

Purpose

To identify suspected or alleged victims of abuse, neglect, and exploitation (ANE) and establish appropriate protocols for reporting and/or referring abuse, neglect, and/or exploitation of a client to the appropriate state agency.

Definition

- I. Adult means a client who:
 - A. Is 18 years of age or older; or
 - B. Under 18 years of age who:
 1. Is or has been married; or
 2. Has had the disabilities of minority removed pursuant to the Texas Family Code Chapter 31.
- II. "Adult Abuse" is defined as:
 - A. 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
 - B. 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.
- III. "Adult 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 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.
- IV. "Adult 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.
- V. "Agency" means an entity licensed under Chapter 142, Health and Safety Code.
- VI. "Cause to believe" means that an Agency or individual knows or suspects, or receives allegation regarding abuse, neglect, or exploitation.
- VII. "Employee" means an individual who:
 - A. Is directly employed by the Agency, a contractor, or a volunteer

Abuse, Neglect, and Exploitation

PC.15

Page 2 of 11

- B. Provides personal care services, active treatment, or any other personal services to a client receiving Agency services
 - C. Is not licensed by the state to perform the services the person performs for the Agency.
- VIII. "Report" means a report that alleged or suspected abuse or neglect of a client has occurred or may occur.
- IX. Additional definitions regarding the protection of a child, include but are not limited to the following: Mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;
1. Causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning;
 2. Physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm;
 3. Failure to make a reasonable effort to prevent an action by another person that results in substantial harm to the child;
 4. Sexual conduct harmful to the child's mental, emotional, or physical welfare, including conduct that constitutes the offense of continuous sexual abuse of young child or children under Section 21.02, Penal Code; indecency with a child under Section 21.11, Penal Code; sexual assault under Section 22.011, Penal Code; or aggravated sexual assault under Section 22.021, Penal Code;
 5. Failure to make a reasonable effort to prevent sexual conduct harmful to a child;
 6. Compelling or encouraging the child to engage in sexual conduct as defined by Section 43.01, Penal Code, including conduct that constitutes an offense of trafficking of persons under Section 20A.02(a)(7) or (8), Penal Code, prostitution under Section 43.02(a)(2), Penal Code, or compelling prostitution under Section 43.05 (a)(2), Penal Code;
 7. Causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene as defined by Section 43.21, Penal Code, or pornographic;

8. The current use by a person of a controlled substance as defined by Chapter 481, Health and Safety Code, in a manner or to the extent that the use results in physical, mental, or emotional injury to a child;
 9. Causing, expressly permitting, or encouraging a child to use a controlled substance as defined by Chapter 481, Health and Safety Code;
 10. Causing, permitting, encouraging, engaging in, or allowing a sexual performance by a child as defined by Section 43.25, Penal Code; or,
 11. Knowingly causing, permitting, encouraging, engaging in, or allowing a child to be trafficked in a manner punishable as an offense under Section 20A.02(a)(5), (6), (7), or (8), Penal Code, or the failure to make a reasonable effort to prevent a child from being trafficked in a manner punishable as an offense under any of those sections.
- B. “Child” means a client under 18 years of age who:
1. Is not and has not been married; or
 2. Has not had the disabilities of minority removed pursuant to the Texas Family Code Chapter 31.
- C. “Child Neglect” includes the following acts or omissions by a person:
1. The leaving of a child in a situation where the child would be exposed to a substantial risk of physical or mental harm, without arranging for necessary care for the child, and the demonstration of an intent not to return by a parent, guardian, or managing or possessory conservator of the child;
 2. The following acts or omissions by a person:
 - a. Placing a child in or failing to remove a child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily injury or a substantial risk of immediate harm to the child;
 - b. Failing to seek, obtain, or follow through with medical care for a child, with the failure resulting in or presenting a substantial risk of death, disfigurement, or bodily injury or with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child;
 - c. The failure to provide a child with food, clothing, or shelter necessary to sustain the life or health of the child, excluding failure caused primarily by financial inability unless relief services had been offered and refused;

Abuse, Neglect, and Exploitation

PC.15

Page 4 of 11

- d. Placing a child in or failing to remove the child from a situation in which the child would be exposed to a substantial risk of sexual conduct harmful to the child;
 3. Placing a child in or failing to remove the child from a situation in which the child would be exposed to acts or omissions that constitute abuse under Family Code Chapter 261 Subdivision (1) (E), (F), (G), or (K) committed against another child.
 4. The failure by the person responsible for a child's care, custody, or welfare to permit the child to return to the child's home without arranging for the necessary care for the child after the child has been absent from the home for any reason, including having been in residential placement or having run away.
- D. "Child 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.

Policy

- I. Agency employees, contractors, and volunteers 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/or exploitation (ANE) in-service annually thereafter.
- II. Agency employees, contractors, and volunteers are required, and have the 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), the Texas Health and Human Services (HHSC) and Agency management.
- III. The 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 client understands.
 - A. If the Agency contracts with HHS for Community Services, the client and their representative will be informed of and educated on this policy, verbally and in writing, during the admission process in a language and manner that the client understands and at least once every 12 months thereafter.

Procedure

- I. The Agency staff, contractor, or representative will:
 - A. Immediately report assessment of the client's condition that might indicate abuse, neglect, or exploitation to the Agency supervisor. Signs and symptoms that may indicate a need for further investigation include the following:
 1. Signs of physical abuse:
 - a. Injuries to the trunk of the body that indicate intentional rather than accidental harm.

- b. Injury with a patterned appearance to it, i.e., marks from a belt or a ring.
 - c. Bruised skin from a grasp, black eyes.
 - d. Swelling, cuts, burns, welts, or scratches.
 - e. The client reports an abusive incident.
2. Signs of emotional/psychological abuse:
 - a. Being emotionally upset or agitated.
 - b. Eating issues, increased worry.
 - c. Being extremely withdrawn and non-communicative or non-responsive.
 - d. Unusual behavior usually attributed to dementia.
 - e. Anxiety or depression.
 - f. An individual's report of being verbally or emotionally mistreated.
3. Signs of sexual abuse:
 - a. Difficulty walking and/or sitting.
 - b. Torn, stained, or bloody clothing.
 - c. Genital pain or itching.
 - d. External genitalia bruising/bleeding, bruising around breasts.
 - e. Dramatic changes in behavior.
 - f. An individual's report of being sexually assaulted or raped.
4. Signs of neglect:
 - a. Lack of necessities-food, clothing, shelter.
 - b. Lack of supervision.
 - c. Dehydration, malnutrition, untreated bed sores, poor personal hygiene.
 - d. Lack of medical care.
 - e. Unsanitary living conditions.
 - f. Unsafe living conditions.
 - g. An individual's report of being neglected.

5. Signs of exploitation:
 - a. Unpaid bills or unusual activity in bank account.
 - b. Frequent expensive gifts to a caregiver.
 - c. Unexplained disappearance of funds or valuable possessions.
 - d. Caregivers refuse to spend money on those they are caring for.
 - e. Frequent checks made out to “cash”.
 - f. Signatures on documents that don’t match a client’s handwriting.
 - g. An individual’s report of financial exploitation.
 - B. When appropriate, acquire input from other disciplines providing care regarding concerns.
 - C. Be knowledgeable of methods to prevent occurrences of abuse, neglect, and exploitation, such as:
 1. Know the signs and symptoms of abuse.
 2. Ask questions when abuse, neglect, or exploitation is suspected.
 3. Listen, affirm, and reassure the person that it is never their fault.
 4. Follow the process to report suspected or reported abuse, neglect, or exploitation.
 5. Refer the person to, or contact, professionals or organizations that have experience in assisting and supporting victims of abuse, neglect, and exploitation.
- II. The Agency Management will:
- A. Immediately initiate an investigation of known or alleged acts of ANE of a client or misappropriation of client property upon witnessing the act or upon receipt of the allegation or upon having cause to believe ANE or misappropriation of client property occurred.
 - B. Report findings and the Agency’s intentions to report the suspected abuse, neglect, or exploitation to the appropriate entities and the client’s attending physician. Medical Social Services may be ordered by the physician, as appropriate.
 1. Beginning September 1, 2023, 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, or
 - (3) 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. Beginning September 1, 2023, the Texas Department of Family and Protective Services (DFPS) will no longer investigate allegations involving Agency providers.
- C. The Agency will educate 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, or
 3. Call 1-800-458-9858 between the hours of 7:00 am and 7:00 pm, Monday through Friday.
- D. 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 or
 3. 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
- E. 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.
- F. 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;
- G. 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.
- H. The Agency will immediately suspend any Agency employee or contractor suspected of abuse, neglect, or exploitation while an investigation is being conducted by the Agency and State agency. If the investigation validates the claim, the employee or contractor will be terminated, and the incident(s) reported to appropriate state department, state licensing board, or law enforcement official.
- I. 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;
 - b. By email to 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: Texas Health and Human Services, Complaint and Incident Intake, Mail Code E249, P.O. Box 149030, Austin, TX 78714-9030.
- J. 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.
- K. Documentation will be kept confidential by the Agency to the extent required by state law.
- III. Child Abuse, Neglect or Exploitation
- A. The Agency will file a report of child abuse, child neglect, or child exploitation immediately, meaning within 24 hours, with DFPS, 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.

- B. Identify the following, if known in the Child Abuse report:
 - 1. Name and address of child;
 - 2. The name and address of person responsible for the care, custody, or welfare of the child;
 - 3. Any other pertinent information concerning the alleged suspected abuse, neglect, or exploitation; and
 - C. Report any incidents of family violence to a local law enforcement agency.
 - D. Track and keep copies of reports filed with the state or local law enforcement.
- IV. If the Agency contracts with HHS for Community Services, the following requirements will also apply:
- A. The Agency staff will be trained before assuming job responsibilities and at least annually thereafter, and be knowledgeable of the following:
 - 1. Acts that constitute abuse, neglect, and exploitation include but not limited to the following:
 - a. Yelling, habitual blaming, isolation, infliction of pain or injury to client, unreasonable confinement, misuse of client money, disappearance of client money and/or valuable possession/property, stealing, poor hygiene, client lack of glasses, hearing aids, dentures, prosthetics, etc., lack of food or water, malnutrition, dehydration, untreated skin disorders/rashes, untreated injuries or medical problems, unsanitary living conditions, medication not being given properly.
 - 2. Signs and symptoms of abuse, neglect and exploitation (see section I)
 - 3. Methods to prevent the occurrence of abuse, neglect, exploitation, include but not limited to:
 - a. Recognizing signs and symptoms;
 - b. Know actions to take when abuse, neglect or exploitation suspected, reported or alleged;
 - c. Be aware of those who may be vulnerable and limit their isolation, encourage them to stay in contact with others;
 - d. Educate others of signs and symptoms of abuse, neglect, and exploitation and actions to take if suspected, reported or alleged;

- e. Encourage client to avoid sharing their personal information like social security number, date of birth, banking information, etc.;
 - f. Assist client in forming support group with friends and family; and
 - g. Encourage open communication with the client.
- B. At the time of admission and at least every 12 months thereafter, the client and the representative will be instructed verbally and in writing on the following:
- 1. How to report allegations of abuse, neglect, or exploitation to DFPS and provided with the Abuse Hotline toll-free number, 1-800-252-5400, in writing, and
 - 2. Education about protecting the individual from abuse, neglect, and exploitation.
- C. The Agency will take necessary actions to secure the safety of the client if there is suspected abuse, neglect, or exploitation and notify the client as soon as possible, but no later than 24 hours, after the Agency reports or is notified of the allegation the following:
- 1. The allegation report, and
 - 2. The actions the Agency has taken or will take based on the allegation, the condition of the client, and the nature and severity of any harm to the client.
- D. If abuse, neglect, or exploitation is confirmed by the investigative authority and the Agency is notified of the confirmation, the Agency will take appropriate action to prevent the reoccurrence of abuse, neglect, or exploitation, including, when warranted, disciplinary action against the employee, subcontractor, or volunteer confirmed to have committed abuse, neglect, and/or exploitation.
- E. The Agency will review reports of confirmed abuse, neglect, or exploitation of which it has been notified, and all final investigative reports received from Texas Health and Human Commission (HHSC) for investigations, at least annually and will identify program process improvements that will prevent the reoccurrence of such incidents, thus improving service delivery.
- F. In addition to not taking retaliatory action against the client if he or she alleges abuse, neglect, or exploitation that did not occur, the Agency will not take retaliatory action against an employee, subcontractor, volunteer, or any other person who files a complaint, presents a grievance, or otherwise provides good faith information relating to possible abuse, neglect, or exploitation against him or her.
- G. The Agency will not take retaliatory action against the client if someone on his or her behalf files a complaint, presents a grievance, or otherwise provides good faith information relating to possible abuse, neglect, or exploitation of the client.

Reference

Texas Administrative Code (TAC)

Title 22, Part 11, Chapter 217, Rule §217.11

Texas Administrative Code (TAC)

Title 40, Part 1, Chapter 47, Subchapter H, Rule §47.101

Texas Administrative Code (TAC)

Title 26, Part 1, Chapter 558, Subchapter C, Rule §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

<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