

**PURPOSE**

To identify suspected or alleged victims of abuse, neglect, or exploitation (ANE) of a patient or individual, or misappropriation of property. To establish appropriate protocols for reporting and/or referring abuse, neglect, or exploitation of a patient or individual, or misappropriation of their property immediately to the Agency and other appropriate authorities in accordance with Texas Administrative Code, Title 40, Part 1, Chapter 97.

**DEFINITIONS**

- I. "Agency" means an entity licensed under Chapter 142, Health and Safety Code.
- II. "Employee" means an individual who:
  - A. Is directly employed by the Agency, a contractor, or a volunteer;
  - B. Provides personal care services, active treatment, or any other personal services to a patient receiving agency services; and;
  - C. Is licensed by the state to perform the services the person performs for the agency.
- III. "Report" means a report that alleged or suspected abuse or neglect of a child or elderly or disabled person or individual has occurred or may occur.
- IV. "Adult Abuse" is defined as:
  - A. The negligent or wilful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to an elderly or disabled individual by the caretaker, family member, or other individual who has an ongoing relationship with the person; or
  - B. Sexual abuse of an elderly or disabled person or individual, 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 individual's caretaker, family member or other individual who has an ongoing relationship with the person.

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- C. "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.
  - D. "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. "Child Abuse" includes the following acts or omissions by a person:
- A. Mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;
  - B. 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;
  - C. 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;
  - D. Failure to make a reasonable effort to prevent an action by another person that results in substantial harm to the child;
  - E. 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 22.00, Penal Code; or aggravated sexual assault under Section 22.021 Penal Code.

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- F. Failure to make a reasonable effort to prevent sexual conduct harmful to a child;
  - G. 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;
  - H. 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 Chapter 481, Health and Safety Code and Section 43.21, Penal Code, or pornographic;
  - I. 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;
  - J. Causing, expressly permitting, or encouraging a child to use a controlled substance as defined by Chapter 481, Health and Safety Code;
  - K. Causing, permitting, encouraging, engaging in, or allowing a sexual performance by a child as defined by Section 43.25, Penal Code.
  - L. 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.
- VI. "Child Neglect" includes the following acts or omissions by a person:
- A. 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.

- B. The following acts or omissions by a person:
1. 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;
  2. 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;
  3. 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;
  4. 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
  5. 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 (1) (E), (F), (G), or (K) committed against another child.
  6. 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.

VII. "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.

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- VIII. "Cause to believe" means an individual knows, suspects, or receives an allegation regarding abuse, neglect, or exploitation
- IX. Abuse is the infliction of injury, unreasonable confinement, intimidations, punishment, mental anguish, sexual abuse or exploitation of an individual. Types of abuse include:
- A. Mental abuse is an act (other than verbal) that may inflict emotional harm, invoke fear or humiliate, intimidate, degrade or demean an individual. This 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 is a physical act by an individual that may cause physical injury to another individual. This refers to any action, other than verbal, 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 (an act or attempted act such as rape, incest, sexual molestation, sexual exploitation, sexual harassment or inappropriate or unwanted touching of an individual by another) includes any incident where a patient or individual 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 one who is unable to defend himself or herself.
  - D. Verbal abuse (using words to threaten, coerce, intimidate, degrade, demean, harass or humiliate) refers to any use of insulting disrespectful, oral, written or gestured language directed toward and in the presence of the patient or individual.
- X. Neglect is the failure to provide an individual goods or services necessary to avoid physical harm, mental anguish or mental illness. Reasonable care required (by self or caregiver), including but not limited to:

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- A. Food
  - B. Clothing
  - C. Shelter
  - D. Medical care
  - E. Personal hygiene
  - F. Protection from harm
- XI. Self neglect: When a person is not able to take care of their physical needs such as getting food, shelter, or avoiding emotional harm or physical injury.
- XII. Neglect by Caregiver: The act of a caregiver who caused emotional harm, physical injury or death.
- XIII. Exploitation: An act of depriving, defrauding or otherwise obtaining the personal property of an individual by taking advantage of an individual of an individual's disability or impairment.
- XIV. Immediately: Reporting no later than 24 hours. The interim time between discovery and reporting an incident may be influenced by the individual situation.
- XV. Injury of an unknown source: An injury that was not witnessed by any person and the source of the injury could not be explained by the patient.
- XVI. Misappropriation of property: Theft or stealing of items from a patient's home.

**POLICY**

- I. Agency employees, volunteers and contractors will be aware of signs and symptoms indicating possible abuse, neglect of a patient and/or misappropriation of patient property and will be oriented upon hire and sign an acknowledgment affirming compliance with the Agency policy. The Agency employees, volunteers and contractors will attend and ANE in service annually thereafter.

- II. Agency employees, volunteers or 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 (TDFPS) and the Texas Department of Health and Human Services (TX HHS). The patient may experience normal day-to-day bumps and minor abrasions as they go about their lives. These minor occurrences should be recorded by the Agency staff once they are aware of them and followup should be conducted as indicated.
- III. An Agency employee, volunteer, representative or contractor suspected of abuse or neglect of a patient or misappropriation of patient 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 or misappropriation of patient property has occurred by a staff member or contractor, the incident(s) will be reported to the appropriate authorities. If there is cause to believe abuse, neglect, or exploitation of the patient has occurred by an Agency employee, representative, volunteer or contractor, the incident(s) will be reported to TDFPS and TX HHS immediately, meaning within twenty-four (24) hours, upon witnessing the act or upon receipt of the allegation.
- IV. The Agency or staff members will not implement retaliatory action against any individual who reports suspected adult patient abuse, neglect and/or misappropriation of patient property.
- V. Patients receiving services will be informed of this policy, verbally and in writing, during the admission process in a language and manner that the patient understands.

**PROCEDURE**

- I. Any Agency staff member, contractor, or representative will:
  - A. Immediately report an assessment of a patient's or individual's condition which might indicate abuse, or neglect of a patient, or misappropriation of 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,

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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 reports an abusive incident.
- B. When appropriate acquire input from other disciplines providing patient care regarding concerns.
- II. Agency management will:
- A. Immediately investigate all alleged violations involving anyone furnishing services on behalf of the Agency and immediately take action to prevent further potential violations while the alleged violation is being verified.
  - B. Address any allegations of 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 if there is cause to believe abuse, neglect, or exploitation of the patient or individual or misappropriation of property has occurred by a staff member, representative, volunteer or contractor immediately, meaning within twenty-four (24) hours, to:
    1. Texas Department of Family and Protective Services at 1-800-252-5400, or through the DFS secure website at [www.txabusehotline.org](http://www.txabusehotline.org) and
    2. Texas Health and Human Services (TX HHS) at 1-800-458-9858 or <https://apps.hhs.texas.gov/services/crs/incidentforms/SRI/index.cfm>
  - D. Report findings and intentions to report the suspected abuse to the patient's Attending Physician and/or Hospice Medical Director.
  - E. Report if there is cause to believe abuse or neglect of a patient or misappropriation of patient property has occurred by a staff member or contractor to the appropriate authorities or state agencies immediately.



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- F. Immediately suspend any Agency employee, volunteer, representative or contractor suspected of abuse or neglect of a patient or misappropriation of a patient's property.
- G. 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 officials.
- H. The Agency will send a written report, using the Provider Investigation form, of the investigation to TX HHS Consumer Rights and Services no later than the tenth day after reporting the act, verbally or online, to Department of Family and Protective Services and TX HHS. Documentation will be kept confidential by the Agency to the extent required by state law.
- I. When working with a Long-Term Care facility (LTC), the Agency management will also immediately report suspicions.
- J. Report all alleged violations involving mistreatment, neglect, or verbal, mental, sexual, and physical abuse, including injuries of unknown source, and misappropriation of patient property by anyone unrelated to the hospice to the SNF/NF or ICF/ID administrator within 24 hours of the hospice becoming aware of the alleged violation.
- K. 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.
- L. Identify, if known, the following in the Child Abuse report:
  - 1. Name and address of child;
  - 2. The name and address of the person responsible for the care, custody or welfare of the child;

3. Any other pertinent information concerning the alleged suspected abuse, neglect or exploitation.
- III. All reports of suspected abuse or neglect of a patient or individual, or misappropriation of 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. Copies of reports filed with the state or local law enforcement will be tracked and kept by the Agency.
- IV. Incidents of Family Violence shall be reported to law enforcement per federal, state and local law.