

## Administrative Policy Manual

### Home Care

#### Abuse, Neglect, and Exploitation

PC.20

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#### Purpose

To identify the suspected or alleged abuse, neglect, or exploitation of a patient/client, or misappropriation of patient/client property, and establish appropriate protocols for reporting and/or referring abuse, neglect, or exploitation of a patient/client, or misappropriation of patient/client property, immediately to the Agency, and other appropriate authorities in accordance with state law.

#### Definitions

The Centers for Medicare & Medicaid Services (CMS) provides the following definitions:

- I. Abuse may be mental, physical, sexual, or verbal, and includes abuse facilitated or enabled through the use of technology.
  - A. Mental abuse includes, but is not limited to, humiliation, harassment, and threats of punishment or deprivation, sexual coercion, and intimidation (e.g., living in fear in one's own home).
  - B. Physical abuse refers to any action intended to cause physical harm or pain, trauma, or bodily harm (e.g., hitting, slapping, punching, kicking, pinching, etc.). It includes the use of corporal punishment as well as the use of any restrictive, intrusive procedure to control inappropriate behavior for purposes of punishment.
  - C. Sexual abuse includes any incident where a patient/client is coerced, manipulated, or forced to participate in any form of sexual activity for which they did not give affirmative permission (or gave affirmative permission without the understanding required to give permission), or sexual assault against a patient/client who is unable to defend themselves.
  - D. Verbal abuse refers to any use of insulting, demeaning, disrespectful, oral, written, or gestured language directed towards, and in the presence of, the patient/client.
- II. Immediately means reporting without delay. The interim time between discovery and reporting an incident may be influenced by the individual situation. However, the reporting must be accomplished as soon as possible following the discovery.
- III. Injury of unknown source is an injury that was not witnessed by any person and the source of the injury could not be explained by the patient/client.
- IV. Misappropriation of property is theft or stealing of items from a patient's/client's home.
- V. Neglect means a failure to provide goods and/or services necessary to avoid physical harm, mental anguish, or mental illness.

**Policy**

- I. Agency employees and contractors will be aware of signs and symptoms indicating possible abuse and/or neglect of the patient/client, and/or misappropriation of patient/client property.
- II. Any agency staff, whether employed directly or under arrangement, in the normal course of providing services to patients/clients, who identifies, notices, or recognizes incidences or circumstances of mistreatment, neglect, verbal, mental, sexual, and/or physical abuse, including injuries of an unknown source or misappropriation of patient/client property, must report these findings immediately to the Agency and other appropriate authorities in accordance with state law. The patient/client may experience normal day-to-day bumps and minor abrasions as they go about lives. These minor occurrences should be recorded by the Agency staff once they are aware, and follow-up should be conducted as indicated.
- III. An agency employee, representative, or contractor suspected of abuse or neglect of a patient/client, or misappropriation of patient/client property, will be suspended immediately, and an investigation will be conducted by the Agency. If there is cause to believe abuse or neglect of the patient/client, or misappropriation of patient/client property, has occurred by a staff member or contractor, the incident(s) will be reported to the appropriate authorities.
- IV. The Agency or staff members will not implement retaliatory action against any individual who reports suspected adult patient/client abuse, neglect, and/or misappropriation of patient/client property.

**Procedure**

- I. Any agency staff member, contractor, or representative will:
  - A. Immediately report an assessment of a patient's/client's condition which might indicate abuse or neglect of a patient/client, or misappropriation of patient/client property, to the Agency supervisor. Symptoms that may indicate a need for further investigation may include the following:
    1. Injuries to the trunk of the body that indicate intentional rather than accidental harm
    2. Injury with a patterned appearance to it, such as marks from a belt or a ring
    3. Bruised skin from a grasp
    4. The patient/client reports an abusive incident
  - B. When appropriate, acquire input from other disciplines providing patient/client care regarding concerns.

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- A. Initiate an investigation of the situation.
- B. Address any allegations or evidence of abuse to determine if immediate care is needed, a change in the plan of care is indicated, or if a referral to an appropriate agency is warranted.
- C. Report findings, and intentions to report the suspected abuse to the patient's/client's attending physician. Medical social services may be ordered by the physician, as appropriate.
- D. Report if there is cause to believe abuse or neglect of a patient/client, or misappropriation of patient/client property, has occurred by a staff member or contractor to the appropriate authorities or state agencies immediately.
- E. Immediately suspend any agency employee, representative, or contractor suspected of abuse or neglect of a patient/client, or misappropriation of patient/client property.
- F. If the investigation validates the claim, the employee or contractor will be terminated, and the incident(s) reported to the appropriate state department, state licensing board, or law enforcement officials.

**III. All reports of suspected abuse or neglect of a patient/client, or misappropriation of patient/client property, will be documented by the Agency and such documentation will be kept confidential by the Agency to the extent required by state law. Documentation will include only observations and statements by the persons involved. The reporter will not document conclusions or opinions.**

- A. Copies of reports filed with the state or local law enforcement will be tracked and kept by the Agency.

**IV. Incidents of family violence will be reported to a local law enforcement agency.****Reference**

Code of Federal Regulations, Title 42, Part 484  
§484.50(e)

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#### Definition

I. In replacement of the definitions found in the Abuse, Neglect, and Exploitation policy in the Provision of Care section of the Administrative Manual the following state definitions will apply:

A. "Abuse" is defined as:

1. The negligent or willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to an elderly or disabled person by the person's caretaker, family member, or other individual who has an ongoing relationship with the person; or
2. Sexual abuse of an elderly or disabled person, including any involuntary or non-consensual sexual conduct that would constitute an offense under Section 21.08, Penal Code (indecent exposure) or Chapter 22, Penal Code (assaultive offenses), committed by the person's caretaker, family member, or other individual who has an ongoing relationship with the person.

B. "Neglect" means the failure to provide for one's self the goods or services, including medical services, which are necessary to avoid physical or emotional harm or pain or the failure of a caretaker to provide such goods or services.

II. In addition to the definitions found in the Abuse, Neglect, and Exploitation policy in the Provision of Care section of the Administrative Manual the following state definitions will apply:

A. "Adult" means a patient/client who:

1. Is 18 years of age or older; or
2. Under 18 years of age who:
  - a. Is or has been married; or
  - b. Has had the disabilities of minority removed pursuant to the Texas Family Code Chapter 31.

B. "Agency" means an entity licensed under Chapter 142, Health and Safety Code.

C. "Cause to believe" means that an Agency or individual knows or suspects, or receives an allegation regarding abuse, neglect, or exploitation.

D. "Employee" means an individual who is directly employed by the Agency, a contractor, or a volunteer.

E. "Exploitation" means the illegal or improper act or process of a caretaker, family member, or other individual who has an ongoing relationship with the elderly or disabled person using the

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resources of an elderly or disabled person for monetary or personal benefit, profit, or gain without the informed consent of the elderly or disabled person.

F. “Report” means a person having cause to believe that an elderly person, a person with a disability, or an individual receiving services from a provider as described in Texas Subchapter F, Section 48.251(a)(3), is in the state of abuse, neglect, or exploitation.

G. Additional definitions regarding the protection of a child, but are not limited to the following:

1. “Abuse” includes the following acts or omissions by a person as defined in Texas Family Code, Title 5, Subtitle E, Chapter 261, Subchapter A, Section 261.001(1).
2. “Child” means a patient/client under 18 years of age who:
  - a. Is not and has not been married; or
  - b. Has not had the disabilities of minority removed pursuant to the Texas Family Code Chapter 31.
3. “Exploitation” means the illegal or improper use of a child or of the resources of a child for monetary or personal benefit, profit, or gain by an employee, volunteer, or other individual working under the auspices of the Agency or program as further described by rule or policy.
4. “Neglect” includes the following acts or omissions by a person as defined in in Texas Family Code, Title 5, Subtitle E, Chapter 261, Subchapter A, Section 261.001(4).
5. “Report” means a report that alleged or suspected abuse or neglect of a child has occurred or may occur.

**Policy**

I. In addition to the requirements defined in the Abuse, Neglect and Exploitation policy in the Provision of Care section of the Administrative Policy Manual:

- A. Agency employees and contractors will be oriented upon hire and sign an acknowledgement affirming compliance with the Agency policy. Agency employees and contractors will attend an abuse, neglect, and exploitation (ANE) in-service annually thereafter.
- B. Agency employees, and contractors are required, and have a legal obligation to, report suspected abuse, neglect, and/or exploitation, as defined in the definition section as reportable conduct, to the Texas Department of Family and Protective Services (DFPS) and the Texas Health and Human Services Commission (HHSC).
- C. The patients/clients will be informed of and educated on this policy, verbally and in writing, during the admission process in a language and manner that the patient/client understands.

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#### Procedure

I. In addition to the requirements defined in the Abuse, Neglect and Exploitation policy in the Provision of Care section of the Administrative Policy Manual the following requirements will apply:

- A. Agency Management will:
  1. Immediately initiate an investigation of known or alleged acts of abuse, neglect, or exploitation of a patient/client or misappropriation of patient/client property immediately upon witnessing the act or upon receipt of the allegation or upon having cause to believe abuse, neglect, or exploitation of a patient/client or misappropriation of patient property occurred.
  2. Report if there is cause to believe abuse, neglect, or exploitation of the patient/client or misappropriation of patient/client property has occurred by a staff member, representative, or contractor, immediately, meaning within 24 hours. Cause to believe is defined as an Agency or individual knows or suspects, or receives an allegation regarding abuse, neglect, or exploitation.
  3. Report all alleged ANE regardless of payor source as follows:
    - a. To Complaint Intake and Investigation (CII) if the agency has cause to believe that the alleged ANE was committed by an Agency employee, volunteer, contractor or subcontractor. Reports are submitted:
      - (1) Online at <https://txhhs.force.com/TULIP/s>, or
      - (2) By emailing [ciicomplaints@hhs.texas.gov](mailto:ciicomplaints@hhs.texas.gov), or
      - (3) By calling 1-800-458-9858 between the hours of 7:00 am and 7:00 pm, Monday through Friday.
    - b. To DFPS, if the agency has cause to believe that the alleged ANE was committed by someone other than Agency staff (e.g. a family member, friend, etc.); or
    - c. To DFPS, if the agency has cause to believe that the consumer is in a state of self-neglect.
    - d. The Texas Department of Family and Protective Services (DFPS) no longer investigates allegations involving Agency providers.
  - B. The Agency will educate patients/clients on this revised process to ensure they understand whom to contact in these situations. Consumers wishing to file a complaint can file a complaint:
    1. Online at <https://txhhs.force.com/complaint/s/>, or
    2. Email CII at [ciicomplaints@hhs.texas.gov](mailto:ciicomplaints@hhs.texas.gov), or

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3. By calling 1-800-458-9858 between the hours of 7:00 am and 7:00 pm, Monday through Friday.
- C. The Agency must self-report an incident of alleged ANE by:
  1. Submitting a report online at <https://txhhs.force.com/TULIP/s>, or
  2. Emailing CII at [ciicomplaints@hhs.texas.gov](mailto:ciicomplaints@hhs.texas.gov) or
  3. By calling 1-800-458-9858 between the hours of 7:00 am and 7:00 pm, Monday through Friday.
  4. Self-reports will no longer go to DFPS
- D. The Agency will report as much information that is known to HHSC during the initial report. For a list of items, the Agency should include in the initial report to CII, the Agency will refer to the HHSC Provider Letter 18-20 (ALL), Section 2.0.
- E. The Agency will complete a Provider Investigation Report (PIR) using the HHSC form 3613:
  1. The Agency may access the HHSC form 3613 at <https://www.hhs.texas.gov/sites/default/files/documents/laws-regulations/forms/3613/3613.pdf>.
  2. Each intake submitted to CII requires a separate PIR.
  3. The PIR must include all information from the initial incident report and any additional information the Agency has obtained since making the initial report, including witness statements.
  4. The Agency will ensure the PIR is signed and includes the CII intake number from the initial report;
- F. The Agency will ensure a thorough investigation is conducted and documented in the PIR.
  1. The Agency will determine why the incident occurred, what actions the Agency will take in response to the incident, and what changes will be made to help prevent a similar incident from occurring.
- G. The Agency will submit the PIR to CII within 10 calendar days, after reporting the act, verbally or online, to the Department of Family and Protective Services and HHSC:
  1. The PIR may be submitted by the following methods:
    - a. If the incident was reported initially through TULIP, the PIR and supporting documentation can be submitted through TULIP;

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- b. By email to [ciiprovider@hhs.texas.gov](mailto:ciiprovider@hhs.texas.gov) (Attachments must be less than 20 MB);
- c. By fax, if the report with statements and other relevant documentation, is 15 pages or fewer, to 877-438-5827; or
- d. By mail to Texas Health and Human Services, Complaint and Incident Intake, Mail Code E249, P.O. Box 149030, Austin, TX 78714-9030.

H. The Agency will complete the investigation and documentation within 30 days after the Agency received a complaint or report of abuse, neglect, and exploitation, unless the Agency has and documents reasonable cause for delay.

I. Documentation will be kept confidential by the Agency to the extent required by state law.

J. Child Abuse, Neglect or Exploitation

1. The Agency will file a report of child abuse, child neglect, or child exploitation immediately, meaning within 24 hours, with DFPS, the local or state law enforcement agency, the state agency that operates, licenses, certifies, or registers the agency in which alleged abuse occurs or other agency designated by the court to be responsible for the protection of children.
2. Identify the following, if known in the Child Abuse report:
  - a. Name and address of the child;
  - b. The name and address of the person responsible for the care, custody, or welfare of the child;
  - c. Any other pertinent information concerning the alleged suspected abuse, neglect, or exploitation.

**Reference**

Texas Human Resources Code

Title 2, Subtitle D, Chapter 48, §48.002

Texas Family Code

Title 5, Subtitle E, Chapter 261, §261.401

Texas Administrative Code (TAC)

Title 26, Part 1, Chapter 558, §558.249 and §558.250

Texas Health and Human Services Commission

Long-Term Care Regulation Provider Letter PL 18-20 (ALL) revised January 19, 2023

Texas Health and Human Services form 3613

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<https://www.hhs.texas.gov/regulations/forms/3000-3999/form-3613-provider-investigation-report-fax-cover-sheet-home-health-hospice-personal-assistance>

Texas Health and Human Services Commission

Long-Term Care Regulation Provider Letters PL 2023-12 and 2023-13

For clients receiving Personal Assistance Services (PAS), references to physicians, medical services, or skilled care do not apply. PAS services are non-medical in nature. Abuse, neglect, and exploitation reporting requirements apply equally to PAS clients and are followed in accordance with Texas HHSC and DFPS requirements.