

# 10

## SUBSTANCE-EXPOSED INFANTS

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# 10

## SUBSTANCE-EXPOSED INFANTS

### 10.1 Introduction

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The Code of Virginia [§ 63.2-1509 B](#) requires the local department (LDSS) to accept as valid a report that a newborn infant may have been exposed to controlled substances prior to birth. This part of the CPS guidance chapter explains how the Code of Virginia impacts:

- Mandated reporting of substance-exposed infants and the validity decision.
- CPS family assessments and investigations.
- Services to the families of substance-exposed infants.
- Possible court actions.

### 10.2 Mandated reporting of substance-exposed infants

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[\(22 VAC 40-705-40 A5\)](#). Pursuant to [§ 63.2-1509 B](#) of the Code of Virginia, a "reason to suspect that a child is abused or neglected" shall include (i) a finding made by a health care provider within six weeks of the birth of a child that the results of toxicology studies of the child indicate the presence of a controlled substance that was not prescribed for the mother by a physician; (ii) a finding made by a health care provider within six weeks of the birth of a child that the child was born dependent on a controlled substance that was not prescribed by a physician for the mother and has demonstrated withdrawal symptoms; (iii) a diagnosis made by a health care provider at any time following a child's birth that the child has an illness, disease, or condition which, to a reasonable degree of medical certainty, is attributable to in utero exposure to a controlled substance that was not prescribed by a physician for the mother or the child; or (iv) a diagnosis made by a health care provider at any time following a child's birth that the child has a fetal alcohol spectrum disorder attributable to in utero exposure to alcohol. When "reason to suspect" is based upon this subsection, such fact shall be included in the report along with the facts relied upon by the person making the report. Any report made pursuant to [§ 63.2-1509 A](#) of the Code of Virginia constitutes a valid report of abuse or neglect and requires a child protective services

investigation or family assessment, unless the mother sought treatment or counseling as required in this section and pursuant to § [63.2-1505](#) B of the Code of Virginia.

a. Pursuant to § [63.2-1509](#) of the Code of Virginia, whenever a health care provider makes a finding pursuant to § [63.2-1509](#) A of the Code of Virginia, then the health care provider or his designee must make a report to child protective services immediately. Pursuant to § [63.2-1509](#) D of the Code of Virginia, a health care provider who fails to make a report pursuant to § [63.2-1509](#) A of the Code of Virginia is subject to a fine.

b. When a report or complaint alleging abuse or neglect is made pursuant to § [63.2-1509](#) A of the Code of Virginia, then the local department must immediately assess the infant's circumstances and any threat to the infant's health and safety. Pursuant to [22VAC40-705-110](#) A, the local department must conduct an initial assessment.

### **10.2.1 Health care providers required to report substance-exposed newborn infants**

The Code of Virginia requires health care providers to make a report of abuse or neglect when there is a reason to suspect that a mother exposed a newborn infant to controlled substances during the pregnancy. The Code of Virginia specifically delineates four circumstances indicating a reason to suspect that a newborn infant was exposed to a controlled substance during pregnancy:

- Toxicology studies of the infant conducted after an infant's birth indicates the presence of a controlled substance. A physician must not have prescribed the controlled substance for the mother. The findings of the toxicology studies must be made within six (6) weeks of the child's birth by a health care provider.
- Within six (6) weeks of the infant's birth, a health care provider finds that the infant was born dependent on a controlled substance and demonstrated withdrawal symptoms. A physician must not have prescribed the controlled substance for the mother.
- Any time after a child's birth, a health care provider diagnoses the child as having an illness, disease or condition which, to a reasonable degree of medical certainty, is attributable to in utero exposure to a controlled substance. A physician must not have prescribed the controlled substance for the mother or the child.
- Any time after a child's birth, a health care provider makes the diagnosis that the child has a fetal alcohol spectrum disorder attributable to in utero exposure to alcohol. See [Appendix A](#) of this section for additional information regarding fetal alcohol spectrum disorder (FASD).

## 10.2.2 Health care provider responsibilities

### 10.2.2.1 Report to CPS

([22 VAC 40-705-40 A5](#)). Pursuant to § [63.2-1509](#) of the Code of Virginia, whenever a health care provider makes a finding pursuant to § [63.2-1509](#) A of the Code of Virginia, then the health care provider or his designee must make a report to child protective services immediately. Pursuant to § [63.2-1509](#) D of the Code of Virginia, a health care provider who fails to make a report pursuant to § [63.2-1509](#) A of the Code of Virginia is subject to a fine.

Whenever a health care provider makes a finding of one (1) of the four (4) circumstances above, the health care provider shall make a report to CPS as soon as possible, but no longer than **24 hours** after having reason to suspect a reportable offense.

### 10.2.2.2 Report to the Community Services Board

The Code of Virginia § [32.1-127 B6](#) requires that each licensed hospital develop and implement a protocol requiring written discharge plans for identified, substance-abusing, postpartum women and their infants. The discharge plan should be discussed with the patient and appropriate referrals made and documented. Hospitals are required to notify the Community Services Board (CSB) of the jurisdiction in which the woman resides to appoint a discharge plan manager for any identified substance-abusing postpartum woman. The CSB shall implement and manage the discharge plan.

## 10.3 CPS response to substance-exposed infant referrals

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Facts indicating that the child was exposed to controlled substances prior to birth are sufficient, in and of themselves, to suspect that the child is abused or neglected. Therefore, any report made pursuant to the Code of Virginia § [63.2-1509 B](#) constitutes a valid report of abuse or neglect and requires a CPS response.

### 10.3.1 Determine the track decision

Validated referrals involving substance-exposed infants may be placed in the Investigation or Family Assessment track. Because exposure to controlled substances prior to birth is not sufficient evidence for a founded disposition of abuse or neglect, a family assessment that assesses the risk and needs of the child and family may be a more appropriate response.

### 10.3.2 Initial assessment and contacts

([22 VAC 40-705-40 A 5 b](#)). When a report or complaint alleging abuse or neglect is made pursuant to § [63.2-1509 B](#) of the Code of Virginia, then the local department must

immediately assess the infant's circumstances and any threat to the infant's health and safety. Pursuant to [22 VAC 40-705-110 A](#), the local department must conduct an initial assessment.

([22 VAC 40-705-40 A 5 c](#)). When a report or complaint alleging abuse or neglect is made pursuant to [§ 63.2-1509 B](#) of the Code of Virginia, then the local department must immediately determine whether to petition a juvenile and domestic relations district court for any necessary services or court orders needed to ensure the safety and health of the infant.

The LDSS must complete an initial safety assessment of the substance-exposed infant. This assessment may lead to consideration of court action.

### 10.3.3 Exception to initiating or completing the investigation or family assessment

([22 VAC 40-705-40 A 5 d](#)). Within five days of receipt of a report made pursuant to [§ 63.2-1509 A](#) of the Code of Virginia, the local department shall invalidate the complaint if the following two conditions are met: (i) the mother of the infant sought substance abuse counseling or treatment during her pregnancy prior to the infant's birth and (ii) there is no evidence of child abuse and/or neglect by the mother after the infant's birth.

(1) The local department must notify the mother immediately upon receipt of a complaint made pursuant to [§ 63.2-1509 B](#) of the Code of Virginia. This notification must include a statement informing the mother that, if the mother fails to present evidence within five days of receipt of the complaint that she sought substance abuse counseling / treatment during the pregnancy, the report will be accepted as valid and an investigation or family assessment initiated.

(2) If the mother sought counseling or treatment but did not receive such services, then the local department must determine whether the mother made a substantive effort to receive substance abuse treatment before the child's birth. If the mother made a substantive effort to receive treatment or counseling prior to the child's birth, but did not receive such services due to no fault of her own, then the local department should invalidate the complaint or report.

(3) If the mother sought or received substance abuse counseling or treatment, but there is evidence, other than exposure to a controlled substance, that the child may be abused or neglected, then the local department may initiate the investigation or family assessment.

The Code of Virginia [§ 63.2-1505 B](#) provides an exception to initiating and/or completing a family assessment or investigation in referrals involving substance-exposed infants when certain circumstances exist. It is incumbent upon the mother

of the infant to present the evidence that she sought or gained substance abuse counseling or treatment prior to the child's birth.

([§ 63.2-1505 B 2](#)) Complete a report and transmit it forthwith to the Department, except that no such report shall be transmitted in cases in which the cause to suspect abuse or neglect is one of the factors specified in subsection B of [§ 63.2-1509](#) and the mother sought substance abuse counseling or treatment prior to the child's birth;

#### 10.3.3.1 Definitions to determine if exception applies

- "Prior to the child's birth" means the substance abuse counseling or treatment must have occurred during the mother's pregnancy.
- "Sought treatment or counseling" does not require that the mother actually gained substance abuse counseling or treatment. If the mother sought counseling or treatment but did not receive such services, then the LDSS must determine whether the mother made a good faith effort to receive substance abuse treatment before the child's birth.
- "Substance abuse counseling or treatment services" are professional services provided to individuals for the prevention, diagnosis, and/or treatment of chemical dependency. Substance abuse counseling or treatment should include education about the impact of alcohol and other drugs on the fetus and on the maternal relationship; and education about relapse prevention to recognize personal and environmental cues which may trigger a return to the use of alcohol or other drugs. The substance abuse counseling or treatment services must be provided by a professional (e.g., a "certified substance abuse counselor" or a "licensed substance abuse treatment practitioner").

Even if the mother sought treatment, the LDSS could continue a family assessment upon the fact that the report was valid and the need to assess services to remedy or prevent child maltreatment are appropriate. An investigation or family assessment should continue if there is an additional allegation of abuse/neglect, or other evidence that the infant is experiencing a threat of harm.

#### 10.3.4 Complete the family assessment or investigation

([22 VAC 40-705-40 A5 d 3 h](#)). Facts indicating that the infant may have been exposed to controlled substances prior to birth are not sufficient, in and of themselves, to render a founded disposition of abuse or neglect. The local department must establish, by a preponderance of the evidence, that the infant was abused or neglected according to the statutory and regulatory definitions of abuse and neglect.

Family assessments or investigations involving substance-exposed infants shall be conducted in accordance with [Section 4, Family Assessment and Investigation](#) of this guidance manual.

Due to the vulnerability of substance-exposed infants, collateral involvement to determine risk and possible services is crucial, and may include contacts with the family, hospital, pediatrician, and substance abuse evaluation/treatment providers. When appropriate, the LDSS should coordinate services with the CSB.

For investigations, facts establishing that the infant was exposed to controlled substances prior to birth are not sufficient to render a founded disposition of abuse or neglect. The LDSS must establish by a preponderance of the evidence that the infant was injured or experienced a threat of injury or harm according to the statutory and regulatory definitions of abuse and neglect to support a founded disposition.

### 10.3.5 Referral to early intervention programs for children

The LDSS shall refer any child under the age of three (3) for early prevention services to the local Infant and Toddler Connection of Virginia who:

- Is the subject of an investigation with a founded disposition;
- Is identified as affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure; or
- Has a physical or mental condition that has a high probability of resulting in developmental delay, regardless of track or disposition.

All localities are served by an Infant & Toddler Connection of Virginia program. This referral is required by the Child Abuse Prevention and Treatment Act (CAPTA).

LDSS are encouraged to meet with the local Infant and Toddler program to learn about any referral issues that should be explained to the parent. LDSS are also encouraged to develop procedures with the Infant & Toddler Connection of Virginia program to make referrals of certain children under age three. Recommended elements of these procedures should include:

- As soon as possible but no later than **seven (7) calendar days** of completing the investigation or family assessment the LDSS should send a referral to the local Part C Early Intervention program using the local referral form.

The LDSS should:

- Send a referral as soon as possible when a child has been identified as exposed prenatally to an illegal substance or has withdrawal symptoms at birth.



- Send a copy of the referral to the family. The parent should also be informed verbally of the referral and have an opportunity to discuss the referral process.
- Request the family to sign a release form allowing the exchange of information between the Infant-Toddler Connection Program and the LDSS regarding the referral.
- Document the notification and referral in the state automated data system.

More information on the Infant & Toddler programs in Virginia can be found on the [Infant & Toddler Connection of Virginia website](#) and in the [Memorandum of Agreement](#) dated May 2013 issued by the Commissioners of the Department of Social Services and Department of Behavioral Health and Developmental Services and other agencies involved with implementation of Part C of the Individuals with Disabilities Education Act (IDEA).

#### **10.4 Petition the court on behalf of a substance-exposed infant**

When conducting a family assessment or investigation, the Code of Virginia [§ 16.1-241.3](#) also permits the LDSS to petition the juvenile and domestic relations district court solely because an infant has been exposed to controlled substances prior to his or her birth.

([§ 16.1-241.3](#) of the Code of Virginia). Newborn children; substance abuse.

Upon the filing of a petition alleging that an investigation has been commenced in response to a report of suspected abuse or neglect of the child based upon a factor specified in subsection B of [§ 63.2-1509](#), the court may enter any order authorized pursuant to this chapter which the court deems necessary to protect the health and welfare of the child pending final disposition of the investigation pursuant to Chapter 15 ([§ 63.2-1500](#) et seq.) of Title 63.2 or other proceedings brought pursuant to this chapter. Such orders may include, but shall not be limited to, an emergency removal order pursuant to [§ 16.1-251](#), a preliminary protective order pursuant to [§ 16.1-253](#) or an order authorized pursuant to subdivisions 1 through 4 of subsection A of [§ 16.1-278.2](#). The fact that an order was entered pursuant to this section shall not be admissible as evidence in any criminal, civil or administrative proceeding other than a proceeding to enforce the order.

The order shall be effective for a limited duration not to exceed the period of time necessary to conclude the investigation and any proceedings initiated pursuant to Chapter 15 ([§ 63.2-1500](#) et seq.) of Title 63.2, but shall be a final order subject to appeal.

#### **10.4.1 LDSS may petition juvenile and domestic relations district court**

The LDSS should consult with their attorneys when considering petitioning for protective and removal orders as described in Section 7, Judicial Proceedings of this guidance manual.

The LDSS may petition a juvenile and domestic relations district court for any necessary services or court orders needed to ensure the safety and health of the infant.

##### **10.4.1.1 Petition must allege substance-exposed infant**

The LDSS must state in the petition presented to the court that a CPS investigation or family assessment has been commenced in response to a report of suspected abuse or neglect of the child based upon a factor specified in [§ 63.2-1509 B](#) of the Code of Virginia.

#### **10.4.2 The court's authority to issue orders**

The court may enter any order authorized pursuant to [§ 16.1-226](#) et seq. which the court deems necessary to protect the health and welfare of the child. The court may issue such orders as an emergency removal order pursuant to [§ 16.1-251](#), a preliminary protective order pursuant to [§ 16.1-253](#) or an order authorized pursuant to [§ 16.1-278.2 A](#).

For example, such authority would allow the court to remove the child from the custody of the mother pending completion of the investigation or family assessment or compel the mother to seek treatment or other needed services. Code of Virginia [§ 16.1-241.3](#) enhances the court's ability to act quickly in a potentially crisis situation. In addition, the court will have the ability to use its authority to ensure that the mother of the child seeks treatment or counseling. For a further discussion on making a complaint pursuant to Code of Virginia [§ 63.2-1509 B](#), see Section 3: Complaints and Reports of this manual.

#### **10.4.3 Any court order effective until investigation or family assessment is concluded**

Any court order issued pursuant to [§ 16.1-241.3](#) is effective pending final disposition of the investigation or family assessment pursuant to [§ 63.2-1500](#) et seq. The order is effective for a limited duration not to exceed the period of time necessary to conclude the investigation or family assessment and any proceedings initiated pursuant to [§ 63.2-1500](#) et seq.

Any order issued pursuant to [§ 16.1-241.3](#) is considered a final order and subject to appeal. The fact that an order was entered pursuant to [§ 16.1-241.3](#) is not

admissible as evidence in any criminal, civil or administrative proceeding other than a proceeding to enforce the order.

### **10.5 CPS ongoing services to families with substance-exposed infants**

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If the LDSS determines that services are needed to prevent child abuse and neglect and the risk assessment is very high, high or moderate in a founded investigation or family assessment, a case may be opened for services. Refer to Section 6: Services of this guidance manual.

## 10.6 Appendix A: Fetal Alcohol Spectrum Disorder (FASD)

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### 10.6.1 Definition of Fetal Alcohol Spectrum Disorder (FASD)

Experts now know that the effects of prenatal alcohol exposure extend beyond Fetal Alcohol Syndrome.

“Fetal alcohol spectrum disorders” (FASD) is an umbrella term describing the range of effects that can occur in an individual whose mother drank alcohol during pregnancy. These effects may include physical, mental, behavioral, and/or learning disabilities with possible lifelong implications. FASD is not a diagnostic term used by clinicians. It refers to conditions such as:

- Fetal alcohol syndrome (FAS), including partial FAS
- Fetal alcohol effects (FAE)
- Alcohol-related neurodevelopmental disorder
- Alcohol-related birth defects

### 10.6.2 Fetal Alcohol Syndrome (FAS)

FAS consists of a pattern of neurologic, behavioral, and cognitive deficits that can interfere with growth, learning, and socialization. FAS has four (4) major components:

- A characteristic pattern of facial abnormalities (small eye openings, indistinct or flat philtrum, thin upper lip)
- Growth deficiencies, such as low birth weight
- Brain damage, such as small skull at birth, structural defects, and neurologic signs, including impaired fine motor skills, poor eye-hand coordination, and tremors
- Maternal alcohol use during pregnancy

Behavioral or cognitive problems may include mental retardation, learning disabilities, attention deficits, hyperactivity, poor impulse control, and social, language, and memory deficits.

Partial FAS describes persons with confirmed alcohol exposure, facial anomalies, and one other group of symptoms (growth retardation, central nervous system defects, or cognitive deficits).

### **10.6.3 Fetal alcohol effects (FAE)**

Fetal alcohol effects (FAE) describes children with prenatal alcohol exposure who do not have all the symptoms of FAS. Many have growth deficiencies, behavior problems, cognitive deficits, and other symptoms. However, they do not have the facial features of FAS. Although the term FAE is still used, the Institute of Medicine has coined more specific terms. These include alcohol-related neurodevelopmental disorder and alcohol-related birth defects.

### **10.6.4 Alcohol- related neurodevelopmental disorder (ARND)**

Alcohol-related neurodevelopmental disorder (ARND) refers to various neurologic abnormalities, such as problems with communication skills, memory, learning ability, visual and spatial skills, intelligence, and motor skills. Children with ARND have central nervous system deficits but not all the physical features of FAS. Their problems may include sleep disturbances, attention deficits, poor visual focus, increased activity, delayed speech, and learning disabilities.

### **10.6.5 Alcohol- related birth defects (ARBD)**

Alcohol-related birth defects (ARBD) describe defects in the skeletal and major organ systems. Virtually every defect has been described in some patient with FAS. They may include abnormalities of the heart, eyes, ears, kidneys, and skeleton, such as holes in the heart, underdeveloped kidneys, and fused bones.

### **10.6.6 Cause of FASD**

The only cause of FASD is alcohol use during pregnancy. When a pregnant woman drinks, the alcohol crosses the placenta into the fetal blood system. Thus, alcohol reaches the fetus, its developing tissues, and organs. This is how brain damage occurs, which can lead to mental retardation, social and emotional problems, learning disabilities, and other challenges. No alcohol consumption is safe during pregnancy. In addition, the type of alcohol (beer, wine, hard liquor, wine cooler, etc.) does not appear to make a difference.

### **10.6.7 Prevalence of FASD**

FASD occurs in about 10 per 1,000 live births or about 40,000 babies per year. FAS, the most recognized condition in the spectrum, are estimated to occur in 0.5 to 2 per 1,000 live births. It now outranks Down syndrome and autism in prevalence.

### **10.6.8 Assessment of FASD**

It is extremely difficult to diagnose a fetal alcohol spectrum disorder. A team of professionals is needed, including a physician, psychologist, speech pathologist, and physical or occupational therapist. Diagnostic tests may include physical exams,

intelligence tests, and occupational and physical therapy, psychological, speech, and neurologic evaluations. Diagnosis is easier if the birth mother confirms alcohol use during pregnancy. However, FAS can be diagnosed without confirming maternal alcohol use, if all the symptoms are present.

#### **10.6.9 Impact of FASD**

Children with FASD often grow up with social and emotional problems. They may have mental illness or substance abuse problems, struggle in school, and become involved with the corrections system. Costs of FAS alone are estimated at between 1 and 5 million dollars per child, not including incarceration. This estimate does not include cost to society, such as lost productivity, burden on families, and poor quality of life.

More information regarding Fetal Alcohol Spectrum Disorder may be accessed at:

[Fetal Alcohol Spectrum Disorder Center for Excellence](#) .