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ADULT PROTECTIVE SERVICES

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ADULT PROTECTIVE SERVICES

2.1 Introduction

Protective services to adults include the receipt and investigation of reports of abuse, neglect, or exploitation of adults, as well as reports that adults are at risk of abuse, neglect, or exploitation. Protective services also include the following:

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

Services to adults whose situations do not allege abuse, neglect, or exploitation, or the risk of abuse, neglect, or exploitation, are provided under Adult Services.

2.2 Legal basis

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

2.3 Charge to LDSS

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

2.4 Definitions

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

Term	Definition
Abuse	(i) Knowing and willful conduct that causes physical injury or pain or (ii) knowing and willful use of physical restraint, including confinement, as punishment, for convenience or as a substitute for treatment, except where such conduct or physical restraint, including confinement, is a part of care or treatment and is in furtherance of the health and safety of the incapacitated person (§ 18.2-369 of the Code of Virginia). **Note:** this definition appears in the criminal section of the Code of Virginia.
Adult	Any person 60 years of age or older, or any person 18 years of age or older who is incapacitated and who resides in the Commonwealth. Adult may include qualifying nonresidents who are temporarily in the Commonwealth and who are in need of temporary or emergency protective services (§ 63.2-1603 of the Code of Virginia).
Adult Abuse	The willful infliction of physical pain, injury, or mental anguish or unreasonable confinement of an adult as defined in 63.2-1603 (§ 63.2-100 of the Code of Virginia).

Term	Definition
Adult Exploitation	The illegal, unauthorized, improper, or fraudulent use of an adult as defined in § 63.2-1603 or his funds, property, benefits, resources or other assets for another's profit, benefit, or advantage, including a caregiver or person serving in a fiduciary capacity, or that deprives the adult of his rightful use of or access to such funds, property, benefits, resources, or other assets. "Adult exploitation" includes (i) an intentional breach of a fiduciary obligation to an adult to his detriment or an intentional failure to use the financial resources of an adult in a manner that results in neglect of such adult; (ii) the acquisition, possession, or control of an adult's financial resources or property through the use of undue influence, coercion, or duress; and (iii) forcing or coercing an adult to pay for goods or services or perform services against his will for another's profit, benefit, or advantage if the adult did not agree or was tricked, misled, or defrauded into agreeing, to pay for such goods or services or perform such services (§ 63.2-100 of the Code of Virginia).
Adult Neglect	An adult as defined in § 63.2-1603 is living under such circumstances that he is not able to provide for himself or is not being provided services necessary to maintain his physical and mental health and that the failure to receive such necessary services impairs or threatens to impair his well-being. However, no adult shall be considered neglected solely on the basis that such adult is receiving religious nonmedical treatment or religious nonmedical nursing care in lieu of medical care, provided that such treatment or care is performed in good faith and in accordance with the religious practices of the adult and there is a written or oral expression of consent by that adult (§ 63.2-100 of the Code of Virginia).

Neglect includes the failure of a caregiver or another responsible person to provide for basic needs to maintain the adult's physical and mental health and well-being, and it includes the adult's neglect of self. Neglect includes, but is not limited to:

1. The lack of clothing considered necessary to protect a person's health;

2. The lack of food necessary to prevent physical injury or to maintain life, including failure to receive appropriate food for adults with conditions requiring special diets;

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

4. Inadequate supervision by a caregiver (paid or unpaid) who has been designated to provide the supervision necessary to protect the safety and well-being of an adult in his care;

5. The failure of persons who are responsible for caregiving to seek needed medical care or to follow medically prescribed treatment for an adult, or the adult has failed to obtain such care for himself. The needed medical care is believed to be of such a nature as to result in physical and/or mental injury or illness if it is not provided;

6. Medical neglect includes, but is not limited to, the withholding of medication or aids needed by the adult such as dentures, eye glasses, hearing aids, walker, etc. It also includes the unauthorized administration of prescription drugs, over-medicating or under-medicating, and the administration of drugs for other than bona fide medical reasons, as determined by a licensed health care professional; and

7. Self-neglect by an adult who is not meeting his own basic needs due to mental and/or physical impairments. Basic needs refer to such things as food, clothing, shelter, health or medical care. (22 VAC 30-100-10).

Term	Definition
Adult at Risk	An adult who is in an endangering situation that may result in imminent injury, death, and/or loss without the provision of adult protective services.
Adult Protective Services	Services provided by the LDSS that are necessary to protect an adult as defined in § 63.2-1603 from abuse, neglect, or exploitation (§ 63.2-100 of the Code of Virginia).
Agent	A person granted authority to act for a principal under a power of attorney, whether denominated an agent, attorney-in-fact, or otherwise. The term includes an original agent, coagent, successor agent, and a person to which an agent's authority is delegated (64.2-1600 of the Code of Virginia).
Aggravated Sexual Battery	Sexual abuse in which: the complaining witness is less than 13 years of age, or the act is accomplished through the use of the complaining witness's mental incapacity or physical helplessness, or the act is accomplished against the will of the complaining witness by force, threat or intimidation, and the complaining witness is at least 13 but less than 15 years of age, or the accused causes serious bodily or mental injury to the complaining witness, or the accused uses or threatens to use a dangerous weapon (§ 18.2-67.3 of the Code of Virginia).
Annual Report of Guardian	An annual report on the personal status of a person who is incapacitated for whom a guardian was appointed. The court-appointed guardian is to file the Annual Report of Guardian with the LDSS in the jurisdiction in which the incapacitated adult resides. The "Annual Report of Guardian for an Incapacitated Person" form is available on the VDSS internal website.
Collateral	A person whose personal or professional knowledge may help confirm or rebut the allegations of adult abuse, neglect, or exploitation or whose involvement may help ensure the safety of the adult (22 VAC 30-100-10).
Commissioner	The Commissioner of the Department (22 VAC 30-100-10).
Complaining Witness	The person alleged to have been subjected to rape, forcible sodomy, inanimate or animate object sexual penetration, marital

Term	Definition
	sexual assault, aggravated sexual battery, or sexual battery (§ 18.2-67.10 of the Code of Virginia).
Conservator	A person appointed by the court who is responsible for managing the estate and financial affairs of an incapacitated person and where the context plainly indicates, includes a "limited conservator" or a "temporary conservator" (§ 64.2-2000 of the Code of Virginia).
Department	The Department for Aging and Rehabilitative Services (§ 51.5-116 of the Code of Virginia).
Disorder	A disorder includes any physical or mental disorder or impairment, whether caused by injury, disease, genetics, or other cause (§ 37.2-1100 of the Code of Virginia).
Disposition	The determination of whether or not adult abuse, neglect, or exploitation has occurred (22 VAC 30-100-10).
Documentation	Information and materials, written or otherwise, concerning allegations facts and evidence (22 VAC 30-100-10).
Emergency	Circumstances in which 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 (§ 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;

Term	Definition
	• The person's former spouse, whether or not he or she resides in the same home with the person; • The person's parents, stepparents, children, stepchildren, brothers, sisters, half-brothers, half-sisters, grandparents, and grandchildren, regardless of whether such persons reside in the same home with the person; • The person's mother-in-law, father-in-law, sons-in-law, daughters-in-law, brothers-in-law, and sisters-in-law who reside in the same home with the person; • Any individual who has a child in common with the person, whether or not the person and that individual have been married or have resided together at any time; or • Any individual who cohabits or who, within the previous 12 months, cohabited with the person, and any children of either of them then residing in the same home with the person (§ 16.1-228 of the Code of Virginia).
Financial Institution Staff	Any employee, agent, qualified individual, or representative of a bank, trust company, savings institution, loan association, consumer finance company, credit union, investment company, investment advisor, securities firm, accounting firm, or insurance company (§ 63.2-1606 of the Code of Virginia).
Guardian	A person appointed by the court who is responsible for the personal affairs of an incapacitated person, including responsibility for making decisions regarding the person's support, care, health, safety, habilitation, education, therapeutic treatment, and, if not inconsistent with an order of involuntary admission, residence. Where the context plainly indicates, the term includes a "limited guardian" or a "temporary guardian" (§ 64.2-2000 of the Code of Virginia).

Term	Definition
Guardian Ad Litem	An attorney appointed by the court to represent the interest of the adult for whom a guardian or conservator is requested, on the hearing of the petition for appointment of a guardian or conservator, the guardian ad litem advocates for the adult who is the subject of the hearing, and his duties are usually concluded when the case is decided (22 VAC 30-100-10).
Incapable of Making an Informed Decision	Unable to understand the nature, extent, or probable consequences of a proposed treatment or unable to make a rational evaluation of the risks and benefits of the proposed treatment as compared with the risks and benefits of alternatives to the treatment. Persons with dysphasia or other communication disorders who are mentally competent and able to communicate shall not be considered incapable of giving informed consent (§ 37.2-1100 of the Code of Virginia).
Incapacitated Person	Any adult who is impaired by reason of mental illness, 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. This definition is for the purpose of establishing an adult's eligibility for adult protective services and such adult may or may not have been found incapacitated through court procedures (22 VAC 30-100-10). An incapacitated person also means an adult who has been found by a court to be incapable of receiving and evaluating information effectively or responding to people, events, or environments to such an extent that the individual lacks the capacity to (i) meet the essential requirements for his health, care, safety, or therapeutic needs without the assistance or protection of a guardian or (ii) manage property or financial affairs or provide for his support or for the support of his legal dependents without the assistance or protection of a conservator. A finding that the individual displays poor judgment alone shall not be considered sufficient evidence that the individual is an incapacitated person within the meaning of this definition (§ 64.2-2000 of the Code of Virginia). **Note:** This definition is used by the court to determine need for the appointment of a guardian or a conservator.

Term	Definition
Intimate Parts	The genitalia, groin, breast, or buttocks of any person (§ 18.2-67.10 of the Code of Virginia).
Involuntary Protective Services	Those services authorized by the court for an adult who has been determined to need protective services and who has been adjudicated incapacitated and lacking the capacity to consent to receive the needed protective services (22 VAC 30-100-10).
Lacks Capacity to Consent	A preliminary judgment of an LDSS service worker that an adult is unable to consent to receive needed services for reasons that relate to emotional or psychiatric problems, intellectual disability, developmental delay, or other reasons which impair the adult's ability to recognize a substantial risk of death or immediate and serious harm to himself. The lack of capacity to consent may be either permanent or temporary. The worker shall make a preliminary judgment that the adult lacks capacity to consent before petitioning the court for authorization to provide protective services on an emergency basis pursuant to § 63.2-1609 of the Code of Virginia (22 VAC-30-100-10).
Legally Incapacitated	A condition describing a person who has been adjudicated incapacitated by a circuit court because of a mental or physical condition which renders him, either wholly or partially, incapable of taking care of himself or his estate (22 VAC 30-100-10).
Legitimate Interest	A lawful, demonstrated privilege to access the information as defined in § 63.2-104 of the Code of Virginia (22 VAC 30-100-10).
Local Department	The local department of social services (LDSS) of any county or city in this Commonwealth (§ 63.2-100 of the Code of Virginia).
Local Director	The director or his designated representative of the LDSS of the city or county (§ 63.2-100 of the Code of Virginia).
Mental Anguish	A state of emotional pain or distress resulting from activity (verbal or behavioral) of a perpetrator. The intent of the activity is to threaten or intimidate, to cause sorrow or fear, to humiliate, change behavior or ridicule. There must be evidence that it is the perpetrator’s activity that has caused the adult’s feelings of pain or distress (22 VAC 30-100-10).

Term	Definition
Neglect	The knowing and willful failure by a responsible person to provide treatment, care, goods, or services which results in injury to the health or endangers the safety of an incapacitated adult (§ 18.2-369 of the Code of Virginia). **Note:** this definition appears in the criminal section of the Code of Virginia.
Notification	Informing designated and appropriate individuals of the local LDSS's actions and the individual's rights (22 VAC 30-100-10).
PeerPlace	The automated state system used to collect case and client information and provide case management for Adult Services and Adult Protective Services Programs.
Preponderance of Evidence	Circumstances in which the evidence as a whole shows that the facts are more probable and credible than not. It is evidence that is of greater weight or more convincing than the evidence offered in opposition (22 VAC 30-100-10).
Principal	An individual who grants authority to an agent in a power of attorney (§ 64.2-1600 of the Code of Virginia).
Public Conservator	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 (§ 64.2-2000 of the Code of Virginia).
Public Guardian	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).

Term	Definition
Report	An allegation by any person that an adult is in need of protective services. The term "report" shall refer to both reports and complaints of abuse, neglect, and exploitation of adults. The report may be made orally or in writing to the LDSS or to the Adult Protective Services hotline (22 VAC 30-100-10).
Responsible Person	A person who has responsibility for the care, custody, or control of an incapacitated person by operation of law or who has assumed such responsibility voluntarily, by contract or in fact (§ 18.2-369 of the Code of Virginia). The term “operation of law” refers to care, custody, or control through some legal means such as guardianship or conservatorship.
Serious Bodily Injury or Disease	The term “serious bodily injury or disease” shall include but is not be limited to (i) disfigurement, (ii) a fracture, (iii) a severe burn or laceration, (iv) mutilation, (v) maiming, or (vi) life-threatening internal injuries or conditions, whether or not caused by trauma (§ 18.2-369 of the Code of Virginia).
Sexual Abuse	An act committed with the intent to sexually molest, arouse, or gratify any person, where: • The accused intentionally touches the complaining witness's intimate parts or material directly covering such intimate parts; • The accused forces the complaining witness to touch the accused's, the witness's own, or another person's intimate parts or material directly covering such intimate parts; or • The accused forces another person to touch the complaining witness's intimate parts or material directly covering such intimate parts (§ 18.2-67.10 of the Code of Virginia).
Sexual Battery	Any sexual abuse against the will of the complaining witness by force, threat, intimidation, or ruse (§ 18.2-67.4 of the Code of Virginia).

Term	Definition
Uniform Assessment Instrument (UAI)	The department's designated assessment form (22 VAC 30-110-10).
Unreasonable Confinement	The use of restraints (physical or chemical), isolation, or any other means of confinement without medical orders, when there is no emergency and for reasons other than the adult's safety or well-being or the safety of others (22 VAC 30-100-10).
Voluntary Protective Services	Those services provided to an adult who, after investigation by the LDSS, is determined to be in need of protective services and consents to receiving the services so as to prevent further abuse, neglect, and exploitation of an adult at risk of abuse, neglect and exploitation (22 VAC 30-100-10).

2.5 Adult Protective Services intake

2.5.1 Accepting reports

APS intake includes the receipt of reports concerning the abuse, neglect, or exploitation of adults are received by LDSS, evaluated for appropriateness against the criteria for a valid report, and either accepted for investigation or determined invalid and not appropriate for an APS investigation.

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

Valid reports that adults are at risk of abuse, neglect, or exploitation shall be accepted and investigated to determine whether or not the individual needs protective services and, if so, what services are needed. Circumstances the 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 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 **within 72 hours** of its receipt.

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). 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; Warehousers, 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). Any mental health services provider as defined in § 54.1-2400.1;
>
> 1. Any emergency medical services personnel certified by the board of health pursuant § 32.1-111.5, unless such personnel immediately reports the suspected abuse, neglect or exploitation directly to the attending physician at the hospital to which the adult is transported, who shall make such report forthwith;

2. Any guardian or conservator of an adult;

3. Any person employed by or contracted with a public or private agency or facility and working with adults in an administrative, supportive or direct care capacity;

4. Any person providing fully, intermittent, or occasional care to an adult for compensation, including but not limited to companion, chore, homemaker, and personal care workers; and

5. Any law-enforcement officer.

2.5.3.1.1 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, online course **ADS5055: Mandated Reporters: Recognizing and Reporting Abuse, Neglect and Exploitation of Adults** available on the VDSS public website. Once on the webpage, select “Required Training/Courses.” The self-paced, interactive, online course offers an overview of the signs of adult abuse, neglect, and exploitation and guidance on making an APS report.

2.5.3.1.3 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 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 30-100-80 addresses the procedures for imposition of a civil penalty for failure to report.

> (22 VAC 30-100-80) 1. Based on a decision by the local department director or his designee that
> a mandated reporter failed to report as required by § 63.2-1606 of the Code of Virginia, the local director shall prepare a written statement of fact concerning the mandated reporter's failure to report and submit the statement of fact to the commissioner.

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

Within 15 days of deciding to request that the Commissioner impose a civil penalty, the director shall provide the mandated reporter with written notification of the intent to request that a civil penalty be imposed. The written notification shall state the mandated reporter's right to submit a written statement to the Commissioner concerning the failure to report. An example of a letter to the mandated reporter is found in Appendix H. The director's statement of fact shall accompany the written notification to the mandated reporter. It is recommended that the director's letter to the mandated reporter be mailed certified mail, return receipt requested.

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

> (22 VAC 30-100-80) 3. The mandated reporter's statement concerning his failure to report must be received by the commissioner within 45 days from the date of the local director's notification of intent to recommend the imposition of a civil penalty. A mandated reporter's statement received after the 45 days shall not be considered by the commissioner.

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

> (22 VAC 30-100-80) 1. The commissioner or his designee shall review the local director's written statement of fact concerning the mandated reporter's failure to report and the mandated reporter's written statement in determining whether to impose a civil penalty.
> (22 VAC 30-100-80) 2. In the case of law-enforcement officers who are alleged to have not reported as required, the commissioner or his designee shall forward the recommendation to a court of competent jurisdiction.

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

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

The Commissioner shall notify the mandated reporter whether a civil penalty will be imposed and, if so, the amount of the penalty. If a civil penalty is imposed, a copy of the notice to the mandated reporter shall be sent to the appropriate licensing, regulatory, or administrative agency and to the local director who recommended the imposition of the penalty.

2.5.3.2 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 exploitation to the local department of the county or city wherein the adult resides or wherein the exploitation is believed to have occurred or to the adult protective services hotline. For purposes section, financial institution staff means 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.

2.5.3.3 Voluntary reports

> (§ 63.2-1606 of the Code of Virginia). Any person other than those specified in subsection a who suspects that an adult is an abused, neglected or exploited adult may report the matter to the local department of the county or city wherein the adult

> resides or wherein the abuse, neglect or exploitation is believed to have occurred or to the adult protective services hotline.

2.5.3.4 Anonymous reports

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

2.5.3.5 Self-reports

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

2.5.3.6 LDSS worker generated reports

When an LDSS worker recognizes that the circumstances meet the criteria for an APS report, the worker either makes an APS report to the appropriate APS worker or enters the report in PeerPlace.

2.5.3.7 APS hotline reports

The hotline submits APS reports to the LDSS of jurisdiction pursuant to the protocols established by the LDSS. If the APS report indicates sexual abuse, death, serious bodily injury that is a result of abuse or neglect, suspected financial exploitation, or other criminal activity involving abuse or neglect that places the adult in imminent danger of death or serious bodily harm has occurred, the APS hotline shall immediately report the matter to local law enforcement. The LDSS has responsibility for determining if the report received through the hotline is a valid report.

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

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

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

2.5.3.8 Types of reports

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

(§ 63.2-1605 of the Code of Virginia). The local department or the adult protective services hotline shall immediately refer the matter and all relevant documentation to the local law-enforcement agency where the adult resides or where the alleged abuse, neglect, or exploitation took place or, if these places are unknown, where the alleged abuse, neglect, or exploitation was discovered for investigation, upon receipt of an initial report pursuant to § 63.2-1606 involving any of the following or upon determining, during the course of an investigation pursuant to this article, the occurrence of any of the following:

1. Sexual abuse as defined in § 18.2-67.10;

2. Death that is believed to be the result of abuse or neglect;

3. Serious bodily injury or disease as defined in § 18.2-369 that is believed to be the result of abuse or neglect;

4. Suspected financial exploitation of an adult; or

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

Local law-enforcement agencies shall provide local departments 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 and 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 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 (or she) knows to be false shall be guilty of a class 4 misdemeanor. Any subsequent conviction of this provision shall be a class 2 misdemeanor.

2.5.4.3 Protecting the identity of the reporter

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

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

> (22 VAC 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

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 and whether an emergency exists. 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.
- Whether an emergency exists.
- Identity of person(s) who witnessed the incident, their addresses and telephone numbers.
- Any information about previous abuse, neglect, or exploitation of the adult.
- The name, address, and relationship of any other person(s) or agencies who might be concerned or have knowledge of the adult.
- Name of the adult's physician(s) and pharmacies.
- Known medication(s) and/or treatment(s).
- Identity and relationship of the alleged perpetrator.
- Living arrangement of the adult (e.g., in own home, lives with spouse, lives with alleged perpetrator, lives alone, etc.).
- Name, address, and phone number of person reporting if the reporter is willing to give this information.
- Source of the reporter's information.
- Any other information that might be helpful in establishing the cause of the suspected abuse, neglect, or exploitation or the risk of abuse, neglect, or exploitation.
- Permission to give the reporter's name and phone number to the appropriate regulatory authority.
- The adult's income and other resources, if known.

- Situations which may affect the safety of the responding APS worker such as the illegal drug dealing or manufacturing at the home or the presence of weapons or vicious animals at the location.

2.7 Determining validity of reports

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

2.7.1 Characteristics of a valid APS report

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

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

2.7.1.1 Definition of adult

> (§ 63.2-1603 of the Code of Virginia). Adult means any person 60 years of age or older, or any person 18 years of age or older who is incapacitated and who resides in the Commonwealth; provided, however, "adult" may include qualifying nonresidents who are temporarily in the Commonwealth and who are in need of temporary or emergency protective services.

2.7.1.1.1 Age

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

2.7.1.1.2 Incapacity

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

The definition of incapacitated person references the adult's impairment due 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

There must be enough information in the report to identify the adult. 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 an APS investigation. The purpose of an APS investigation is to determine whether the living adult is in need of protective 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 transmitted to the appropriate LDSS. The 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.

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

The adult for whom a report that alleges need for protective services is made, may be an individual living in the community, a nursing facility, an assisted living facility, an adult foster care home, an acute-care hospital, a DBHDS operated or licensed facility or program, or other type of facility.

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

- 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 POA resides in County B and financial exploitation by the POA is alleged. County A shall have jurisdiction and County B may be asked to conduct a courtesy interview with the 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 were the abuse, neglect, or exploitation was discovered has jurisdiction.

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

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

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

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

2.8 Documenting an APS report in PeerPlace

PeerPlace is the system of record to document the receipt and investigation of APS reports. Prior to entering APS report information, the worker shall search the system to determine if the individual has previously been registered in PeerPlace.

2.8.1 When the individual has not been registered previously in PeerPlace

The worker shall register the individual in the APS program. The APS report shall be completed in PeerPlace.

2.8.2 When the individual has been registered previously in PeerPlace

If the adult has been registered in PeerPlace 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 be registered multiple times in various PeerPlace programs.

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

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 person who has reported, if the person's identity is known, of the reasons why the case is not being accepted for an APS investigation. The reporter should be informed that the case may be referred to another agency for administrative or criminal investigation if appropriate.
- Document the receipt of the report and the reasons it is not valid in PeerPlace and then close the report. The worker shall select the closure reason "Invalid Report."
- When appropriate, contact the individual who is the subject of the APS report to offer adult services, provide consultation, or/and make direct referrals for other services.
- Refer the situation being reported to other entities as appropriate (i.e., local law enforcement, state or local Ombudsman, other state agencies for possible administrative actions).
- 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 domestic violence 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 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 has been permanently relocated and 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: Worker may use the Referral for Investigation Form available in PeerPlace to notify Regulatory or Statutory authority entities (identified in Section 2.26)

2.9.2 When the report is valid

If the worker determines the report is valid, the worker shall select the “Sent for Investigation” link in PeerPlace. This action closes the APS report and opens the APS investigation links, including additional questions in the APS Report/Investigation link

(for NAMRS, as well as the Investigation Initiation Date, Face-to-Face Date). **A closed report cannot 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.

2.10 Initiating the investigation

The LDSS worker responsible for intake must gather enough information from the reporter to determine if an immediate response is needed to ensure the safety of the alleged victim.

> (22 VAC 30-100-20). When determining the need for an immediate response, the social worker should consider the following factors:
>
> a. The imminent danger to the adult;
>
> b. The severity of the alleged abuse, neglect or exploitation;
>
> c. The circumstances surrounding the alleged abuse, neglect or exploitation; and
>
> d. The physical and mental condition of the adult.

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, friends, neighbors, and service providers to obtain additional information.

After initiating the APS investigation, the APS worker determines 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.

2.10.1 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).

- 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.

2.10.2 Where the investigation extends across city or county lines

> (22 VAC 30-100-20). When an investigation extends across city or county lines, local departments in those cities or counties shall assist with the investigation at the request of the local department with primary responsibility.

2.10.3 Conflict of interest

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

Examples of such situations include, 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

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

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

2.11.1 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 having knowledge of the facts of the particular case.

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 inform 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 may be 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.

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.

> (§ 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 **five calendar days** after 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.

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. The form "Consent for Photography in APS Investigations" is located on the VDSS internal website. 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 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.

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 or not 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 transfer the investigation to the appropriate jurisdiction. The receiving LDSS should be notified prior to this action. PeerPlace transfers can be completed by the Supervisor/Program Admin or APS Regional Consultant.

2.11.15 Medical records from Veterans Administration Medical Centers

There may be instances when the APS workers needs to obtain medical records from a Veterans Administration Medical Center. LDSS shall follow the instruction on the

sample form letters available on APS page on FUSION 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.

2.12 APS assessment

> (22 VAC 30-100-20). The purpose of the investigation is to determine whether the adult alleged to be abused, neglected or exploited or at risk of abuse, neglect or exploitation is in need of protective services and, if so, to identify services needed to provide the protection.

Accurate assessment of all of the adult's abilities and needs is crucial to making the disposition and determining 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.

2.12.1 The investigation assessment

> (22 VAC 30-100-40). An Assessment narrative shall be required for all protective services investigations and shall be titled Adult Protective Services Assessment Narrative.

There are text boxes in PeerPlace where the worker enters 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 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 is in need of protective services. The APS worker shall evaluate the individual's ability to handle tasks such as bathing, dressing, toileting, transferring, and eating.

The APS worker shall also 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.).

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?

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.

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. The APS worker is required to certify that the assessment is accurate and complete.

2.13 Disposition and application

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

2.13.1 Documentation of dispostion 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 days of the date the report was received. If the investigation is not completed within 45 days, the record shall document reasons.

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

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 into PeerPlace no later than five days of the conclusion of the investigation.

See Chapter 8, Right to Review regarding notification to alleged perpetrators in substantiated cases of adult abuse, neglect, and exploitation.

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

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

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

When the adult has the capacity to consent to receive services

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

If the adult needs protective services and agrees to accept services, a service application will be completed (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. If the capable adult refuses to accept all of the services offered, the investigation shall be shall be closed no later than 15 days after entering the disposition. 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 ceased to be at risk of further abuse, neglect or exploitation.

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, thus, is not expected to 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 course of 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.

If the disposition is need no longer exists, the case shall be closed no later than 15 days of entering the disposition unless a right to review notification was issued. 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 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 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 validity criteria are not met, the disposition shall be entered as invalid.

If the disposition is unfounded, protective services are not offered. Adult Services may be offered if the adult is eligible for services and agrees to the service delivery. For a new case, appropriate adult services may be offered or the case should be closed no later than 15 days after entering the disposition.

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"

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

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 no later than 15 days after determining an invalid disposition. The following are examples investigations that are 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.

- Example #3: After validating the APS report, the investigator learns the adult is residing outside the jurisdiction of the investigating LDSS. The disposition is entered as invalid. If the case meets all other validity criteria the incorrect jurisdiction shall provide all information to the correct jurisdiction.

2.13.2 Reopening a closed investigation

When the investigation has been substantiated, and perpetrator notification is required, the APS worker shall close the investigation. The Supervisor/Program Admin or APS Regional Consultant may reopen an investigation if the alleged perpetrator requests a right to review and documentation in the case record needs to be updated in response to 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 Investigation Compliance report in PeerPlace.

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

2.14 Time frames for notifications

2.14.1 Notification to reporter

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

The APS worker shall notify the reporter in writing and mail the notice within ten working days of the completion of the investigation. PeerPlace contains the templates for the notification letters.

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. PeerPlace contains templates for these notification letters.

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 case narrative within ten working days of the completion of the investigation.

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

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 enforcment and medical examiner

If the APS report or the investigative findings 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, or suspected financial exploitation has occurred the APS worker shall report the case immediately to local law enforcement.

If the APS report or the investigative findings indicate there is a suspicious death that may have been the result of abuse or neglect, the APS worker shall report the case immediately to the appropriate medical examiner and local law enforcement. 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 agencies with a legitimate interest of the disposition.

2.15 Opening a case for ongoing protective services

> (22 VAC 30-100-60). Once a disposition of the report and an assessment of the adult's need and strengths have been made, the department shall assess the adult's service needs. A case shall be opened for adult protective services when:
>
> a. The disposition is that the adult needs protective services; and
>
> b. The service needs are identified; and
>
> c. The adult agrees to accept protective services or protective services are ordered by the court.

A service application shall be completed when the adult has accepted services or services are court ordered.

> (22 VAC 30-100-30). The application process is designed to assure the prompt provision of needed adult protective services including services to adults who are not able to complete and sign a service application.

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

> (22 VAC 30-100-30). 1. The adult who will receive the services or the adult's legally appointed guardian or conservator;
>
> 2. Someone authorized by the adult; or
>
> 3. The local department.

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

2.16 Service planning and service delivery

2.16.1 The service plan

> (22 VAC 30-100-60). A service plan which is based on the investigative findings and the assessment of the adult's need for protective services shall be developed. The service plan is the basis for the activities that the worker, the adult, and other persons will undertake to provide the services necessary to protect the adult.

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 if the disposition is needs 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).

- A case in which the disposition is "needs and accepts services" 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.

- 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.

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

2.16.5 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 be in need of protective services, the first consideration shall be to provide the needed services in the individual's own home or place of residence. Any one or a combination of services (e.g., medical care, counseling, homemaker/chore/companion services, day services, nutrition services, transportation, financial management, financial assistance for which the adult may be eligible, informal supportive services, home repair, protective orders, 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 both 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.

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.

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 in order to accomplish the goals(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 measureable. All services 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: $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.

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.

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 or not 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 Implementaton of the service plan

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

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

- Make contact with the adult to clarify any issues around service delivery (what services, provided by whom, for how long, etc.).
- Initiate delivery of those services identified in the service plan.
- Monitor the progress made toward meeting the objectives and time frames set forth in the service plan and reassess and revise the service plan as appropriate.
- Make a face-to-face, 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 case narrative.
- *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. Adult Services) or if the case needs to be closed.*

2.18 Judicial proceedings

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

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

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

2.18.1 Access to provide protective services

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

2.18.2 Order to enjoin interference

> (§ 63.2-1610 of the Code of Virginia). No person shall interfere with the provision of adult protective services to an (i) adult who requests or consents to receive such services, or (ii) for whom consent has been lawfully given. 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 is in need of protective services, an emergency exists, and the adult is incapacitated and lacks the capacity to consent to receive adult protective services, a petition should be filed through the LDSS attorney for a hearing to obtain the earliest possible court date requesting court authorization to provide protective services on an emergency basis.

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

LDSS shall following the guidance of their LDSS attorney when an emergency order is requested.

- 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.
    - If the 24-hour notice will seriously jeopardize the adult's welfare, clearly explain in the petition why the notice should be waived.
    - The nature of the adult's incapacity.
    - Evidence of the adult's incapacity and lack of capacity to consent.
    - Facts showing attempts to obtain the adult's consent and the outcomes of attempts.
    - The specific authority requested and rationale for the request.
    - The proposed adult protective services.
    - If the adult who is subject of the emergency order is indigent, the department should request that the costs of the proceeding be borne by the Commonwealth (see Section 2.19.1.2).
        - 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 APS worker 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 emergency services, the APS worker 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 a specific treatment or course of treatment or is physically or mentally incapable of communicating such a decision;
>
> 3. That the person who is the subject of the petition is unlikely to become capable of making an informed decision or of communicating an informed decision within the time required for decision; and
>
> 4. That the proposed course of treatment is in the best interest of the person 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, a number of individuals in a specific order of priority are authorized to make decisions concerning the health care of an incapacitated adult. Health care is defined as:

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

The attending physician of an adult patient must certify in writing upon personal examination of the patient that the patient is incapable of making an informed decision regarding health care and has obtained written certification from a capacity reviewer that, based upon a personal examination of the patient, the patient is incapable of making an informed decision. However, certification by a capacity reviewer shall not be required if the patient is unconscious or experiencing a profound impairment of consciousness due to trauma, stroke, or other acute physiological condition. When the determination has been made that the adult is incapable of making an informed decision about providing, withholding, or withdrawing a specific health care treatment or course of treatment because of mental illness, 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.);
- The patient’s spouse except where a divorce action has been filed and the divorce is not final;
- An adult child of the patient;
- A parent of the patient;
- An adult brother or sister of the patient; or
- Any other relative of the patient in the descending order of blood relationship, except in cases in which the proposed treatment recommendation involves the withholding or withdrawing of a life-prolonging procedure, any adult, except any director, employee, or agent of a health care provider currently involved in the care of the patient, who (i) has exhibited special care and concern for the patient and (ii) is familiar with the patient's religious beliefs and basic values and any preferences previously expressed by the patient regarding health care,

to the extent that they are known. A quorum of a patient care consulting committee as defined in § 54.1-2982 of the facility where the patient is receiving health care or, if such patient care consulting committee does not exist or if a quorum of such patient care consulting committee is not reasonably available, two physicians who (a) are not currently involved in the care of the patient, (b) are not employed by the facility where the patient is receiving health care, and (c) do not practice medicine in the same professional business entity as the attending physician shall determine whether a person meets these criteria and shall document the information relied upon in making such determination.

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

> (§ 54.1-2982 of the Code of Virginia). "Capacity reviewer" means a licensed physician or clinical psychologist who is qualified by training or experience to assess whether a person is capable or incapable of making an informed decision.
>
> (§ 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 other as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or
>
> (b) Suffers serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, and
>
> (ii) Requires involuntary inpatient treatment.

2.18.11 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 member including:

- Spouse or former spouse, whether or not the spouse or former spouse resides in the same house with the abuser.
- Parents, stepparents, children, stepchildren, brothers, sisters, half-brothers, half-sisters, grandparents, and grandchildren, regardless of whether such persons reside in the same home with the abuser.
- Mother-in-law, father-in-law, sons-in-law, daughters-in-law, brothers-in-law and sisters-in-law who reside in the same home with the abuser.
- Any individual who has a child in common with the abuser whether or not the individual and the abuser have been married or lived together at any time.
- Any individual who cohabits or who, within the previous 12 months, cohabited with the abuser, and any children of either of them then residing in the same home with the abuser.

2.18.13 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 incapacitated adults

> (§ 18.2-369 of the Code of Virginia). It shall be unlawful for any responsible person to abuse or neglect any incapacitated adult as defined in this section. Any responsible person who abuses or neglects an incapacitated adult in violation of this section and the abuse or neglect does not result in serious bodily injury or disease to the incapacitated adult shall be guilty of a class 1 misdemeanor. Any responsible person who is convicted of a second or subsequent offense under this subsection shall be guilty of a class 6 felony.
>
> Any responsible person who abuses or neglects an incapacitated adult in violation of this section and the abuse or neglect results in serious bodily injury or disease to the incapacitated adult shall be guilty of a class 4 felony. Any responsible person who abuses or neglects an incapacitated adult in violation of this section and the abuse or neglect results in the death of the incapacitated adult is guilty of a class 3 felony.

Abuse and neglect of an incapacitated adult can be prosecuted as a criminal offense when the abuse or neglect is perpetrated by a "responsible person" as defined in Section 2.4.

Abuse and neglect meeting definitions under § 18.2-369 of the Code of Virginia should be referred to the Commonwealth's Attorney for possible prosecution.

2.18.16 Financial exploitation of mentally incapacitated persons

> (§18.2-178.1 of the Code of Virginia). A. It is unlawful for any person who knows or should know that another person suffers from mental incapacity to, through the use of that other person's mental incapacity, 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.
>
> B. 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.
>
> C. 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 person with mental incapacity or made a good faith effort to assist such person with the management of his money or other thing of value.
>
> D. As used in this section, "mental incapacity" means that condition of a person existing at the time of the offense described in subsection A that prevents him from understanding the nature or consequences of the transaction or disposition of money or other thing of value involved in such offense.

Financial exploitation of a mentally incapacitated adult as described in § 18.2-178 of the Code of Virginia should be referred to the Commonwealth's Attorney for possible prosecution.

2.19 Reimbursement for legal services

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

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

2.19.1 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 estate of the incapacitated person is available and sufficient therefore, the court shall order that the petitioner be reimbursed from the estate for all costs and fees.

2.19.2.2 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 which 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 internal website.

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 internal website.

2.19.5 Reimbursement for cost of providing protective services

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

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

2.19.5.1 Involuntary adult protective services

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

2.19.5.2 Voluntary adult protective services

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

2.20 Reassessment

2.20.1 Reassessment

The worker shall reassess the adult's situation and evaluation of the effectiveness of services at least monthly and ideally should coincide with required monthly case contacts. During the reassessment process, the worker shall determine if the case should remain open for adult protective services, registered in the Adult Services 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 PeerPlace the need for ongoing protective services lasting greater than six months after service plan implementation.

2.20.1.1 Continue Adult Protective Services

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

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

2.20.1.2 Registered in Adult Services 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 case

The 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 APS case, the APS worker shall:

- Send a written notice of action to the adult and/or his or her legally appointed guardian and/or conservator 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 case (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

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

> (§ 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 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

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 PeerPlace and promptly forward a written summary of the reported incident(s) to the appropriate regulatory authority. The written summary should state the reason an APS investigation will not be conducted. The form "Referral for Investigation from Adult Protective Services" in PeerPlace may be used for the referral/summary.

2.23.1 Reports that address the general conditions of a facility

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

2.24 Responsibility of the APS worker in facility investigations

Valid reports alleging that individuals residing in long-term care facilities, acute care facilities, and other group care facilities are abused, neglected, or exploited or at risk of abuse, neglect, or exploitation shall be investigated by the LDSS. 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

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

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

- When a valid APS report is received on an individual residing in a long-term care or acute care facility or other group care facility, the APS worker shall determine whether it is appropriate to ask other agencies or programs with regulatory or licensing responsibility for investigations to participate in a joint investigation. In all cases, the APS worker shall notify the appropriate agencies or programs that a report has been received concerning an individual residing in a regulated facility.

- It is appropriate to give other agencies and programs an opportunity to participate in a joint investigation when such agency or program has regulatory authority that is compatible with the LDSS's responsibility to provide protective services to incapacitated and/or older adults.

- If staff from other agencies or programs are not available to participate in a joint investigation within the timeframe that APS shall initiate the investigation, the APS investigation shall not be delayed.

2.26 Investigators with regulatory or statutory authority responsibilities in facility investigations

2.26.1 The Department of Social Services, Division of Licensing Programs

The 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 (formerly known as the Virginia Office for Protection and Advocacy or VOPA) is an independent agency. dLCV is authorized to receive and investigate complaints regarding any activity, practice, policy, or procedure in institutional or community settings that adversely affects the health, safety, welfare, civil or human rights of an individuals with mental, cognitive, sensory, or physical disabilities. dLCV may wish to investigate with APS or investigate an allegation by itself. dLCV focuses on reports involving licensed providers such as day support programs, sheltered workshops and subminimum wage employers (known as 14-C locations), residential programs, and assisted living facilities. dLCV should also receive reports concerning transportation providers under contract with or otherwise regulated by DMAS.

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

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

2.27.1 Sharing information when coordinating a joint investigation

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

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

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

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

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

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

2.27.2 Information sharing when a joint investigation is not planned

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

2.27.3 Assurances that information will be held confidential

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

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

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

2.27.4 Confidential information collected by the investigatory team

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

2.27.5 Confidential information not collected by the investigatory team

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

2.28 Preparing for the facility investigation

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

2.28.1 Availability of records

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

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

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

2.28.2 Sources of information available within a facility

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

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

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

2.28.3 DBHDS incident reports

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

2.29 Persons to inform when a facility report will be investigated

2.29.1 Facility administrator/director/superintendent/person in charge

Before entering a facility to investigate, the APS worker shall make a good faith effort to contact the facility administrator, director, superintendent, or other person 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

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 PeerPlace.

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

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

- Makes a disposition. If the APS worker makes a disposition that varies or is in conflict with the findings of other members of the investigatory team, the worker shall document the differences in the Investigative Findings screen.

- Completes all appropriate screens in PeerPlace.

- Prepares a written report of findings. The letter to a facility or others may serve as the written report. The worker should specify whether the report is a department or team report. If it is a team report, the worker identifies what agencies or programs participated on the team. This report should include only the specific confidential information that may be disclosed as outlined in Section 2.36.3. This report may

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

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

2.32 Notifications and Reports in facility investigations

2.32.1 Notifications

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

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

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

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

2.32.2 Reports

The APS worker sends the report to:

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

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

2.33 Identification of service needs and service planning in facility investigations

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

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

2.34 Monitoring and follow-up in facility investigations

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

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

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

2.35 Confidentiality in all APS cases

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

> having a legitimate interest in the matter in accordance with §§ 63.2-102 and 63.2-104 and pursuant to official interagency agreements or memoranda of understanding between state agencies.

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

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

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

2.36 Release of information in all APS cases

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

Exception: Such assurances are not required of:

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

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

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

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

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

LDSS are required to share information with certain agencies that need this information to fulfill their licensing, regulatory and legal responsibilities. 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 § 63.2-104 and the release of information is in the best interest of the adult:

1. Representatives of public and private agencies including community services boards, area agencies on aging and local health departments requesting disclosure when the agency has legitimate interest;

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

3. The adult's legally appointed guardian or conservator;

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

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

6. An attorney representing a local department in an adult protective services case;

7. The Social Security Administration; or

> 8. Any other entity that demonstrates to the commissioner or local department director that legitimate interest is evident.

2.36.3 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 or incidents of abuse, neglect, or exploitation;
>
> 4. Description of medical problems to the extent known;
>
> 5. Disposition of the adult protective services report; and
>
> 6. The protective services needs of the adult.

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

2.36.5.1 Notification that information has been disclosed

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

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

2.36.6 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 Appendix A: APS forms

The following forms may be used during the provision of Adult Protective Services. Unless otherwise indicated, these forms are located on the Adult Services forms page of the VDSS internal website.

Acknowledgment of Mandated Reporter Status
This optional form is used by employers to document that employees have been notified of mandated reporting responsibilities. The form is located on the VDSS public website.

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.

Report of Guardian for Incapacitated Person
This form is used by the guardian to complete the initial report and subsequent annual 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.

2.38 Appendix B: Preponderance of evidence

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

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

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

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

2.39 Appendix C: Letter of understanding

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

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.

2.40 Appendix D: Sample letter of intent to impose civil penalty

Dear:

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

Attached is a copy of the "Request to Impose Civil Penalty" form that identifies the incident you failed to report. This request has been submitted to the Commissioner of the 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 postmark of this letter. If your statement is received in a timely manner, the Commissioner will review your statement and the agency's request to determine if a civil penalty will be imposed. You will receive a written notice of the Commissioner's decision.

The Commissioner's address is:

Department for Aging and Rehabilitative Services

8004 Franklin Farms Drive

Richmond VA 23229

Sincerely,

(Director)

(Name of Local Department)

(Address)

2.41 Appendix E: APS investigation photography guidelines

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

Photographs taken during investigations

- Prior to taking any photographs during the course of an APS investigation, the APS worker shall document all efforts to obtain consent from the adult or his or her legal representative. Written consent is recommended and the form "Consent for Photography for Adult Protective Services (APS) Investigation" may be used. The consent form is located on the DSS internal website.

- If an APS worker takes photographs during an APS investigation, one or more photographs should be printed for inclusion in the hard copy case record (if available). All of the photographs do not need to be printed. One or two photographs may suffice but should clearly represent the injury or the situation which prompted the investigation. The hard copy case record photographs should be large enough to be easily viewed. Each photograph or page of photographs should be labeled with the APS worker's name, the PeerPlace ID, date of the APS report, and the date the photograph was taken.

- After downloading photographs from the camera, <u>all</u> photographs should be stored on a CD. Photographs taken by the APS worker will be put on that CD and placed in the adult's hard copy case record (if available). Each CD should be identified with the adult's PeerPlace case ID, date of the APS report, and the date the photographs were taken. If a hard copy case record is not available, the CD should be stored in a secure location. If the APS worker

leaves his or her position in the APS program, the CD will be given to the APS supervisor.

- Under no circumstances should photographs be stored on a computer hard drive or on any network drive.
- Photographs cannot be digitally altered.
- The LDSS may share the photographs with 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.

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, 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.
- 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[1]

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

- 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

1 Adapted with permission from Montana APS.

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.