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SUBSTANCE-EXPOSED INFANTS

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SUBSTANCE-EXPOSED INFANTS

10.1 Introduction

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

> (22 VAC 40-705-40 A4). Pursuant to § 63.2-1509 B of the Code of Virginia, certain specified facts indicating that a newborn infant may have been exposed to controlled substances prior to birth or a positive drug toxicology of the mother indicating the presence of a controlled substance are sufficient to suspect that a child is abused or neglected. A diagnosis of fetal alcohol syndrome is also sufficient. Any report made pursuant to § 63.2-1509 B 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. The attending physician may designate a hospital staff person to make the report to the local department on behalf of the attending physician. That hospital staff person may include a nurse or hospital social worker.

b. Pursuant to § 63.2-1509 B of the Code of Virginia, whenever a physician makes a finding pursuant to § 63.2-1509 B of the Code of Virginia, then the physician or his designee must make a report to child protective services immediately.

10.2.1 Physicians required to report substance-exposed newborn infants

The Code of Virginia requires attending physicians to make a report of abuse or neglect when there is 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:

- A blood or urine test of the infant or mother conducted **within 48 hours** of the 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 blood or urine test must be made **within seven (7) days** of the child's birth.

- **Within 48 hours** of the infant's birth, the attending physician 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.

- **Within seven (7) days** of the infant's birth, the attending physician 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.

- **Within seven (7) days** of the child's birth, the attending physician makes the diagnosis that the child has fetal alcohol syndrome attributable to in utero exposure to alcohol.

10.2.2 Physician and hospital responsibilities

10.2.2.1 Report to CPS

Whenever a physician makes a finding of one of the four circumstances above, the physician shall make a report to CPS immediately or at least **within 72 hours** of making the finding.

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 of the jurisdiction in which the woman resides to appoint a discharge plan manager for any identified substance-abusing postpartum woman. The Community Services Board shall implement and manage the discharge plan.

10.3 CPS response to substance-exposed infant referrals

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 4 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 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.
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> (22 VAC 40-705-40 A 4 d). 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 newborn. 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 4 e). Within five days of receipt of a report made pursuant to § 63.2-1509 B 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.
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> (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.
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> (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 § 63.2-1509 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.

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 A4 e 3 i). 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 Community Services Board.

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.

10.4 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.
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> Upon the filing of a petition, within twenty-one days of a child's birth, 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.
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> 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. If an LDSS wishes to seek the assistance of the juvenile and domestic relations district court pursuant to § 16.1-241.3, the LDSS shall file the petition **within 21 days** of the child's birth. Please note that the Code of Virginia requires that the petition shall be filed **within 21 days** of the child's birth and not **within 21 days** of the date of receipt of the complaint or report.

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

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.