Abuse, Neglect and Exploitation
– Reporting and Investigation in HCSSAs

A joint presentation by:
Texas Department of Family and Protective Services
Texas Department of Aging and Disability Services

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Adult Protective Services (APS)
Provider Investigations
Texas Department of Family and Protective Services

Topics
- APS Mission, Vision, and Values
- DFPS Organization Chart
- APS Scope and Jurisdiction Bill
- Who and What APS Provider Program Investigates
- What happens during an APS Provider Investigation
- Roles and Responsibilities
- Reporting Abuse, Neglect, and Exploitation
Mission, Vision, and Values

- **Mission:**
  - To protect older adults and people with disabilities from abuse, neglect and exploitation

- **Vision:**
  - Protecting with purpose, passion and persistence

- **Core Values:**
  - We champion the SAFETY and DIGNITY of vulnerable adults
  - We conduct ourselves with INTEGRITY
  - We demonstrate RESPECT for all persons
  - We COLLABORATE to improve outcomes

How Is DFPS Organized in Texas?

- **Department of Family and Protective Services**
  - Child Protective Services (CPS)
  - Residential Child Care Licensing (RCCL)
  - Adult Protective Services (APS)
  - In-Home Investigations
  - Provider Investigations

APS Scope and Jurisdiction Bill (SB 1880, 84th RS)

- Moved certain investigations of ANE from APS In-Home to APS Provider program:
  - Adults receiving Medicaid home and community-based services
  - Individuals participating in the Consumer Directed Services (CDS) option

- Granted APS authority to investigate ANE involving children receiving services from HCSSAs.
APS Provider Program Investigates

- Facilities
  - State Hospitals
  - State Supported Living Centers
  - ICF-IID
  - DADS/DSHS-operated community services
  - Person contracting with a HHS agency to provide inpatient mental health services

- Community Center, Local Mental Health Authority, Local Intellectual and Developmental Disability Authority

- Person who contracts with HHS agency or MCO to provide Home and community-based services

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APS Provider Program Investigates

- Person who contracts with MCO to provide behavioral health services

- Managed Care Organization

- Officer/employee/agent/contractor/subcontractor of above

- Employee/agent/manager/coordinator of an individual participating in the Consumer Directed Services Option

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APS Provider Program Investigates cont.

AS WELL AS

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

- Children receiving services from a HCSSA

BUT NOT

- APS does not investigate if the provider is licensed AND another agency has authority to investigate the abuse, neglect, exploitation of such licensed provider.
APS Provider Program Investigates Cont.

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

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Physical Abuse Definition

- 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 a person served;
- an act of inappropriate or excessive force or corporal punishment, regardless of whether the act results in a physical injury to a person served; or
- the use of chemical or bodily restraints on a person served not in compliance with federal and state laws and regulations.

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Sexual Abuse Definition

- Any sexual activity;
- engaging in with a person served:
  - sexual conduct as defined in the Texas Penal Code, §43.01, or
  - any activity that is obscene as defined in the Texas Penal Code, §43.2;
- requesting, soliciting, or compelling a person served to engage in:
  - sexual conduct as defined in the Texas Penal Code, §43.01, or
  - any activity that is obscene as defined in the Texas Penal Code, §43.2;
- in the presence of a person served:
  - engaging in or displaying any activity that is obscene, as defined in the Texas Penal Code, §43.2, or
  - requesting, soliciting, or compelling another person to engage in any activity that is obscene, as defined in the Texas Penal Code, §43.21.
Sexual Abuse Definition Cont.

- committing sexual exploitation as defined in 40 TAC §711.15, against a person served;
- committing sexual assault as defined in the Texas Penal Code §22.011, against a person served;
- committing aggravated sexual assault as defined in the Texas Penal Code, §22.021, against a person served; and
- causing, permitting, encouraging, engaging in, or allowing the photographing, filming, videotaping, or depicting of a person served if the employee, agent, or contractor knew or should have known that the resulting photograph, film, videotape, or depiction of the person served is obscene as defined in the Texas Penal Code, §43.21, or is pornographic.

Consensual sexual activity between an employee, agent, or contractor, and an alleged victim is not considered sexual abuse if the consensual sexual relationship began before the employee, agent, or contractor became a paid employee, agent, or contractor.

Sexual Exploitation Definition

- A pattern, practice, or scheme of conduct against a person served, which may include sexual contact, that can reasonably be construed as being for the purposes of sexual arousal or gratification or sexual abuse of any person.

The term does not include obtaining information about a patient's sexual history within standard accepted clinical practice.

Emotional Abuse Definition

- An act or use of verbal or other communication, including gestures, to curse, vilify, or degrade a person served or threaten a person served with physical or emotional harm.

The act or communication must result in observable distress or harm to the person served, or be of such a serious nature that a reasonable person would consider it harmful or causing distress.
Neglect Definition

A negligent act or omission by any individual responsible for providing services to a person served which caused, or may have caused, physical or emotional injury or death to a person served, or which placed a person served at risk of physical or emotional injury or death.

Neglect Examples

Neglect includes, but is not limited to, the failure to:

- establish or carry out an appropriate individual program plan or treatment plan for a person served, if such failure results in a specific incident or allegation involving a person served;
- provide adequate nutrition, clothing, or health care to a specific person served in a residential or inpatient program; or
- provide a safe environment for a specific person served, including the failure to maintain adequate numbers of appropriately trained staff, if such failure results in a specific incident or allegation involving a person served.

Exploitation Definition

The illegal or improper act or process of using a person served or the resources of a person served for monetary or personal benefit, profit, or gain.
Investigation Findings

- **Confirmed**: An allegation that is supported by the preponderance of the evidence.
- **Unconfirmed**: An allegation in which a preponderance of evidence exists to prove that it did not occur.
- **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 abuse, neglect, or exploitation or the provider’s established policy is inadequate and fails to ensure the safety of the client.

Employee Misconduct Registry

The Employee Misconduct Registry (EMR) is a public database maintained by DADS pursuant to Health and Safety Code. The purpose of the Employee Misconduct Registry is to ensure that unlicensed personnel who commit acts of abuse, neglect, or exploitation against residents and consumers are denied employment in certain facilities.

A person whose name is listed on the EMR is permanently denied employment in certain facilities.
Who is Eligible for the EMR?

The designated perpetrator must be a person who:

- works for an agency (such as HCSSA) as an employee, agent or contractor or an individual-employer participating in the consumer-directed services (CDS) option;
- provides personal care services, active treatment, or any other services to a client; and
- is not licensed by the state to perform the services the person performs.

Most licensed professionals are not eligible for the EMR, although they may be subject to other registries.

Review of Methodology and Review of the Findings

The following may request a review of methodology or a review of the findings:

- A service provider
- A Limited Service Provider (LSP), if any, may request a review unless the LSP is an individual, rather than a company. A service provider may request a review on behalf of a LSP, when that LSP is an individual.
- A CDS provider. Additionally, because the CDS provider is the AV, they also have the right to appeal.

A direct provider may not request a review of methodology or a review of the investigative findings. If the investigator determines the direct provider’s actions rise to level of reportable conduct, the direct provider is entitled to an Employee Misconduct Registry (EMR) hearing.

Appeals

- The (alleged) victim/legal guardian has a statutory right to appeal.
- The provider is responsible for notifying the (alleged) victim/legal guardian of the investigatory findings and the method to appeal the finding.
Roles and Responsibilities

APS Provider Investigations will:

- Notify the provider of an allegation;
- Conduct a thorough investigation;
- Provide the investigative report to the provider upon completion of the investigation; and
- Communicate with other HHS agencies to ensure the safety and welfare of individuals receiving services.

Roles and Responsibilities

The provider will:

- Report abuse, neglect, or exploitation as required by the Health and Safety Code 142.018 and Human Resources Code 48.051;
- Cooperate completely with the investigation;
- Provide APS investigators complete access to all sites owned, operated, or controlled by the provider; and
- Provide APS investigators complete access to clients and client records.

Roles and Responsibilities

The provider will:

- Ensure all employees receive and understand training on how to prevent and report abuse, neglect, and exploitation;
- Take necessary steps to protect the client once notified of an allegation of ANE; and
- Take appropriate action steps once APS Provider Investigations provides the investigation report.
Reporting ANE

- 1-800-252-5400
- www.txabusehotline.org
- E-reporting **not** for emergencies
- Mandatory Reporting
- Confidential reporting

Helpful Information for Reporting

- Name, DOB, Medicaid#, and current address of the alleged victim
- Name, address, contact phone number of the service provider
- A brief description of the situation
- Details about the alleged perpetrator
- Current injuries and medical conditions
- Names and phone numbers of relatives, neighbors, and friends that might have knowledge of the situation
- Reporter should provide all appropriate contact information (reporter remains confidential)

Questions/Contact

APS Provider Investigations Mailbox
APSPolicy@dfps.state.tx.us
Abuse, Neglect and Exploitation in HCSSAs – Regulatory Expectations

Texas Department of Aging and Disability Services (DADS)

Objectives
- Understand state agencies’ authority to investigate abuse, neglect and exploitation (ANE) in home and community support services agencies (HCSSAs).
- Recognize DADS treatment and prioritization of self-reported incidents.
- Identify statutory and regulatory requirements of providers for reporting and investigating ANE.
- Describe components of the internal investigation.
- Explain the rights of HCSSA clients related to ANE.
- Recognize the difference between complaints and incidents.

Investigation Authority in HCSSA
- Department of Family and Protective Services
  - Investigates ANE of elderly or adult disabled clients residing outside of an inpatient hospice
  - Investigates ANE of all children
- Department of Aging and Disability Services
  - Investigates ANE of adults residing in an inpatient hospice facility
  - Reviews all incidents and may survey to determine compliance with licensure and certification requirements (§97.501)
  - Client rights
  - Client care
  - Reporting requirements
  - Internal investigation
  - Policies and procedures
Desk Review
- DADS uses desk reviews for off-site investigation of HCSSA self-reported incidents.
- May be conducted in lieu of on-site investigation based on:
  - Facts of the case
  - Completeness of documentation
  - Agency plans
  - Extent of injury
  - DADS factors
- If further investigation is warranted, regional staff conduct an on-site investigation.

Desk Review
- Purpose: to determine licensure or certification compliance
- A desk review must be completed on or before 120 working days.
- Statewide: 3,540 Desk Reviews Assigned in FY 2014 (70%)

Client Rights and Agency Responsibilities
40 TAC §97.282
- Adopt and enforce a written policy governing client conduct and responsibility and client rights that includes a grievance mechanism under which a client can participate without fear of reprisal.
- A client has the right:
  - (4) ... to exercise rights as a client of the agency.
  - (5) ... to have the client’s person and property treated with consideration, respect, and full recognition of the client’s individuality and personal needs.
  - (6) ... to be free from abuse, neglect, and exploitation by an agency employee, volunteer, or contractor.
  - (8) ... to voice grievances regarding treatment or care...
Defining Abuse, Neglect and Exploitation

- Must meet definition in code
  - Texas Human Resources Code, §48.002 (elderly and disabled)
  - Texas Family Code §261.401 (children)
- “Cause to believe”
  - Knows
  - Suspects
  - Received an allegation

Reporting Requirements

§97.249 – Self-Reported Incidents of ANE

- An agency must adopt and enforce a written policy relating to the agency’s procedures for reporting alleged acts of ANE.
- If an agency has cause to believe that a client has been the victim of ANE by an agency employee, volunteer or contractor, the agency must report within 24 hours to:
  - DADS
    - 1-800-458-9858
  - DFPS
    - 1-800-252-5400

Internal Investigation

§97.250 – Agency Investigations

- An agency must adopt and enforce a written policy relating to the agency’s procedures for investigating complaints and reports of abuse, neglect and exploitation.
- Immediately upon witnessing the act or upon receipt of the allegation, an agency must initiate an investigation.
Managing an Incident of ANE

- Discover initial facts
- Protect the client
- Report (initial call to DADS/DFPS)
- Gather policies, procedures, staff
- Investigate the incident
- Report findings and facts (form 3613)
- Document everything

Provider Investigation Report

- Must be as complete as possible – submit within 10 calendar days
- Form 3613 includes:
  - Incident date
  - Alleged victim
  - Alleged perpetrator
  - Any witnesses
  - The allegation
  - Any injury or adverse affect
  - Any assessments made
  - Any treatment required
  - Investigation summary
  - Any action taken

Completing the Investigation

- An agency must complete the investigation and documentation within 30 days after the agency receives a complaint or report of ANE, unless the agency has and documents reasonable cause for delay.
Complaints vs. Incidents

- **Reportable Incidents** = Abuse, neglect, and exploitation; self-reported to DADS by agency staff.
- **Complaints** = Other assertions of violations of rules and regulations reported by clients or their proxies. Can also be grievances that clients report to the agency that do not meet the definition of ANE.

Complaints

- Do not report to DADS unless the incident meets the definition of ANE.
- Agency must document receipt of the complaint and initiate a complaint investigation within 10 days.

Examples

- Complaints and grievances made by a client, a client's family or guardian, or a client's health care provider that are not abuse or neglect
- Failure to provide treatment or care appropriately that is not abuse or neglect
- Lack of respect for the client's property

- Client perception
  - Past experiences
  - Motivational state
  - Emotional state

Questions/Contact

Regulatory Services Contacts

- Policy, Rules, and Curriculum: 512-438-3161
- Licensing: 512-438-2630
- Survey Operations: 512-438-2627
- Enforcement: 512-438-2626