

HOME HEALTH AND HOSPICE NEWS

Federal and Texas legal issues affecting home health agencies and hospices, provided as a free service to our client and friends.
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ABUSE, NEGLECT AND EXPLOITATION: SELF-REPORTING AND REPORTING OTHERS

Recent changes to the state licensing standards for home and community support services agencies ("HCSSAs") have left some providers confused about their obligations to self-report and investigate cases of abuse, neglect or exploitation ("ANE") to state enforcement agencies, and to report cases of ANE discovered in another facility by HCSSA personnel.

The Texas Health & Safety Code, §142.018, requires a HCSSA that has "cause to believe" that a person *receiving services from the agency* has been abused, neglected or exploited by an *employee* of the Agency to report the information to the Texas Department of Protective & Regulatory Services (DPS) and the Department of Aging and Disability Services (DADS). Implementing regulations found in the HCSSA licensure rules at Texas Administrative Code (TAC), Chap. 97, were revised and expanded in June 2006, to provide additional clarification of HCSSA self-reporting obligations.

"Cause to believe" means *knows or suspects*. Reporting is required when an agency has cause to believe that there has been an occurrence of ANE of one of the agency's *own patients*, by an *employee* of the agency. "Employee" includes independent contractors and volunteers. "Abuse," "neglect" and "exploitation" are defined in the Human Resource Code, Chap. 48, governing investigations and protective services for the elderly and disabled. "Abuse" includes the *willful or negligent* infliction of injury, confinement, intimidation, or cruel punishment resulting in physical or emotional harm to the victim, including sexual abuse. "Neglect" is the *failure to provide* items or services necessary to avoid physical or emotional pain or harm. "Exploitation" includes illegal or improper action toward elderly or disabled individual for monetary or personal benefit, profit or gain of the perpetrator, without consent of the victim. Other reportable conduct is also defined in the statute.

Every HCSSA must have a *written policy* governing complaints, investigations, and reporting of ANE and reportable conduct. The standards for written reports are contained in the revised licensure regulations. Reports must be made *immediately* to DPS and DADS, with a follow-up investigation and second

report containing the findings and conclusions, and any corrective action taken, within ten days of the initial report. The reporting form, DADS-3613, may be found on the DADS website.

Parallel requirements apply to other facilities, such as nursing homes, under their own licensing standards. That is, nursing homes are obligated to self-report when they have cause to believe that one of *their* patients is the victim of ANE by one of *their* own employees. Further, nurses licensed by the Board of Nurse Examiners have a separate obligation, as a condition of their professional licenses, to report abuse.

What has confused HCSSAs is the scope of their obligation to report or investigate ANE observed or suspected to be occurring in *another facility*. A common example is when a hospice nurse furnishes hospice care to a nursing home resident and observes or suspects ANE of a patient by the nursing facility's staff. In those instances, the reporting obligations are not spelled out in the ANE reporting requirements for HCSSAs. Rather, they are found in the HCSSA licensing standards governing *client rights*, at 40 TAC § 97.282, and at Human Resources Code Chap. 102, governing rights of the elderly. Reading these provisions together, patients have the right to be free from abuse, and a HCSSA must protect and promote its clients' rights. DADS has interpreted this to mean that a HCSSA that has cause to believe that one of its *own* clients is being abused, neglected or exploited by *another facility's* employee(s) must report that other facility. The HCSSA is not obligated to conduct an investigation of that other facility. A HCSSA may be cited for a violation of the licensing standard on protecting client rights, however, if it fails to report ANE, even if the outcome of the state's investigation is inconclusive or exonerates the facility.

HCSSAs should maintain a complaint log containing information relating to complaints, the source of the complaint, reporting/investigative action taken, and the outcome, and all complaints should be addressed as part of the agency's quality assurance process and review.

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