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HHSC Long-Term Care Regulation Provider Investigations

**Investigating Abuse,
Neglect, and Exploitation**

Agenda

1. Overview of Provider Investigations Program
2. HHSC Transformation Efforts
3. Investigation Process Overview
4. Information Sharing
5. Reporting Abuse, Neglect, and Exploitation
6. Contact Information



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Provider Investigations Legal Authority

- Title 2 of Human Resources Code, Chapter 48
- Title 5 of the Texas Family Code, Chapter 261
- Title 26 of the Texas Administrative Code (TAC), Chapter §711
- Title 40 of the TAC, Chapter §705



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Jurisdiction

PI has authority to investigate allegations of abuse, neglect, or exploitation of individuals receiving services from:

- State operated facilities (State Hospitals/SSLCs)
- Intermediate Care Facilities
- Persons contracting with an HHS agency to provide inpatient mental health services
- HCS and TxHmL
- Community Centers, Local Mental Health Authorities, Local Intellectual and Developmental Disability Authorities



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Jurisdiction, continued

- HCS and TxHmL
- Community Centers, Local Mental Health Authorities, Local Intellectual and Developmental Disability Authorities
- a person who contracts with a health and human services agency or managed care organization to provide home and community-based services;



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Jurisdiction, continued

- a person who contracts with a Medicaid managed care organization to provide behavioral health services;
- a managed care organization;
- an officer, employee, agent, contractor, or subcontractor of a person or entity listed in the bullets above; and
- an employee, fiscal agent, case manager, or service coordinator of an individual employer participating in the consumer directed service option.



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Jurisdiction, continued

- Individuals residing in an HCS group home regardless of whether the individual is receiving services under the waiver program from the provider
- Children receiving services from a HCSSA



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HHSC Transformation

- In 2017, PI transitioned from DFPS to HHSC Regulatory Services Division.
- In 2020, PI fully integrated into HHSC Long-term Care Regulation.



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HHSC Transformation

HHSC Long-Term Care Organizational Structure

- Michelle Dionne-Vahalik, Associate Commissioner for Long-Term Care Regulation
- Rene Blanch-Haley, Deputy Associate Commissioner of Survey and Compliance



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HHSC Transformation





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HHSC Transformation

LTCR Regional Director Contacts are located on the HHSC webpage

<https://www.hhs.texas.gov/about/find-us/long-term-care-regulatory-regional-contact-numbers>

Scope

PI does not:

- proactively investigate;
- have operational authority over providers; or
- investigate if the provider is licensed and another agency has authority to investigate the ANE of such licensed provider.



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PI Investigates

- Physical Abuse
- Sexual Abuse
- Emotional/Verbal Abuse
- Neglect
- Exploitation



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Physical Abuse

- an act or failure to act performed knowingly, recklessly, or intentionally, including incitement to act, which caused or may have caused physical injury or death to an individual receiving services;
- an act of inappropriate or excessive force or corporal punishment, regardless of whether the act results in a physical injury to an individual receiving services; or
- the use of chemical or bodily restraints or seclusion on an individual receiving services not in compliance with federal and state laws and regulations.



Sexual Abuse

Any sexual activity, including but not limited to:

- kissing, hugging, stroking, fondling an individual receiving services with sexual intent;
- engaging in sexual conduct with an individual receiving services;



Sexual Abuse

- engaging in or displaying any activity that is obscene, as defined in the Texas Penal Code §43.21 in the presence of an individual receiving services; or
- requesting, soliciting, or compelling another person to engage in any activity that is obscene, as defined in the Texas Penal Code §43.21 in the presence of an individual receiving services;



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Sexual Abuse

- sexual exploitation;
- sexual assault;
- aggravated sexual assault; and
- creating a pornographic video of a person served.



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Verbal/Emotional Abuse

The willful infliction of an act or repeated acts of verbal or other communication, including gestures, to harass, intimidate, humiliate, or degrade an individual receiving services; or threats of physical or emotional harm against an individual receiving services.



Verbal/Emotional Abuse

The act or communication must:

- result in an individual receiving services experiencing:
 - significant impairment to his or her physical, mental, or emotional health;
 - substantial physical, mental, or emotional distress as identified by an appropriate medical professional; or
- be of such a serious nature that a reasonable person would consider it causing significant impairment to the physical, mental, or emotional health of the victim.



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Neglect

Neglect is defined a negligent act or omission which caused or may have caused physical or emotional injury or death to an individual receiving services or which placed an individual receiving services at risk of physical or emotional injury or death.

Examples of neglect may include, but are not limited to, the failure to:

- establish or carry out an appropriate individual program plan or treatment plan for a specific individual receiving services, if such failure results in physical or emotional injury or death to an individual receiving services or which placed an individual receiving services at risk of physical or emotional injury or death;
- provide adequate nutrition, clothing, or health care to a specific individual receiving services in a residential or inpatient program if such failure results in physical or emotional injury or death to an individual receiving services or which placed an individual receiving services at risk of physical or emotional injury or death; or
- provide a safe environment for a specific individual receiving services, including the failure to maintain adequate numbers of appropriately trained staff, if such failure results in physical or emotional injury or death to an individual receiving services or which placed an individual receiving services at risk of physical or emotional injury or death.



Exploitation

The illegal or improper act or process of using an individual receiving services or the resources of an individual receiving services for monetary or personal benefit, profit, or gain, and excludes:

- theft as defined in Chapter 31 of the Texas Penal Code;
- allegations of exploitation less than \$25.00

Investigation Process



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Notification

Upon receiving an allegation of abuse, neglect, and exploitation, PI notifies:

- the administrator or designee of a provider; and when appropriate:
 - other state agencies,
 - law enforcement, and
 - Office of the Inspector General.



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Notification

PI also notifies:

- the CPS primary case worker if the child or young adult is listed in an open CPS conservatorship case, and
- HHSC guardianship caseworker if a HHSC ward is the alleged victim in an abuse, neglect, or exploitation investigation.



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Evidence Collection

PI:

- Makes initial contact with the victim, according to priority assignment.
 - Priority 1 - 24 Hours
 - Priority 2 - 3 Calendar Days
 - Priority 3 - 7 Calendar Days
- Interviews relevant witnesses and alleged perpetrators.
- Obtains and reviews relevant evidence



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Analysis of Evidence

Upon completion of evidence collection, PI:

- analyzes all relevant evidence,
- documents the outcome in the final investigative report, and
- concerns related to protection of the individual so the provider can take action.



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Time Frames

Investigation completion time frames are set by setting and priority:

- 10 days (state supported living center)
- 14 days (state hospital if P1 or P2)
- 21 days (state hospital P3)
- 30 days (all other providers)

Investigators may request to extend an investigation deadline when circumstances warrant it.



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Investigation Findings

Confirmed: An allegation that is supported by the preponderance of the evidence.

- **Confirmed, Reportable Conduct:** Finding is confirmed *and* the injuries or risk of harm meet the definition of reportable conduct.

Unconfirmed: An allegation in which a preponderance of evidence exists to prove that it did not occur.



Investigation Findings

Inconclusive: An allegation leading to no conclusion or definite result because of lack of witnesses or other relevant evidence.

Unfounded: An allegation that is spurious or patently without factual basis.

System Issue:

- The provider's lack of established policy or procedure contributed to the ANE; or
- the provider's established policy is inadequate and fails to ensure the safety of the individuals.

Employee Misconduct Registry



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- Confirmed – Reportable Conduct
- Public database maintained by HHSC Enforcement
- Unlicensed personnel who commit acts of abuse, neglect, or exploitation
- Permanently denied employment with certain facilities and providers

<https://emr.dads.state.tx.us/DadsEMRWeb/>

Report Sharing

PI releases the final report to the provider, and when applicable:

- the appropriate HHSC division,
- local law enforcement, and
- the Office of Inspector General.



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Notice of Findings

In all cases, the investigator notifies the reporter of:

- the outcome of the investigation and
- the process to appeal.

In community provider cases, the investigator notifies the following persons about the outcome of an investigation:

- the alleged victim, parent (if the victim is a child), or court appointed guardian; and
- the alleged or designated perpetrator.



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Notice of Findings

When the alleged victim has a guardian, PI notifies the probate court of the investigation outcome.



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Reporter

PI makes contact with the reporter:

- during the investigation, and
- at the conclusion of the investigation.



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Appeals

Qualified parties have the right to appeal the findings of PI reports.

- Provider – 30 days
- Alleged victim/guardian – 60 days
- Reporter – 60 days
- Disability Rights TX – 60 days



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Appeals

Requests for appeals may be sent by qualified parties to:

PI_appeals@hhs.Texas.gov



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Record Requests

Victims, their representatives, and other qualified parties may request case records by submitting a request via U.S. mail, fax or email to:

- HHSC Open Records Coordinator MC-1070
- 4900 N. Lamar Blvd. Austin, TX 78751-2316
- Fax: 512-424-6586
- OpenRecordsRequest@hhs.texas.gov



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Reporting ANE

Suspected abuse, neglect, and exploitation in settings investigated by PI are reported to DFPS Statewide Intake at:

- 800-252-5400, or
- www.txabusehotline.org

DFPS SWI documents the report in an intake or Information & Referral report and sends it to PI for investigation or review.



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Thank You

PI_Policy@hhs.Texas.gov