incapacitated adult to participate in decisions, to act on his or her own behalf, and to develop or regain the capacity to manage personal affairs. A guardian, in making decisions, shall consider the expressed desires and personal values of the incapacitated adult to the extent known, and shall otherwise act in the adult's best interest and exercise reasonable care, diligence and prudence. A guardian shall not unreasonably restrict an incapacitated person's ability to communicate with, visit, or interact with other persons with whom the incapacitated person has an established relationship, *unless such restriction is reasonable to prevent physical, mental, or emotional harm to or financial exploitation of such incapacitated person and after consideration of the expressed wishes of the incapacitated person. Such restrictions shall only be imposed pursuant to § 64.2-2019.1*
- Having the authority to make arrangements for the funeral and disposition of the adult's remains, if the guardian is not aware of any person that has been otherwise designated to make such arrangements or if the next of kin does not wish to make the arrangements or the next of kin cannot be located.

The guardian also has the responsibility to file an annual report on the incapacitated adult's condition with the LDSS for the jurisdiction in which the incapacitated adult resides (§ 64.2-2020 of the Code of Virginia).

### 7.2.13 **Procedures to restrict communication, visitation, or interaction**

*(64.2-2019.1 of the Code of Virginia). A. A guardian may restrict the ability of a person with whom the incapacitated person has an established relationship to communicate with, visit, or interact with such incapacitated person only when such restriction is reasonable to prevent physical, mental, or emotional harm to or financial exploitation of such incapacitated person and after consideration of the expressed wishes of such incapacitated person. Any such restriction may include (i) limitations on time, duration, location, or method of visits or communication, (ii) supervised visitation, or (iii) prohibition of in-person visitation, and shall be the least restrictive means possible to prevent any such harm or exploitation.*

*B. The guardian shall provide written notice to the restricted person, on a form developed by the Office of the Executive Secretary of the Supreme Court of Virginia, stating (i) the nature and terms of the restriction, (ii) the reasons why the guardian believes the restriction is necessary, and (iii) how the restricted person or incapacitated person may challenge such restriction in court pursuant to §64.2-2012. The guardian shall also inform the incapacitated person of such restriction and provide a copy of such written notice to the incapacitated person, unless the guardian has a good faith belief that such information would be detrimental to the health or safety of such incapacitated person. The guardian shall provide a copy of such written notice to the local department of social services of the jurisdiction where the incapacitated person resides and shall file a copy of such written notice with the circuit court that appointed the guardian. If the incapacitated person is in a hospital, convalescent home, or certified nursing facility licensed by the Department of Health pursuant to § 32.1-123, an assisted living facility as defined in § 63.2-100, or any other similar institution, the guardian shall also inform such hospital, home, facility, or institution of such restriction.*

*A guardian is required to file notice of a restriction on the form developed by the Office of the Executive Secretary of the Supreme Court of Virginia and send the form to the appropriate LDSS. The court may act in response to a challenge of a restriction imposed by the guardian. Any order issued by the court in response to a challenge of a restriction shall be filed with the appropriate LDSS. Forms or orders received by the LDSS in response to a restriction shall be uploaded to the appropriate guardianship record in PeerPlace. The LDSS is not required to take any*



*action in response to a restriction notice or court order in response to a challenge to a restriction notice.*

#### **7.2.14 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 (§ 64.2-2012 of the Code of Virginia).

If the petition is for modification to expand the scope of the guardianship/conservatorship, notice of the hearing and a copy of the petition shall be personally served on the incapacitated adult and mailed to other persons entitled to notice. The court shall appoint a guardian ad litem for the incapacitated adult and may appoint one or more licensed physicians or psychologists, or licensed professionals skilled in the assessment and treatment of the physical or mental conditions of the incapacitated adult.

Revocation, modification, or termination may be ordered upon a finding that it is in the best interests of the incapacitated adult and that:

- The incapacitated adult is no longer in need of the assistance or protection of a guardian/conservator;
- The extent of protection, management, or assistance previously granted is either excessive or insufficient considering the incapacitated adult's current need;
- The incapacitated adult's understanding or capacity to manage the estate and financial affairs or to provide for his or her health, care or safety has so changed as to warrant the proposed action; or
- Circumstances are such that the guardianship/conservatorship is no longer necessary or is insufficient.

Regardless of whether an individual's capacity has improved, only the Circuit Court that issued the guardianship order can terminate it. Therefore, the order will remain valid and in full effect until the Circuit Court that issued the order terminates it.

### 7.2.15 Reasons for termination of guardianship

A guardianship order shall terminate for any of the following reasons:

- The death of the incapacitated adult.
- The court orders the termination of the guardianship following a hearing on the petition of any interested person.
- The death, resignation, or removal of the guardian.

A guardianship that terminates due to the guardian's death, resignation or removal does not necessarily mean that the adult is no longer in need of guardianship. **The LDSS may need to assess the incapacitated adult's needs, if the LDSS receives notice of the termination.** ~~The adult's needs and risk shall be assessed by the service worker.~~ The LDSS or another appropriate individual may need to file another petition for guardianship, **if the adult still needs a guardian.**

### 7.2.16 Transfer of guardianship or conservatorship

(§ 64.2-2114 of the Code of Virginia). A guardian or conservator appointed in the Commonwealth may petition the court to transfer the guardianship or conservatorship to another state.

Under the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, if the incapacitated adult relocates to another state, the guardian may petition to transfer the guardianship to that state. Notice of a petition to transfer shall be given to the persons that would be entitled to notice of a petition in the Commonwealth for the appointment of a guardian or conservator.

### 7.2.17 Accepting guardianship or conservatorship transferred to the Commonwealth

A guardian appointed in another state may petition the court in the Commonwealth to accept the guardianship or conservatorship. Notice of a petition for transfer shall be given to those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian in both the transferring state and the Commonwealth (§ 64.2-2115 of the Code of Virginia).

### 7.2.18 Registration of guardianship orders

(§ 64.2-2116 of the Code of Virginia). If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in the Commonwealth, the

guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in the Commonwealth by filing as a foreign judgment in a court, in any appropriate county or city of the Commonwealth, certified copies of the order and letters of office.

### ~~7.3 Case managing a guardianship case~~ **Review of annual guardian report form**

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#### ~~7.3.1 Case registration and service planning in~~ **of guardianship cases**

LDSS shall register guardianship report review cases into the Guardianship Program in PeerPlace, **including uploading the order of appointment and certificate of qualification.**

Workers shall register guardianship cases, in which additional services such as ALF reassessment or APS investigation are being provided into the appropriate PeerPlace program.

A service plan and the Uniform Assessment Instrument (UAI) are not required to be completed in a guardianship case if the only services being provided are receipt and review of the guardianship report. **If the LDSS is providing or arranging other services, such as companion or homemaker for an adult under guardianship** are being performed, a service plan and UAI would be required per guidance. See Chapter 3, for additional information on service planning and UAI requirements.

#### **7.3.2 Guardian reports filed with the LDSS**

When a guardian qualifies before the clerk of the circuit court, the clerk is required by § 64.2-2011 of the Code of Virginia to forward a copy of the order of appointment to the LDSS in the jurisdiction where the incapacitated adult resides. ~~It is required that the LDSS must receive~~ obtain both the qualification document **certificate of qualification** (to confirm the date of qualification) and the order of appointment to **conduct an appropriate review the annual report.** The individual **appointed as guardian** shall have a court order and must qualifying order **qualify** before assuming the role of guardian.

The guardian is responsible for filing an annual report on the incapacitated adult's condition with the LDSS in the jurisdiction in which the incapacitated adult resides. The report form "Report of Guardian for an Incapacitated Person" is located on the DARS public site and DSS intranet. **Note:** Temporary or limited guardians are also required to file guardian reports. Instructions for newly appointed guardians are found in ~~Appendix B~~ **on the DARS public site and DSS intranet.**

The guardian shall certify the annual report by signing under oath that the information contained in the annual report is true and correct to the best of his knowledge.

The LDSS may notify the guardian when the initial or annual report is due. See the Appendix-D **DSS intranet** for a sample letter.

A guardian who was appointed and qualified prior to July 1, 1997 (the date the annual report law took effect) is not required to file an annual report.

### **7.3.2.1 First (initial) report**

Within six months from the date of the guardian's qualification date (not the order of appointment date), the guardian is required to file the first report on the status of the incapacitated adult with the LDSS in the jurisdiction in which the incapacitated adult resides. This first report addresses the status of the incapacitated adult during the first four months, beginning on the date of qualification of the guardian. PeerPlace automatically computes the due date for the initial report.

When the incapacitated adult lives outside the Commonwealth of Virginia, the court that appointed the guardian retains jurisdiction and reports shall be made to the LDSS in the jurisdiction in which the guardian was appointed. See section 7.2.13 for information regarding transfer of guardianship to another state.

**Pursuant to § 64.2-2020 of the Code of Virginia**, the guardian shall submit a \$5.00 filing fee with the first report. If the filing fee is in the form of a check, it shall **should** be made payable to the LDSS (~~§ 64.2-2020 of the Code of Virginia~~). If the filing fee is in the form of cash, the LDSS shall issue a receipt to the guardian.

### **7.3.2.2 Subsequent guardian reports**

Subsequent guardian reports will be for a period of 12 months. Reports will be due within four months from the last day of the previous 12-month reporting period. Each report shall be accompanied by a \$5.00 filing fee. PeerPlace automatically computes the due dates for subsequent annual reports.

### **7.3.2.3 Co-guardian reports**

When co-guardians are appointed, each co-guardian is required to sign the "Annual Report of Guardian for an Incapacitated Person" form if filing jointly. One filing fee of \$5.00 shall accompany the report signed by co-guardians.

Each co-guardian may file a separate report. Separate co-guardian reports shall each be accompanied by the \$5.00 filing fee.

#### 7.3.2.4 Exception to filing guardian report

In rare instances, the guardianship order may state that the guardian is excused from the requirement to file any guardian reports. The LDSS shall follow the guardianship order. As appropriate, the LDSS may ask their attorney to review an order that contains this exception.

#### 7.3.2.5 Processing the guardian report filing fees

Guardianship filing fees received by the LDSS shall be used in the provision of services to adults in need of protection. The LDSS should report all guardian report filing fees as a receipt to Adult Protective Services, Budget Line 895, Cost Code 89501. To record the receipt of Guardianship Fees, the LDSS should enter the amount collected as a credit, using Account Code 40895 Receipt of Guardianship Fees.

#### 7.3.2.6 When the filing fee is not sent

Some guardians may submit the report without including the \$5.00 filing fee. The LDSS may develop their own guidance on how to address the issue of guardians who do not submit the \$5.00 filing fee.

The ~~service~~ worker is still responsible for reviewing the report even if the \$5.00 was not submitted with the report.

#### 7.3.2.7 When the LDSS or LDSS employee is the guardian

When the LDSS or an employee of the LDSS in the jurisdiction in which the incapacitated adult resides is the guardian, the order of ~~Guardianship~~ **appointment** and *certificate of qualification* shall be forwarded to a neighboring LDSS, and the annual reports shall be made by the guardian to the neighboring LDSS. The LDSS may contact ~~the appropriate APS Division Regional Consultant~~ **an Adult Services Specialist** for assistance in assigning responsibility to another LDSS.

#### 7.3.2.8 Review of guardian report by the LDSS

The date the LDSS received the guardian report should be stamped or noted on the report form. **Within 10 calendar days** of the receipt of a guardian report, the ~~service~~ 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 C for guidelines on reviewing guardian reports.

#### **7.3.2.9 Visitation by a guardian**

*Section 64.2-2019 of the Code of Virginia does not address sanctions, penalties, or actions if the guardian does not visit the incapacitated person at the frequency (e.g., every 120 days) or type of contact (e.g., in-person, telephonic) outlined by law. The worker may circle or highlight the guardian's response to Question #9 (visitation section) on the annual report form to call the court's attention to the guardian's response, if the worker believes that the guardian did not visit the incapacitated person according to the law.*

#### **7.3.2.10 Worker's response to review of the guardian report**

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

If the **LDSS** worker has a concern that the guardian has made a false entry or statement on the annual report, the worker should notify the supervisor of this concern. The concerns should be discussed with the agency attorney.

If a guardian makes a false entry or statement in the annual report, he shall be subject to a civil penalty of not more than \$500. This penalty shall be collected by the attorney for the Commonwealth or the county or city attorney (**§ 64.2-2020 of the Code of Virginia**).

If it is the judgment of the ~~service~~ worker that there is reason to suspect that the subject of the annual report is abused, neglected, or exploited or is at risk of abuse, neglect, or exploitation, an APS **report** case shall be ~~opened~~ **made**. ~~An investigation shall 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 service worker shall make an APS report to the appropriate state, county, or city where the incapacitated adult resides.

If an APS case is opened, a copy of the guardian's report shall be uploaded to the attachments in the APS program registration.

*The LDSS worker is still responsible for signing and dating the review of the form in the appropriate area on the annual report form, even if an APS report has been made.*

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

Documentation of the review shall be entered in PeerPlace guardianship program registration notes. The LDSS may send a letter confirming receipt of the report and the date the next report is due. See Appendix G for a sample letter *on the DSS intranet.*

(§ 64.2-2020 of the Code of Virginia). Within 60 days of the receipt of the annual report, the local department shall file a copy of the annual report with the clerk of the circuit court that appointed the guardian, to be placed with the court papers pertaining to the guardianship case.

#### **7.3.2.11 When a guardian fails to file a required report**

If the guardian fails to file a required report within thirty days of its due date, the worker may send a letter to the guardian to notify him that the report is overdue (see Appendix E and F for sample letters). *See DSS intranet for sample overdue letters.*

The LDSS may also:

- Ask the court whether the guardianship was transferred to another state.
- Send a second letter by certified mail, return receipt requested, stating the report is overdue.
- Contact the guardian by phone or other means.
- Notify the court earlier than required by § 64.2-2020 of the Code of Virginia if the guardian is delinquent in submitting the report and does not respond to letters sent by the LDSS.
- Visit the home of the guardian and/or incapacitated adult.

All efforts to contact the guardian shall be documented in PeerPlace guardianship program registration notes.

If, the guardian continues to fail to submit the report within four months from the last day of the reporting period and the well-being of the incapacitated adult is unknown or is in question, then the LDSS **worker** shall, ~~at its discretion,~~ initiate **make** an APS report ~~and proceed with an investigation.~~

However, if the incapacitated adult has relocated outside of Virginia and ~~the guardian fails to file the report, the LDSS will not be able to conduct an APS investigation.~~ If the LDSS **worker** is concerned that the incapacitated adult may be at risk for abuse, neglect or exploitation, the LDSS **worker** shall make a report to APS in the appropriate state. The LDSS shall **may** consult the LDSS attorney for additional guidance, as appropriate.

Twice each year the LDSS shall file with the appropriate circuit court a list of all guardians who are more than ninety days delinquent in filing an annual report (§ 64.2-2020 of the Code of Virginia).

LDSS are recommended to submit the list of delinquent guardians on agency letterhead and include the following information in the letter to court:

- Court case number.
- Name of incapacitated person.
- Name of guardian.
- Date annual report was due.
- Information about actions that the LDSS may have taken to contact the guardian and request the annual report.
- Contact information for the appropriate LDSS worker who can answer questions about the situation.

A sample letter is found in Appendix H **available on the DSS intranet.**

If the LDSS files notice that the annual report has not been filed timely in accordance with § 64.2-2020 of the Code of Virginia, the court may issue a summons or rule to show cause why the guardian has failed to file such annual report (§ 64.2-2020 of the Code of Virginia).



### **7.3.2.12 Transferring the guardianship case when the incapacitated adult relocates to another jurisdiction**

When the incapacitated adult relocates to another jurisdiction the guardian is required to submit the annual report with the LDSS in that jurisdiction.

When the LDSS becomes aware that the incapacitated adult has relocated, the LDSS shall notify the appropriate LDSS of the relocation, document the transfer in the guardianship registration notes, and close the registration in PeerPlace.

If an LDSS receives a guardian report on an adult with whom they are not familiar, it is recommended that the LDSS search PeerPlace to locate the LDSS that managed the guardianship report previously. The LDSS should confirm that the adult has relocated to the new jurisdiction and the new LDSS should request that the previous LDSS close the registration.

### **7.3.2.13 Maintenance of the guardian report**

When the guardian report has been reviewed by the ~~service~~ worker, and no further action is needed, the completed report form shall be uploaded to the attachments tab in the client registration. Once a guardian report becomes part of a case record, the report is considered a confidential social service record pursuant to §§ 63.2-104 and 2.2 3705.5 of the Code of Virginia.

### **7.3.2.14 Purging of the guardian report**

Guardian report forms filed with the LDSS in compliance with § 64.2-2020 of the Code of Virginia shall be purged in PeerPlace following the schedule (GS-15) established by the Library of Virginia. Guardian report forms that have not been uploaded to the PeerPlace record shall be purged by the LDSS according to GS-15. GS-15 is located on the Library of Virginia's website.

## **7.4 Conservators**

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### **7.4.1 General duties and liabilities of conservators**

A conservator stands in a fiduciary relationship to the incapacitated adult for whom he or she was appointed conservator and may be held personally liable for a breach of fiduciary duty to the incapacitated adult.

The powers of a conservator shall terminate upon the death of the incapacitated adult or upon the death, resignation, or removal of the conservator or upon the termination of the conservatorship.

The conservator's responsibilities to the incapacitated adult include:

- Acting in the best interest of the incapacitated adult and, to the extent known, considering the incapacitated adult's expressed desires and personal values.
- Caring for and preserving the estate of the incapacitated adult and managing it to the best advantage; applying the income from the estate to the payment of the incapacitated adult's debts including reasonable compensation to the conservator and to any guardian appointed and to the incapacitated adult's legal dependents.
- Encouraging the incapacitated adult to participate in decisions, to act on his or her own behalf, and to develop or regain capacity to manage the estate and his or her financial affairs (§ 64.2-2021 of the Code of Virginia).

#### **7.4.2 Management powers and duties of the conservator**

A conservator, in managing the estate of an incapacitated adult, has the following management powers and duties (§ 64.2-2022 of the Code of Virginia):

- To ratify or reject a contract entered into by the incapacitated adult;
- To pay bills for the benefit of the incapacitated adult;
- To maintain life, health, casualty and liability insurance for the benefit of the incapacitated adult or his or her legal dependents;
- To manage the estate following termination of the conservatorship until it is delivered to the incapacitated adult or his or her successors;
- To execute and deliver all documents and to take all other actions that will serve the best interest of the incapacitated adult;
- To initiate a proceeding:
  - To revoke a power of attorney under the provisions of the Uniform Power of Attorney Act (§ 64.2-1600 et seq. of the Code of Virginia);
  - To claim a share of the estate of a deceased spouse under § 64.2-302 of the Code of Virginia; or
  - To make an election to take a family allowance, exempt, property, or a homestead allowance under § 64.2-313; and

- To borrow money as seems advisable and/or to mortgage portions of the incapacitated adult's estate to secure loan(s) or renew existing loan(s).

#### **7.4.3 Accounting responsibilities of the conservator**

The conservator accounts to the Commissioner of Accounts. At the time of qualification, the clerk of the circuit court will provide the conservator with the name and address of the Commissioner of Accounts.

(§ 64.2-2021 of the Code of Virginia). A conservator shall comply with and be subject to the requirements imposed upon fiduciaries generally under Part A (§ 64.2-1200 et seq.) of this subtitle, specifically including the duty to account set forth in § 64.2-1305.

An accounting is a record of all money, property, and other assets for which the conservator is responsible. The accounting includes a record of money spent, a record of any investments, and a statement of available cash.

The first accounting covers the first four months of the conservatorship and shall be filed with the Commissioner of Accounts within six months of qualification. After the initial accounting, other accounts are due annually. Any account filed with the commissioner shall be signed under oath by the fiduciary who is filing.

#### **7.4.4 APS reports involving conservators**

When the LDSS receives an APS report that the incapacitated adult's funds are being misused by the conservator, and the report is valid an APS investigation shall be initiated.

## 7.5 Appendix A: Forms

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The following forms are used in guardianship cases. These forms are located on the Adult Services forms page of the VDSS intranet.

### **Notice of Restriction**

*This form is used by guardian to notify the incapacitated adult, the restricted person, the circuit court and the LDSS of a restriction.*

### **Physician's Evaluation of Respondent**

This form may be provided to the physician who is conducting an evaluation.

### **Report of Guardian for an Incapacitated Person**

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

### **Request for the Appointment a Guardian/Conservator**

This form may be used by the LDSS to gather information about the respondent for inclusion in the petition.

## 7.6 Appendix B: Instructions to newly appointed guardians

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~~Court-appointed guardians are required under § 64.2-2020 of the Code of Virginia, to file an annual report with the LDSS in the jurisdiction in which the incapacitated adult resides.~~

~~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 annual report covers a 12-month period. Reports will be due within four months from the last day of the previous 12-month reporting period. (§ 64.2-1305 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 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. **Incomplete report forms will be returned to the guardian for completion.**~~

~~The report form shall be accompanied by a \$5.00 filing fee. If the fee is submitted in check form, 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 § 64.2-2020 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.~~

~~If the LDSS files notice that the annual report has not been timely filed in accordance with § 64.2-2020 of the Code of Virginia, the court may issue a summons or rule to show cause why the guardian has failed to file the annual report.~~

~~If the incapacitated person relocates to another jurisdiction in Virginia, please inform this LDSS promptly.~~

~~If the incapacitated adult moves outside of Virginia, please notify this LDSS promptly.~~

~~If the incapacitated person dies, please notify this LDSS promptly.~~

~~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 is 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, unauthorized, improper, or fraudulent use of an adult as defined in § 63.2-1603 or his funds, property, benefits, resources or other assets for another's profit, benefit, or advantage, including a caregiver or person serving in a fiduciary capacity, or that deprives the adult of his rightful use of or access to such funds, property, benefits, resources, or other assets. "Adult exploitation" includes (i) an intentional breach of a fiduciary obligation to an adult to his detriment or an intentional~~

~~failure to use the financial resources of an adult in a manner that results in neglect of such adult; (ii) the acquisition, possession, or control of an adult's financial resources or property through the use of undue influence, coercion, or duress; and (iii) forcing or coercing an adult to pay for goods or services or perform services against his will for another's profit, benefit, or advantage if the adult did not agree or was tricked, misled, or defrauded into agreeing, to pay for such goods or services or perform such services (§ 63.2-100 of the Code of Virginia).~~

~~For additional information on mandated reporting visit the DARS public site.~~

## 7.7 Appendix CB: Guidelines for review of guardian's report

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

**Address of Incapacitated Person:** The address where the incapacitated person resides.

**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.

**Date Qualified:** The date the guardian qualified before the clerk of the court and was issued a certificate of qualification.

**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 is 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.



**Initial four-month report, annual report, or final report:** A check mark should be placed in the appropriate box designating the type of report.

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

**Describe the living arrangements of the incapacitated person, including address:** This section should describe the setting in which the incapacitated person lives including if the living arrangement is adequate. (i.e., with relatives **or alone in apartment/single home**, in a nursing home or assisted living facility, ~~alone~~, etc.)

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

**State any changes in the condition of the incapacitated person in the past year:** This section should describe any changes in diagnosis or condition of the incapacitated person by any medical provider since the last report.

**Describe all medical, educational, vocational, social, recreational, and professional services and activities 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. Information in this section shall include specific names of medical providers and a description of frequency or number of times the incapacitated person has seen these providers and the date of visits or hospitalizations:** Information required in this section includes specific names of medical providers that treated the person and the frequency or number of times the person was seen by these providers; the date and location of and reason for any hospitalization, and a description of the educational, vocational, social, and recreational activities the person participated 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 whether or not you agree with the current treatment or care 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. **The guardian should describe steps taken to make these changes.** ~~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.

**State the name of any persons whose access to communicate, visit, or interact with the incapacitated person has been restricted and the reasons for such restriction:** In this section the guardian should identify the names of persons they restricted from contacting the incapacitated adult and the reason the restriction was made. The guardian may identify if the restriction is short term or they may identify the restriction is being more permanent.

**Provide a self-assessment as to whether you feel you can continue to carry out the powers and duties imposed upon you as specified in the court's order of appointment:** This section will contain a statement by the guardian as to his or her continued ability to fulfil the duties as the appointed guardian. The guardian may identify they are pursuing a back-up guardian in the event they are unable to continue their duties.

**Unless the incapacitated person resides with you, provide statement of frequency and nature of any (i) in-person visits from you with the incapacitated person over the course of the previous year and (ii) visits over the course of the previous year from a designee performing such visit. If any visit described in this section is made virtually, please specify. If no visit was made within a six-month 120-day period, describe any challenges or limitations in completing such visit. If the incapacitated person reside with you state as such: Unless the guardian resides with the incapacitated adult,** the guardian will document in this section the number of visits made during the reporting period, identifying if they were in person, via telephone, or virtually. The guardian will identify if the contact was made by a designee. The guardian will document if a visit was not made within a ~~six-month~~ 120-day period including what challenges prevented the visit (COVID) or limitations (such as a facility

restricting visitation). The guardian will state if they reside with the incapacitated person.

**Provide a general description of the activities taken on by you for the benefit of the incapacitated person during the past year:** In this section the guardian should identify activities they performed on behalf of the person during the reporting period. These activities could be completing a Medicaid application, applying for housing, requesting Meals on Wheels.

**State whether the incapacitated person has been an alleged victim in a report of abuse, neglect, or exploitation to the extent known, and whether there are any other indicators of abuse, neglect, or exploitation:** This section will include any indicator or reports of abuse, neglect, or exploitation involving the incapacitated person such as the person was the victim of a scam or the person was **physically** abused by another resident in the **facility** ALF.

**Provide any other information useful in your opinion:** In this section the guardian may state any other information they feel is important but not applicable **included in the prior questions.** ~~to questions 1-11.~~

**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.

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**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.

**Court Use Only:**

**Date Received:** The date the completed annual report is received at the court.

**Clerk:** The clerk's signature should be entered on this line.

## 7.8 Appendix D: Sample letter-the initial report is now due

### ~~Reminder: INITIAL GUARDIAN REPORT WILL SOON BE DUE~~

Date

Guardian's Address

Dear ~~(guardian's name):~~

This is to notify you that the ~~(name of department)~~ Department of Social Services has received notice that you were appointed guardian for ~~(name of incapacitated person)~~. Section 64.2-2020 of the Code of Virginia requires a guardian of an incapacitated adult to file an initial report with the local department of social services in the jurisdiction in which the incapacitated adult resides within six months of the qualification date.

It is now time to file the initial guardian report for the reporting period of ~~(date)~~ through ~~(date)~~. The initial report is due no later than ~~(date)~~. The initial report should address the status of the incapacitated person for the first four months of the guardianship.

The guardian is also required to submit a \$5.00 fee with the report. If the \$5.00 is in the form of a check, please make the check out to ~~(name of local department)~~.

A blank copy of the report, with instructions, has been enclosed for your convenience. If you need assistance with completing the form or if you have questions, you may contact me at ~~(phone number/email address)~~.

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

## 7.9 Appendix E: Sample letter the initial report is overdue

### ~~NOTICE OF OVERDUE INITIAL GUARDIAN REPORT~~

Date

Guardian's Address

Dear ~~(guardian's name)~~

~~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). Section 64.2-2020 of the Code of Virginia, requires a guardian of an incapacitated adult to file an initial report with the local department of social services in the jurisdiction in which the incapacitated adult resides within six months of the qualification date.~~

~~I am required by § 64.2-2020 of the Code of Virginia to provide a list of guardians who are more than 90 days delinquent in filing the report to the Clerk of the Circuit Court. In response to the submission of this list, the court may issue a summons or rule to show cause why the guardian has failed to file the annual report.~~

~~In addition to notifying the court, an Adult Protective Services Investigation may be initiated if we do not receive a response from you by (date).~~

~~A blank copy of the report, with instructions, is enclosed for your convenience. A \$5.00 fee is also required to be submitted with the report. If the \$5.00 is in the form of a check, please make the check out to (name of local department).~~

~~If you need assistance with completing the form or if you have questions, you may contact me at (phone number/email address).~~

~~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

## ~~7.10 Appendix F: Sample letter the annual report is overdue~~

### ~~NOTICE OF OVERDUE ANNUAL GUARDIAN REPORT~~

Date

Guardian's Address

Dear ~~(guardian's name)~~

This is to notify you that the ~~(name of department)~~ Department of Social Services has not received your annual guardian report on ~~(name of incapacitated person)~~ which was due in this office on ~~(date report was due)~~. Section 64.2-2020 of the Code of Virginia, requires a guardian of an incapacitated adult to file an annual report with the local department of social services in the jurisdiction in which the incapacitated adult resides.

The report covers the one year period that began ~~(date)~~ and ended ~~(date)~~. The report should address the status of ~~(name of incapacitated person)~~ for this 12-month period.

~~I am required by § 64.2-2020 of the Code of Virginia to provide a list of guardians who are more than 90 days delinquent in filing the annual report to the Clerk of the Circuit Court. In response to the submission of this list, the court may issue a summons or rule to show cause why the guardian has failed to file the annual report.~~ In addition to notifying the court, an Adult Protective Services Investigation may be initiated if we do not receive a response from you by ~~(date)~~.

A blank copy of the report, with instructions, is enclosed for your convenience. A \$5.00 fee is also required to be submitted with the report. If the \$5.00 is in the form of a check, please make the check out to ~~(name of local department)~~.

~~If you need assistance with completing the form or if you have questions, you may contact me at (phone number/email address).~~

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

### **~~7.11 Appendix G: Sample letter-the initial/annual report was received/next due date~~**

---

Date

Guardian's Address

Dear ~~(guardian's name)~~

This is to notify you that the initial/annual guardian report on ~~(name of incapacitated person)~~ was received and the next report is due ~~(date next report is due)~~. Section 64.2-2020 of the Code of Virginia, requires a guardian of an incapacitated adult to file an annual report with the local department of social services in the jurisdiction in which the incapacitated adult resides.

If the adult relocates to a different jurisdiction, please promptly notify me.

A blank copy of the report, with instructions, is enclosed for your convenience. A \$5.00 fee is also required to be submitted with the report. If the \$5.00 is in the form of a check, please make the check out to ~~(name of local department)~~.

~~If you need assistance with completing the form or if you have questions, you may contact me at (phone number/email address).~~

Please send the next annual report to my attention at the address below:

Name of APS Worker to Receive the Report

Address of the Local Department

Sincerely,

Enclosure

### **~~7.12 Appendix H: Sample letter-notification to court of delinquent guardians~~**

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Date

Name of Clerk of the Court

~~Name of Circuit Court  
Address of Circuit Court~~

~~Dear (name of Clerk of Court)~~

~~Pursuant to § 64.2-2020 of the Code of Virginia, (name of LDSS) is required twice a year to submit the name of guardians who are more than 90 days overdue in submitting their annual guardian report to the appropriate LDSS.~~

~~The information below complies with this requirement.~~

<del>Court File No.</del>	<del>Incapacitated Person</del>	<del>Guardian</del>	<del>Report Due Date</del>
<del>XXXXX</del>	<del>John Doe</del>	<del>Susie Smith</del>	<del>12/15/2018</del>

~~**Optional information to include in letter:** (Name of LDSS) has made multiple attempts to contact the guardian by phone and in writing.~~

~~If you have any additional questions, you may contact me at (email address/phone number).~~

~~Sincerely,  
Name of Worker  
Name of LDSS~~