

Purpose

To ensure the Agency’s procedures for reporting, investigating, and documenting alleged acts of abuse, neglect, and/or exploitation of a client by an employee or volunteer of the Agency per the Texas Licensing Standards for Home and Community Support Services Agencies in §558.249, §558.250, and their revisions.

Policy

If the Agency has cause to believe, because of witnessing the act or upon receipt of an allegation, that an employee, volunteer, or contractor has committed abuse, neglect, and/or exploitation of an Agency’s client, within 24 hours a verbal or online report will be made to the Department of Family and Protective Services (DFPS) and a verbal report will be made to the Health and Human Services Commission (HHSC), a written report will be submitted to HHSC within ten (10) calendar days, and the investigation will be completed within 30 days.

Definitions per 40 TAC, Chapter 711, Subchapter A; the Human Resources Code, §48.251 (for children and adults and 40 TAC, Chapter 705, Subchapter A (for adults)

A. Adult Abuse:

1. An adult is a client who is 18 years of age or older or under 18 years of age who is or has been married or has had the disabilities of minority remove pursuant to the Texas Family Code Chapter 31.
2. The negligent or willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to an elderly person or person with a disability by the person's caretaker, family member, or other individual who has an ongoing relationship with the person; or
3. Sexual abuse of an elderly person or person with a disability, including any involuntary or nonconsensual 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. Adult Exploitation: the illegal or improper act or process of a caretaker, family member, or other individual who has an ongoing relationship with an elderly person or person with a disability using, or attempting to use, the resources of the elderly person or a person with a disability including the person’s Social Security Number or other identifying information, for monetary or personal benefit, profit, or gain without the informed consent of the person.

C. Adult Neglect: 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.

D. Agency: an entity licensed under the Texas Health and Safety Code, Chapter 142.

E. Cause to believe: an agency knows, suspects, or receives an allegation regarding abuse, neglect, and/or exploitation.

F. Child Abuse: includes the following acts or omissions by a person:

1. A child is a client under 18 years of age who is not and has not been married or has not had the disabilities of minority removed pursuant to the Texas Family Code Chapter 31.
2. Mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;
3. 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;
4. 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;
5. Failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child;
6. Sexual conduct harmful to the child's mental, emotional, or physical welfare, including conduct that constitutes the offense of continuous sexual abuse of a 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;
7. Failure to make a reasonable effort to prevent sexual conduct harmful to a child;
8. Compelling or encouraging the child to engage in sexual conduct as defined by Section 43.01, Penal Code, including compelling or encouraging the child in a manner that constitutes an offense of trafficking of persons under Section 20A.02(a)(7) or (8), Penal Code; prostitution under Section 43.02(b), Penal Code; or compelling prostitution under Section 43.05(a)(2), Penal Code;
9. 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;
10. 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;
11. Causing, expressly permitting, or encouraging a child to use a controlled substance as defined by Chapter 481, Health and Safety Code;
12. Causing, permitting, encouraging, engaging in, or allowing a sexual performance by a child as defined by Section 43.25, Penal Code;
13. 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; or

14. Forcing or coercing a child to enter into a marriage.
- G. Child Exploitation: 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.
- H. Child Neglect: includes:
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;
 - 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; or
 - e. 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 subdivision 261.001(1)(E), (F), (G), or (K) committed against another child.
 3. 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; or
 4. A negligent act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program, including failure to comply with an individual treatment plan, plan of care, or individualized service plan, that causes, or may cause, substantial emotional harm or physical injury to, or the death of, a child serviced by the facility or program as further described by rule or policy.
- I. Child Neglect: does not include:
1. The refusal by a person responsible for a child's care, custody, or welfare to permit the child to remain in or return to the child's home resulting in the placement of the child in the conservatorship of the DFPS if:
 - a. The child has a severe emotional disturbance;

- i. A mental, behavioral, or emotional disorder of sufficient duration to result in functional impairment that substantially interferes with or limits a person's role or ability to function in family, school, or community activities.
 - b. The person's refusal is based solely on the person's inability to obtain mental health services necessary to protect the safety and well-being of the child; and
 - c. The person has exhausted all reasonable means available to obtain the mental health services described in Subparagraph (b) above.
- J. Employee: An officer, an individual directly employed by an agency or a contractor, volunteer, or agent working under the auspices of an agency.

Procedure

- A. As part of an employee's and volunteer's orientation and a contractor's agreement with the Agency, it will be explained that under no condition will a client be abused, neglected, and/or exploited and what the Agency's process is for investigating the allegation if there is cause to believe this has occurred.
 - 1. Employees and volunteers will be responsible for knowing, observing, and implementing this information in all contacts with the clients.
 - a. Signs indicating abuse, neglect, and/or exploitation should be reported to the Administrator or designee immediately and include, but are not limited to:
 - i. Injuries to the client's trunk that cannot be explained;
 - ii. Other unexplained injuries, frequent falls, or bruising of various colors;
 - iii. Fractures that do not coincide with a child's motor ability or an adult's explanation of how they were received;
 - iv. An imprint of a hot object on the back, buttocks, or back of hands;
 - v. Inadequate bathing, toileting, food, etc.;
 - vi. Sudden marked irritability, avoidance of relationships, and/or marked change in sexual behavior;
 - vii. Misuse of the client's money;
 - viii. Inability of the family or the client's representative to account for the client's money or property; and
 - ix. Reports of demands for goods in exchange for services.
 - 2. If an employee, volunteer, or contractor reports abuse, neglect, and/or exploitation of a client, s/he will be assured the allegation can be made without fear of discrimination, reprisal, termination, or other retaliation.
 - 3. If the employee/volunteer is the subject of the allegation, s/he will be suspended immediately and referrals to a contractor will be put on hold.
 - a. As a result of the investigation, the Agency will follow its Policy on Progressive Discipline, up to and including termination as appropriate.

- b. If the investigation validates the claim, the employee, volunteer, or contractor will be terminated and the incident(s) reported to the appropriate state department, state licensing board, or law enforcement official.
 4. The Agency's staff will be provided training annually and as needed to reinforce the Agency's policy on protecting the clients from abuse, neglect, and/or exploitation.
 5. Documentation of the orientation and ongoing training will be kept in the individual's personnel file.
- B. On or before the first date of service, the client or the client's representative will be given a written statement that a grievance or complaint against the Agency, including of abuse, neglect, and/or exploitation, may be directed to:
 1. The Health and Human Services Commission (HHSC); Health and Human Services Commission (HHSC)'s Consumer Rights and Services Division; PO Box 149030; Austin, TX 78714-9030; or by calling toll free 24 hours a day at 1.800.458.9858; the Office for Civil Rights; U. S. Department of Health and Human Services; 200 Independence Avenue, SW, Room 509F, HHH Building; Washington, D. C. 20201; <https://ocrportal.hhs.gov/ocr/portal/lobby.jsf>; ocrmail@hhs.gov; 1.800.368.1019; TDD 1.800.537.7697; and/or through the Texas Attorney General's Consumer Protection Hotline at 1.800.621.0508.
 2. The written statement may include that the client can register a complaint with the Agency's Administrator.
 3. The client or the client's representative will be assured grievances and/or complaints and information relating to the Agency's services and/or abuse, neglect, and/or exploitation, can be made without fear of discrimination, reprisal, or retaliation.
 4. The client or the client's representative will be assured the Agency will investigate grievances or complaints made regarding, but not limited to, the following:
 - a. Treatment or care that was furnished by the Agency;
 - b. Treatment or care that the Agency failed to furnish;
 - c. A lack of respect for the client's property by anyone furnishing services on behalf of the Agency;
 - d. Discrimination; and/or
 - e. Abuse, neglect, and/or exploitation.
 5. It will be explained to the client or the client's representative that the Agency will notify the DFPS and HHSC within 24 hours of receiving an allegation of abuse, neglect, and/or exploitation, will begin its investigation within ten (10) days of receiving the allegation, and will complete the investigation within 30 days.
 - a. If there is a reasonable delay, the Agency will provide information about the cause.
 6. The client or the client's representative will sign and date an Acknowledgment of receiving and understanding the information about his/her right to file a grievance or complaint.
 - a. The Agency's representative will sign and date the Acknowledgment, also.

- b. If the client is unable to sign/date the Acknowledgment, the reason why will be provided on the form.
 - c. The original signed/dated Acknowledgment will be kept in the client's record at the Agency and a copy will be given to the client or the client's representative.
 - C. If the Agency has cause to believe a client has been abused, neglected, and/or exploited by an employee or volunteer either through witnessing the act or upon receipt of an allegation, the Agency will do the following:
 1. Report the information immediately (within 24 hours, including weekends and holidays) to:
 - a. DFPS at 1.800.252.5400; or
 - b. DFPS at their secure website <https://www.txabusehotline.org/Login/Default.aspx>, and
 - c. HHSC at 1.800.458.9858.
 - i. In the telephone calls and on the Provider Investigation Report, the following information will be provided:
 - incident date,
 - the name of the alleged victim,
 - the age of the alleged victim at the time of the incident,
 - the name of the alleged perpetrator,
 - any witnesses,
 - the allegation,
 - any injury or adverse effect,
 - any assessments made,
 - any treatment required,
 - the investigation summary, and
 - any action taken.
 - d. Incidents of family violence will be reported to a local law enforcement agency.
 - e. Reports of child abuse, neglect, and/or exploitation will be filed immediately with DFPS as described above, local law or state law enforcement agencies, HHSC, or other state agency as appropriate, but no later than 24 hours after the time of discovery or suspicion.
 - i. The child abuse report will identify the following, if known:
 - The name and address of the child;
 - The name and address of the person responsible for the care, custody, or welfare of the child; and

- Any other pertinent information concerning the alleged suspected abuse or neglect.
2. Within ten (10) calendar days of making the verbal or on-line report, the Agency will complete HHSC's Provider Investigation Report Form.
 - a. The Provider Investigation Report Form must include all of the information from the initial incident report as provided above and any additional information the Agency has obtained since making the initial report, including additional witness statements.
 - b. The Agency will complete and submit the Provider Investigation Report Form per the instructions posted on the HHSC website at the time of submission.
 3. The Agency will initiate or continue its investigation into the allegation of abuse, neglect, and/or exploitation of a client by an employee, volunteer, or contractor of the Agency.
 - a. The investigation will determine:
 - i. Why the incident occurred,
 - ii. What actions the Agency will take in response to the incident, and
 - iii. What changes will be made to help prevent a similar incident from occurring.
 - b. As appropriate, input from other disciplines providing client care will be considered.
 - c. The Agency will complete the investigation and documentation within 30 days after receiving the complaint or report of abuse, neglect, and/or exploitation.
 - i. If there is a reasonable delay, the Agency will document the cause.
 - d. Copies of reports filed with the state or local law enforcement agencies will be tracked and kept by the Agency.