

Purpose

To ensure a smoke-free workplace.

Policy

The Agency is committed to providing as safe and healthy a workplace as possible for employees, volunteers, and visitors to the office so prohibits smoking of any kind in the workplace.

Definitions

- A. Electronic Smoking Device (e-cigarette, e-cigar, e-pipe, or vape pen, etc.): a device containing or delivering nicotine or any other substance intended for human consumption that can be used by a person to simulate smoking by inhalation of vapor or aerosol from the device.
- B. Workplace: inside the Agency's office(s), anywhere the Agency conducts business, an Agency's vehicle, a client's home, a client's vehicle, or any other location while providing client care.

Procedure

- A. As part of an employee's and volunteer's orientation, s/he will be informed the Agency does not allow smoking of any kind, including the use of electronic smoking devices, in the workplace, except in designated areas outside.
 - 1. Employees and volunteers will be responsible for knowing, observing, and implementing this information in all of the Agency's workplaces.
 - 2. Violating this policy will lead to the Agency's Progressive Discipline Policy being initiated.
 - 3. Documentation of the orientation and training will be kept in the individual's personnel file.

Purpose

To ensure the safety of clients and the Agency's employees, volunteers, and contractors (collectively referred to as employees) per the Texas Licensing Standards for Home and Community Support Services Agencies found throughout Chapter 558.

To mitigate workplace violence per Federal regulations set forth by the Occupational Safety and Health Administration (OSHA).

Policy

- A. The Agency promotes the safety of its clients and employees through training and establishing a safe workplace environment.
- B. The Agency does not tolerate workplace violence of any kind whether it is verbal or physical.
- C. The Texas Legislature in the 84th Regular Legislative Session passed new handgun open carry and concealed carry licensing regulations. The Agency may allow handguns in the workplace as open carry, concealed carry, or both.
 - The Agency allows open carry, concealed carry, or both in the workplace and follows the Texas Department of Public Safety Rules found at <http://www.dps.texas.gov/rsd/ltc/index.htm>.
 - The Agency does not allow open carry, concealed carry, or both in the workplace.

Definitions

- A. Active shooter: an individual actively engaged in killing or attempting to kill people in a confined and populated area, usually with firearms, with no pattern to the selection of victims.
- B. Administrative and Work Practices Risk (OSHA): includes shortages in staff, reduction of trained regular staff, working alone at night or in a remote area with poorly lit parking areas.
- C. Environmental Risk (OSHA): includes the prevalence of handguns, a decrease in availability of medical attention to the mentally ill, client's right to refuse medication, and sites which contain medication or money and are viewed as a source to rob.
- D. Perpetrator and Victim Risk (OSHA): people with a history of violence, people seeking revenge, gang members, drug or alcohol use, social deviants, or individuals who feel threatened and desperate.
- E. Workplace: inside the Agency's office(s), anywhere the Agency conducts business, an Agency's vehicle, a client's home, a client's vehicle, or any other location while providing client care.
- F. Workplace violence (OSHA): any act or threat of physical violence, harassment, intimidation, or other threatening disruptive behavior that occurs at the workplace.

Procedure

- A. The Agency's Supervisor evaluating the client for admission will explain to him/her or the client's representative that the Agency will provide services in a safe manner, will work with him/her to provide a safe environment, and has a zero tolerance for verbal or physical abuse of its staff. This information will be provided at the earlier of:
 - 1. The time the client is admitted to receive services from the Agency; or

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2. The time the Agency begins providing services to the client.
 3. If the Agency has a concern for the safety of its staff, the client will be counseled.
 - a. If the behavior persists, the client may be transferred to another agency of his/her choice or be discharged from the Agency.
 - b. If this decision is made, the Agency's Policy PE.4 Client Transfer or PE.5 Client Discharge, as applicable and incorporated here by reference, will be followed.
 4. The client or the client's representative will sign and date on the appropriate form acknowledging this information has been provided.
 - a. The Agency's representative will sign and date the appropriate form, also.
 - b. If the client is unable to sign/date the appropriate form, the reason why will be provided on the form.
 - c. The original signed/dated appropriate form 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.
- B. As part of an employee's orientation, s/he will be informed of safety interventions such as appropriate body mechanics, that the Agency promotes safety in the workplace, and it has a zero tolerance for verbal or physical abuse/violence in the workplace.
1. This training will include awareness, avoidance, and actions to take in order to prevent violence and acts of mugging, robbery, rape, and other assaults.
 - a. Staff will be trained on what to do in a home or in the Agency where violence has erupted.
 - b. Staff will be trained on what to do if there is an active shooter in the Agency.
 2. The individual may report unsafe working conditions such as broken chairs, leaks, fire hazards, etc. and incidents of verbal or physical abuse such as threats, assaults, or other aggression without fear of retaliation, coercion, or reprisal.
 - a. The Administrator or designee will investigate promptly and follow-up accordingly.
 - i. The unsafe condition will be removed or repaired in a timely manner.
 - ii. If the report related to verbal or physical abuse is found to be substantiated, the offending party will be subject to the Agency's Progressive Discipline Policy (HR.13 and incorporated here by reference), up to and including termination.
 - iii. If the investigation results in a finding that the accuser has maliciously or recklessly made false accusations, s/he will be subject to the Agency's Progressive Discipline Policy (HR.13 and incorporated here by reference), up to and including termination.
 - iv. The report, investigation, and actions taken will be documented and retained in the employee's personnel file.
 - v. The investigation and documentation are confidential.

- vi. Records may be analyzed through the Agency's Quality Assessment and Performance Improvement (QAPI) program in order to prevent future security and safety problems and to develop appropriate training courses.
 3. Employees will be responsible for knowing, observing, and implementing this information within the workplace and in all contacts with co-workers and clients.
 4. Employees are expected to comply with the Agency's rules, Federal regulations such as from OSHA, and state regulations at all times while at work and in all of the Agency's workplaces.
 - a. Compliance includes attending all of the Agency's inservices on safety and workplace violence.
 5. Documentation of the orientation and training will be kept in the individual's personnel file.
- C. The following tips per category will be observed in an effort to ensure the safety of clients and the Agency's employees and to mitigate workplace violence. The tips include; but, are not limited to:
1. Safety
 - a. Client Care Site
 - i. The Agency's Supervisor will assess the client care environment when admitting the client and if the client's environment changes and will document the findings in the client's record. Elements to observe include, but are not limited to:
 - Fire safety, including presence of working smoke alarms, fire extinguishers, and evacuation plans;
 - Electrical safety in the home or other service environment;
 - Mobility;
 - Bathroom safety;
 - Potential for slips, trips, and falls;
 - Medication risks related to client care;
 - Equipment used by the client within the home or other service environment; and
 - Conditions posing a potential threat to the Agency's employees such as uncontrollable pets, presence of illegal drugs, presence of weapons, evidence of violent behavior, etc.
 - ii. Follow-up educational activities with established goals will be developed for the client.
 - Education will be provided on risks, hazards, and unsafe practices, as well as how to mitigate them in the client care environment.

- iii. If the Agency allows open carry, concealed carry, or both in the workplace, the client may deny entry to employees carrying a handgun.
 - b. Agency Site(s)
 - i. The Agency's site(s) will be assessed to identify risks, environmental hazards, and/or unsafe practices.
 - ii. If an employee experiences a work-related injury, s/he will select a provider from the Agency's list of approved providers for evaluation, treatment, and follow-up.
 - The Agency will evaluate the circumstances surrounding the injury to correct the potential for future risks.
 - The Agency will initiate performance improvement activities as indicated to enhance the effectiveness and safety of all services provided.
 - iii. The Agency will document all work-related injuries on an "Occurrence/Incident Report" and log them on the appropriate OSHA form.
 - The Agency will follow OSHA regulations on reporting work-related injuries.
 - iv. If a surveyor arrives at the Agency, the Agency will provide the surveyor with a reasonable and safe workspace, free from hazards, at which to conduct a survey at the parent or branch office.
 - If the Administrator or designee is notified by the surveyor of an unsafe workspace, s/he will provide the surveyor with a different workspace at the Agency that meets requirements or will correct the unmet space requirements within two (2) hours of the notification so the surveyor can reasonably and safely conduct the survey.
2. Workplace Violence
- a. The Agency's Administrator or designee will complete a Workplace Violence Prevention Program Assessment Checklist (following this Policy) at least annually or when changes are made to the workplace that may warrant a reassessment.
 - i. The Assessment will be utilized to identify risk factors and recommend training that may be needed, as well as what types of control measures and hazard prevention strategies are necessary to prevent workplace violence.
 - b. The Agency's management, supervisors, clerical staff, and human resources staff, as applicable, will discuss workplace violence and measures to promote safety of staff annually and after reports of violence or after investigations have been completed.
 - i. The appropriate control measures will be put in place for the Agency and include, but are not limited to, the following:

- Obtaining advice or information from independent reviewers such as insurance safety auditors, members of law enforcement, or security specialists regarding safety procedures or self-defense training;
 - Providing a measure of safety by having employees follow a work plan and stay in contact with the office throughout the day while working in the field;
 - This work plan enables management to locate employees working in the field when the need arises.
 - Instructing employees not to enter any location where they feel threatened or unsafe; and
 - Management may facilitate a "buddy" system or utilize an escort service when employees are working in hazardous situations.
 - Use of this "buddy" system or escort service may be required whenever an employee feels threatened or unsafe regarding the time and/or the location of the assignment.
 - When employees visit clients living in high-rise buildings that seem to present security hazards, they should exercise special care in elevators and stairwells.
 - Employees must make the decision not to enter a location based upon procedures that have been developed to help them evaluate the relative danger in a given situation.
 - The Agency may choose not to provide services in situations that clearly indicate a hazardous condition.
 - Establishing procedures to reduce threatening behavior and the likelihood of assaults and robbery from those seeking drugs, alcohol, or money including, but not limited to:
 - Carry only necessary items into a client's home;
 - Lock purses and equipment in the trunk or keep them out of view if this is not possible;
 - Do not carry a lot of money or wear expensive jewelry while working in the field;
 - Carry only minimum required identification; and
 - Carry hand-held alarms, whistles, or similar noise devices to alert others that help is needed.
- ii. When the Agency provides equipment and automobiles used in the field, they will be well maintained.
- iii. The Agency will establish a liaison with the local police department.

- c. If violence is about to occur or is already in progress, employees will call 911 immediately.
 - i. Employees will avoid violent persons.
 - ii. Employees will leave the vicinity immediately.
 - iii. The Administrator or designee will be notified of any problems or threats of violence.

Resource:

Workplace Violence Coordinator, OSHA, U. S. Department of Labor, 200 Constitution Avenue, N.W., Room N-3107, Washington, D.C. 20210; (202) 219-8031, ext. 111.

Purpose

To establish a drug free workplace policy that will protect the safety and well-being of the Agency's clients and employees.

Policy

- A. The Agency's employees are prohibited from the unlawful or unauthorized manufacture, distribution, dispensing, possession, or use of an illegal drug or alcoholic beverages while in the workplace, including the client's home; on Agency business; or on the Agency's time.
- B. The Agency's employees, including those who have direct client contact, will be subject to drug testing, as applicable, random, random/reasonable suspicion, post-accident/incident, and/or rehabilitation/re-entry.
- C. Per §558.253 of the Licensing Standards for Home & Community Support Services Agencies, the Agency will provide a copy of this Policy to anyone applying for services from the Agency and any person who requests it, as well as to its employees.
- D. The Agency complies with applicable Federal conscience and anti-discrimination laws prohibiting exclusion, adverse treatment, coercion, or other discrimination against individuals or entities on the basis of their religious beliefs or moral convictions as found in the Department of Health and Human Services, Office for Civil Rights, Rule 45 CFR, Part 88, Protecting Statutory Conscience Rights in Health Care, effective May 2019.

Definitions

- A. **Drug:** This term includes alcoholic beverages; illegal drugs, including marijuana; and/or prescribed and over-the-counter medication, including controlled substances.
- B. **Post-accident/incident:** The employee(s) will be tested if they are involved in on-the-job accidents, engage in unsafe behavior or activities on the job, pose a threat to themselves or others, cause bodily injury, cause property damage, or pose a danger to the overall operation of the Agency. Appropriate disciplinary action will be taken if the results are positive.
- C. **Random:** The Agency reserves the right to drug test the employees as it chooses. Everyone has an equal chance of being selected so there is no chance for subjectivity, favoritism, or manipulation of the process. Appropriate disciplinary action will be taken if the results are positive. Additionally, employees may be required to submit to drug testing when required by State or Federal law, regulation, or contractual obligation not otherwise anticipated by this Policy.
- D. **Random/Reasonable Suspicion:** The employee will be subject to drug testing on the basis of direct observation of drug use or the physical symptoms of being under the influence of drugs or alcohol; abnormal conduct or erratic behavior while at work; or absenteeism, tardiness or deterioration in work performance that is continuous and repeated over time. Appropriate disciplinary action will be taken if the results are positive.
- E. **Rehabilitation/Re-entry:** Periodic retesting of employees who have acknowledged substance abuse problems and who have participated in, or completed, substance abuse treatment or rehabilitation programs may be mandated.

Procedure

- A. Upon admission, the Agency provides the clients with a copy of its Drug Free Workplace Policy.
 - 1. The Agency's representative conducting the admission will explain the Policy and answer any questions the client might have related to the Policy.
 - 2. The client will sign an acknowledgment of receipt of the Policy that will be returned to the Agency and retained in the client's record.
- B. Upon hire, employees will be oriented to the Agency's Drug Free Workplace Policy and expectations including, but not limited to:
 - 1. There are substantial dangers of drug and alcohol abuse in the workplace.
 - 2. It is the Agency's policy to maintain a workplace free of illegal drugs and alcohol.
 - a. Accordingly, the employee is subject to drug testing random, random/ reasonable suspicion, post-accident/incident, and rehabilitation/re-entry.
 - 3. Management will advise the employee of counseling and rehabilitation programs that are available.
 - a. The Agency may, at its sole discretion, require an employee to participate in an appropriate counseling and rehabilitation program as the result of substance abuse violations.
 - b. Refusal to participate in such a program and to submit to retesting during the course of treatment will be grounds for termination.
 - 4. Employees taking legally prescribed or over-the-counter medications that might impair mental or physical functions, must notify Management prior to reporting to work and/or prior to taking the medication after the start of work. A doctor's note may be required.
 - 5. Employees must notify Management of any drug convictions within five (5) days of such conviction.
 - a. If the employee is performing services under a government contract, the Agency will notify the government contracting officer within ten (10) days of the Agency's receipt of a notice of conviction.
 - b. Appropriate disciplinary action will be taken as soon as is practical; but, within ten (10) days after receipt of the notice of conviction.
 - c. The information and action(s) taken will be documented in the employee's personnel file, excluding written reports of the conviction.
 - 6. All employees are responsible to report instances of possible substance abuse, including prescribed and over-the-counter medication used in a manner other than as directed.
 - a. Reported instances of substance abuse will be thoroughly investigated.
 - b. If the results indicate illegal drug or alcohol use, Management will follow the Agency's Progressive Discipline Policy, up to and including termination.
 - c. The investigation will be documented and retained in the employee's personnel file.

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HR.15 Drug Free Workplace

- i. The investigation and documentation are confidential.
 - 7. Any questions will be answered and/or clarifications will be provided during or following orientation.
 - 8. The employee will sign an acknowledgment of receipt of the Policy that will be retained in the individual's personnel file.
 - a. The acknowledgment serves as written consent for drug testing per the Agency's policy.
 - C. The Agency's location and method of substance abuse testing are: (Check all that apply.)
 - At a certified laboratory that will ensure using systematic and reliable testing with chain-of-custody for samples, proper documentation, and confidentiality.
 - At the office where the Agency's Administrator will ensure the use of systematic and reliable testing with chain-of-custody for samples, proper documentation, and confidentiality.
 - Blood Hair Saliva Urine
- Other: _____

References:

Anderson, Leigh Ann, PharmD. "Drug Testing FAQs". Online. May 18, 2020.
<https://www.drugs.com/article/drug-testing.html#workplace-drug-testing>

"Drug-Free Workplace Policy." Texas Workforce Commission. Online. April 18, 2018.
http://www.twc.state.tx.us/news/eftc/drug_free_workplace_policy.html

"Drug-Free Workplace Resource Guide." Texas Department of Insurance. Online. April 18, 2018.
<http://www.tdi.texas.gov/pubs/videoresource/drugfree.pdf>

"Workplace Drug Testing." Drug & Alcohol Testing Industry Association. Online. January 15, 2019.
<http://www.datia.org/datia-resources/27-credentialing/cpc-and-cpct/931-workplace-drug-testing.html>

Purpose

To establish procedures for processing criminal history checks, searching the Nurse Aide Registry (NAR) and the Employee Misconduct Registry (EMR) for unlicensed personnel who would have face-to-face contact with the Agency’s clients per Home and Community Support Services Agencies Licensure Rules found at §558.247, and checking the Lists of Excluded Individuals and Entities (LEIE) of the federal and state Offices of Inspector General.

Policy

Health and Safety Code Chapters 250 and 253.008;

- A. The Agency will conduct a criminal history check at the Texas Department of Public Safety’s (DPS) website at <https://records.txdps.state.tx.us/DpsWebsite/CriminalHistory/> in compliance with the Texas Health and Safety Code, Chapter 250 for unlicensed applicants, unlicensed employees, and unlicensed volunteers before they have face-to-face contact with the Agency’s clients. The Agency will not hire or will terminate an individual whose offense is listed in the Texas Health and Safety Code, Chapter 250.006.
- B. The Agency will search the Nurse Aide Registry (NAR) and the Employee Misconduct Registry (EMR) using the required website at <https://emr.dads.state.tx.us/DadsEMRWeb/> for unlicensed applicants, unlicensed employees, and unlicensed volunteers before they have face-to-face contact with the Agency’s clients and at least every twelve months thereafter. The Agency will not hire or will terminate an individual who is listed as unemployable.
- C. Agencies will use the HHSC Employability Status Search at <https://emr.dads.state.tx.us/DadsEMRWeb/> (link is external), Employability Status Check Search (state.tx.us) which includes information regarding Sanctions. OC § 53 requires an employer to consider only convictions directly related to the occupation.
- D. If the Agency accepts Medicare or Medicaid funds, the Agency will search the federal Health and Human Services (HHS) Office of Inspector General’s (OIG) website at <https://www.oig.hhs.gov/exclusions/index.asp> for its List of Excluded Individuals and Entities (LEIE) before hiring any individual, or contracting with or accepting orders from, those who will be providing or ordering services to its clients and monthly thereafter. The Agency will not hire or will terminate an individual who is listed as being excluded from participation in any federal health care programs.
- E. If the Agency accepts Medicare or Medicaid funds, the Agency will search the Texas Health and Human Services Commission (HHSC) OIG’s website at <https://oig.hhsc.state.tx.us/oigportal2/Exclusions> for its LEIE before hiring any individual, or contracting with or accepting orders from, those who will be providing or ordering services to its clients and monthly thereafter. The Agency will not hire or will terminate an individual who is listed as being excluded from participation in any federal or state health care programs.

Procedure

- A. Before an unlicensed applicant, unlicensed employee, or unlicensed volunteer has face-to-face contact with a client, it will be explained the Agency conducts a criminal history check, searches the NAR and EMR, and checks the Federal and Texas OIGs’ websites for the LEIEs.
 - 1. Information about the EMR will be given in writing.

2. The individual will sign a Statement of Employability, incorporated here by reference, acknowledging s/he has been informed by the Agency, and agrees, that the Agency may conduct these activities to determine the employability of the individual.
 - a. The individual's signature acknowledges s/he will not be hired or will be terminated if the checks indicate s/he is unemployable.
 - b. If the criminal history check includes a conviction of an offense that is not listed in Health and Safety Code §250.006, the Agency will document its review of the conviction and its determination of whether the conviction is a contraindication to employment or not.
 3. The Statement of Employability, the review of convictions not listed in the Texas Health and Safety Code 250.006, and the determination will be kept in the individual's personnel file.
- B. Before an unlicensed applicant, unlicensed employee, or unlicensed volunteer has face-to-contact with a client, the Agency conducts a criminal history check.
1. The Administrator or designee will serve as the authorized official for accessing the DPS website and ensuring compliance with its policies.
 - a. Other trusted employees may be appointed to serve as authorized users.
 - i. Authorized users will be given a copy of the "CHRI Access & Dissemination Policy" to follow when accessing Criminal History Record Information (CHRI).
 - b. The authorized official must delete individuals from the CHRI website when they are no longer authorized users.
 - c. Any employee violating the confidentiality of CHRI is subject to disciplinary action, up to and including termination.
 2. All DPS CHRI is confidential.
 - a. CHRI will be maintained in a secure records environment to prevent the unauthorized viewing or use of CHRI.
 - i. Paper CHRI will be kept in a file cabinet/drawer that can be locked or in a room with locked access that is limited to authorized personnel only.
 - ii. When using electronic CHRI, computer monitors used to display and view CHRI will be placed so unauthorized viewing is not possible.
 - When not in use, computer terminals will be locked or the authorized users will lock the door to the room.
 - iii. The Agency will not use publicly owned computers to access criminal justice information.
 - iv. CHRI will not be released or otherwise disclosed to any person or agency except on court order or with the written consent of the person being investigated.

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HR.17 Background Checks

- Prior to this, if the individual requests a copy of his/her CHRI from the Agency as a result of the criminal history check, s/he will be referred to DPS.
 - However, a Surveyor from HHS is part of a regulatory agency and is entitled to view and have copies of CHRI while on site at the Agency.
- b. The Agency will dispose of CHRI that is no longer necessary or is not permitted by law.
- i. When employees are terminated, the criminal history information will be filed in a “pending destruction” file or folder. After the next licensure survey or any pending complaint survey, the criminal history will be destroyed.
 - ii. Destruction and sanitation must be performed or witnessed by persons who are authorized users.
 - iii. A secure manner of disposal will be utilized to thoroughly destroy all elements of the records and preclude unauthorized viewing, access, or use such as:
 - Paper CHRI may be destroyed by cross-cut shredding or other method to preclude recognition or reconstruction of the information.
 - Electronic CHRI may be overwritten three times or degaussed prior to disposal and inoperable electronic media will be destroyed by cutting up, shredding, or other method to preclude recognition or reconstruction of the information.
 - iv. The disposal procedures will be documented on the DPS Audit Verification Form found on its website or a similar form of documentation.
3. The Agency may pay a private agency to obtain CHRI directly from DPS per the Texas Health and Safety Code 250.002 (a-1) and 250.002(b)(1).
- C. Before an unlicensed applicant, unlicensed employee, or unlicensed volunteer has face-to-face contact with a client, the Agency conducts a search of the NAR and EMR using the Texas Health and Human Services Commission’s Internet website to determine if the applicant or employee is listed in either registry as unemployable:
- 1. Use the HHSC Employability Status Search at <https://emr.dads.state.tx.us/DadsEMRWeb/> (link is external), which includes information regarding Sanctions. OC § 53 requires an employer to consider only convictions directly related to the occupation
 - 2. Subsequently, the Agency will search the NAR and the EMR annually.
 - 3. The results of the initial and annual searches will be maintained in the individual’s personnel file.
- D. If the Agency accepts Medicare or Medicaid funds, the Agency will search the LEIEs at both the HHS OIG’s and the Texas HHSC OIG’s websites before hiring any individual, or contracting with, or accepting orders from, those who will be providing or ordering services to its clients.
- 1. The searches will be repeated monthly.

2. If an individual or entity is excluded, the Agency prohibits payment for any items or services furnished, ordered, or prescribed by the individual or entity.
3. The Agency will report to the HHSC-OIG the identity of an excluded individual or entity that the Agency employed or contracted with and the amount paid to the individual or entity immediately by following the instructions found at <https://oig.hhsc.texas.gov/report-fraud>.
4. The documentation of the review and report, as applicable, will include the following:
 - a. The date of the LEIE review;
 - b. The printed name and signature of the person conducting the review;
 - c. The first and last name and the date of birth of the individual or entity that was subject of the review;
 - d. Whether the individual or entity was excluded;
 - e. If applicable, the date an excluded individual was reported to the HHSC-OIG; and
 - f. Maintenance of the documentation demonstrating compliance with the reviewing and reporting requirements, as well as copies of the reports submitted to the HHSC-OIG for six years after the end of the federal fiscal year in which the information was created.
- E. If the Agency contracts with another agency or organization for an unlicensed person to provide personal assistance services under arrangement, the Agency will ensure that the contracting agency or organization:
 1. Searches the NAR and the EMR before the unlicensed person's first face-to-face contact with a client of the Agency using the Texas Health and Human Services Commission's website to confirm that the unlicensed person is not listed in either registry as unemployable;
 2. Provides written information to the unlicensed person about the EMR that complies with the requirements of the Texas Administrative Code Chapter §93.3(c);
 3. Searches the NAR and the EMR at least every twelve months using the Texas Health and Human Services Commission's website to confirm that the person is not listed in either registry as unemployable;
 4. Use the HHSC Employability Status Search at <https://emr.dads.state.tx.us/DadsEMRWeb/> (link is external), which includes information regarding Sanctions. OC § 53 requires an employer to consider only convictions directly related to the occupation.
 5. Conducts a criminal history check before the unlicensed person's first face-to-face contact with a client of the Agency; and
 6. Verifies that the unlicensed person's criminal history information does not include a conviction that bars employment under the Texas Health and Safety Code §250.006.

Purpose

To ensure a consistent and equitable process for the selection of the Agency's staff.

Policy

- A. The Agency will establish a process for the recruitment and selection of staff that ensures equal consideration of applicants whose qualifications are commensurate with the anticipated job responsibilities as found in the Job Description.
- B. The Agency will not discriminate in the provision of employment with respect to age, race, color, religion, military status, gender preference, sex, marital status, national origin, disability, or source of payment.
- C. The Agency complies with applicable Federal conscience and anti-discrimination laws prohibiting exclusion, adverse treatment, coercion, or other discrimination against individuals or entities on the basis of their religious beliefs or moral convictions as found in the Department of Health and Human Services, Office for Civil Rights, Rule 45 CFR, Part 88, Protecting Statutory Conscience Rights in Health Care, effective May 2019.
- D. The Agency complies with federal and state laws and regulations.
- E. The Agency will utilize an equivalent process for selection when considering independent contractors or volunteers for positions at the Agency.

Procedure

- A. The Agency's leaders will review federal and state employment laws and regulations.
 - 1. All regulations will be incorporated into the selection process and/or Job Descriptions.
- B. The applicable staff will be trained to follow the Agency's personnel selection process to include, but not be limited to:
 - 1. Obtaining an application completed by the individual seeking a position with the Agency;
 - 2. Attempting and documenting the verification of two references;
 - 3. Checking the applicant's criminal history;
 - 4. Completing background checks for unlicensed personnel who will have face-to-face contact with the Agency's clients per licensing standards;
 - 5. Verifying the qualifications, experience, and job history provided by the applicant;
 - 6. Verifying the applicant's education, training, licensure, and/or certification;
 - 7. Testing to determine if job knowledge requirement(s) and/or competencies are met; and
 - 8. Making an offer of employment.
- C. Applicants will be informed of the employment determination in a timely manner.

Purpose

To ensure the Agency implements measures to prevent further transmission of infection by incorporating work restrictions set forth by the Centers for Disease Control (CDC).

Policy

- A. In order to prevent the spread of infections in all of the Agency's workplaces, all Agency employees, volunteers, and contractors (known collectively as employees) will wear appropriate Personal Protective Equipment (PPE) in all work settings.
- B. In order to prevent the spread of infections in all of the Agency's workplaces, all Agency employees will be restricted from working if they are infected with any of the diseases identified by the CDC as having work restrictions, or have been exposed to them, in the absence of state and local regulations.
 - 1. This includes the Novel Coronavirus (COVID-19) whose symptoms include, if they are new to the individual:
 - a. Fever (100.4° Fahrenheit or higher) or chills;
 - b. Cough;
 - c. Shortness of breath or difficulty breathing;
 - d. Fatigue;
 - e. Muscle or body aches;
 - f. Headache;
 - g. New loss of taste or smell;
 - h. Sore throat;
 - i. Congestion or runny nose;
 - j. Nausea or vomiting; and
 - k. Diarrhea.
 - 2. Per the CDC, this list does not include all possible symptoms. The CDC will continue to update its list as more is learned about COVID-19.
- C. The Agency complies with applicable Federal conscience and anti-discrimination laws prohibiting exclusion, adverse treatment, coercion, or other discrimination against individuals or entities on the basis of their religious beliefs or moral convictions as found in the Department of Health and Human Services, Office for Civil Rights, Rule 45 CFR, Part 88, Protecting Statutory Conscience Rights in Health Care, effective May 2019.
- D. For COVID-19:
 - 1. The Administrator or designee will contact the Texas Department of State Health Services (DSHS) and will follow the recommendations for the next steps such as testing or going for treatment.
 - 2. The Administrator or designee will contact DSHS at 512-776-7111 or 1-888-963-7111 if there are any questions.

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IC.4 Employee Infections and Work Restrictions

- 3. The Administrator or designee will review the CDC website dedicated to COVID-19 for health professionals at <https://www.cdc.gov/coronavirus/2019-nCoV/hcp/index.html>

Procedure

- A. The Administrator or designee will have the authority to exclude personnel from the workplace.
- B. Employees are to report their illnesses or exposures immediately to the Administrator or designee.
 - 1. The notification will include client/individual’s name, equipment in the home, and location where the contact was made.
 - 2. If the employee develops a respiratory infection while on the job, s/he will:
 - a. Immediately stop work, put on a facemask, and self-isolate at home for 12 days or as recommended by the CDC.
- C. The decision to exclude personnel will be documented in their personnel or health file.
 - 1. The documentation may include lab reports.
 - 2. The documentation will be updated when the employee provides more information.
- D. The individual will not be allowed to return to work until clearance for work is received from his/her physician.
 - 1. The clearance to return to work will be placed in the individual's personnel or health file.
- E. The Agency will follow the CDC's work restriction guidelines below:

Disease/Problem	Work Restriction	Duration
Conjunctivitis	Restrict from client contact	Until discharge ceases
Coronavirus (COVID-19)	Exclude from duty; no client contact. If employee has signs and symptoms of a respiratory infection, do not report to work.	A test-based strategy is no longer needed. If the individual was severely or critically ill or severely immunocompromised, 20 days from symptom onset. There is no fever for at least 24 hours without the use of fever reducing medicine AND improvement in symptoms.
Cytomegalovirus infections	No	N/A
Diarrhea - acute stage, with other symptoms	Restrict from client contact	Until symptoms resolve
Diarrhea - convalescent stage; <i>Salmonella</i> spp	Restrict from care of high-risk clients	Until symptoms resolve; consult with local and state health authorities regarding need for negative stool cultures
Diphtheria	Exclude from duty	Until antimicrobial therapy completed and two (2) cultures obtained >24 hours apart are negative

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Enteroviral infections	Restrict from care of infants, neonates, and immunocompromised clients	Until symptoms resolve
Hepatitis A	Restrict from client contact	Until seven (7) days after onset of jaundice
Hepatitis B - personnel with acute or chronic HBV surface antigenemia who do not perform exposure-prone procedures	No restriction	N/A
Hepatitis B - personnel with acute or chronic HBV e antigenemia who perform exposure-prone procedures	Do not perform exposure-prone invasive procedures until counsel from an expert review panel has been sought; panel should review and recommend procedures the worker can perform, taking into account specific procedure, as well as skill and technique of worker; refer to state regulations	Until HBV e antigen is negative.
Hepatitis C	No recommendation	N/A
Herpes simplex - Genital	No restriction	N/A
Herpes simplex- Hands (herpetic whitlow)	Restrict from client contact	Until lesions heal
Herpes simplex - Orofacial	Evaluate the need to restrict from care of high-risk patients	N/A
HIV	Do not perform exposure-prone invasive procedures until counsel from an expert review panel has been sought; panel should review and recommend procedures the worker can perform, taking into account specific procedure, as well as skill and technique of worker; refer to state regulations; standard precautions should always be observed	N/A
Measles - active	Exclude from duty	Until seven (7) days after the rash appears
Measles - postexposure (susceptible personnel)	Exclude from duty	From 5th day after 1st exposure through 21st day after last exposure and/or four (4) days after the rash appears
Meningococcal infections	Exclude from duty	Until 24 hours after start of effective therapy
Mumps - active	Exclude from duty	Until nine (9) days after onset of parotitis (swelling of the gland)

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Mumps – post-exposure (susceptible personnel)	Exclude from duty	From 12th day after 1st exposure through 26th day after last exposure or until nine (9) days after the onset of parotitis
Pediculosis	Restrict from patient contact	Until treated and observed to be free of adult and immature lice
Pertussis - active	Exclude from duty	From beginning of catarrhal stage through 3 rd week after onset of paroxysms or until five (5) days after start of effective therapy
Pertussis - postexposure (asymptomatic personnel)	No restriction, prophylaxis recommended	N/A
Pertussis - postexposure (symptomatic personnel)	Exclude from duty	Until five (5) days after the start of effective antimicrobial therapy
Rubella - active	Exclude from duty	Until five (5) days after the rash appears
Rubella - postexposure (susceptible personnel)	Exclude from duty	From the 7 th day after 1st exposure through 21st day after last exposure
Scabies	Restrict from client contact	Until cleared y medical evaluation
<i>Staphylococcus aureus</i> infection - active, draining skin lesions	Restrict from contact with clients	Until lesions have resolved
<i>Staphylococcus aureus</i> infection - carrier state	No restriction, unless personnel are epidemiologically linked to transmission of the organism	N/A
<i>Streptococcal</i> infection, group A	Restrict from client care	Until 24 hours after adequate treatment started
Tuberculosis - active disease	Exclude from duty	Until proved noninfectious
Tuberculosis - PPD converter	No restriction	N/A
Varicella - active	Exclude from duty	Until all lesions dry and crust
Varicella - postexposure	Exclude from duty	From the 10 th day after 1st exposure through 21st day (28th day if VZIG given) after last exposure
Viral respiratory infections - acute febrile	Consider excluding from the care of high risk clients	Until acute symptoms resolve
Zoster - localized in health person	Cover lesions; restrict from care of high-risk clients	Until all lesions dry and crust
Zoster - generalized or localized in immunosuppressed person	Restrict from client contact	Until all lesions dry and crust

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Zoster – post-exposure (susceptible personnel)	Restrict from client contact	From 10th day after 1st exposure through 21st day (28th day if VZIG is given or, if varicella occurs, until all lesions dry and crust
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Purpose

To ensure each client's information and record, whether on paper or in an electronic format, is treated with confidentiality and is kept secure in accordance with the Texas Licensing Standards for Home and Community Support Services Agencies at §558.301, per the federal standards found in the Health Insurance Portability and Accountability Act (HIPAA), and other applicable state and federal regulations.

Policy

- A. The Agency will ensure that all of the client's protected health information (PHI) and electronic protected health information (ePHI) will remain confidential and will be secured and controlled whether on paper, in an electronic format, or a combination of both in compliance with the Privacy Rule of the Administrative Simplification provisions of HIPAA, the HITECH Act of 2009, the Texas House Bill (HB) 300 of 2012, and other applicable state and federal regulations.
 - 1. The state regulations include the Data Use Agreement (DUA) and the Security and Privacy Inquiry (SPI) that are incorporated here by reference for those contracting with Texas Health and Human Services (HHS).

Definitions

- A. Breach: an impermissible use or disclosure that compromises the security or privacy of an individual's protected health information or electronic protected health information, known collectively as protected health information.
- B. Business Associate: a person or organization that performs certain functions or activities on behalf of, or provides services to, a covered entity that involve the use or disclosure of individually identifiable health information; includes the Agency's contractors and subcontractors of organizations.
- C. Covered Entity: health plans, health care clearinghouses, and any health care provider who transmits health information in electronic form.
- D. Disclose: to release, transfer, provide access to, or otherwise divulge information outside the Agency.
- E. Electronic Devices: include, but are not limited to, computers, laptops, tablets, smart phones, personal digital assistants (PDAs), USB flash drives, and external hard drives.
- F. e-PHI: electronic protected health information is all of an individual's identifiable health information the Agency creates, receives, maintains, or transmits in electronic form.
- G. Health Information Technology: includes digital tools and services such as mobile phone apps and email messaging that can be used to enhance a client's self-care, facilitate client-provider communication, inform health behaviors and decisions, prevent health complications, and promote health equity.
- H. HITECH Act: Health Information Technology for Economic and Clinical Health Act expands the types of businesses covered by HIPAA, allows clients to more directly access their electronic health records, requires covered entities to notify clients of breaches, and encourages "meaningful use" to improve communication between health care providers in direct relationships for client care.

- I. **Meaningful Use:** the use of certified electronic health record (EHR) technology in a meaningful manner and ensuring that it is connected in a manner that provides for the electronic exchange of health information to improve the quality of care.
- J. **Notice of Privacy Practices:** the Agency's description of how the client's individually identifiable health information may be used, disclosed, and accessed.
- K. **Personally Identifiable Information (PII):** any information about an individual maintained by the Agency including that which can be used to distinguish or trace an individual's identity, such as name, Social Security number, date and place of birth, mother's maiden name, or biometric records and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.
- L. **Privacy Officer:** provides oversight of the Agency's compliance with its policies and procedures related to the client's privacy and security of records by monitoring compliance with its policy on confidentiality and privacy of information.
- M. **Protected Health Information (PHI):** individually identifiable information that is transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium; but, excludes individually identifiable information in education records covered by the Family Educational Rights and Privacy Act, in employment records held by a covered entity in its role as employer, and regarding a person who has been deceased for more than 50 years.
- N. **Risk Analysis:** an ongoing process in which a covered entity regularly reviews its records to track access to e-PHI and detect security incidents, periodically evaluates the effectiveness of security measures that have been put in place, and regularly reevaluates the potential risk to e-PHI.
- O. **Security Officer:** security official who is responsible for developing and implementing the Agency's security policies and procedures.
- P. **Unsecured Protected Health Information:** protected health information that has not been rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology specified by the Secretary of Health and Human Services (HHS).

Procedure - Clients

- A. The Agency's Supervisor evaluating the client for admission will verbally explain to him/her or the client's representative that the Agency will keep all his/her records and information confidential and secure from impermissible use or access. This information will be provided at the earlier of:
 - 1. The time the client is admitted to receive services from the Agency; or
 - 2. The time the Agency begins providing services to the client.
 - 3. The client or the client's representative will be given a copy of the Agency's Notice of Privacy Practices that is included here by reference.
 - a. The client or the client's representative will be notified 30 days before changes are made to the Notice of Privacy Practices if the Agency changes it or if the HIPAA rules impacting it change and s/he will be given the opportunity to:
 - i. Accept the policy change(s) prior to any new use or disclosure of his/her health data; or
 - ii. Be allowed to terminate his/her contract or user agreement with the Agency.

4. It will be explained that sources who may have access to the client's records, without his/her consent, include other treatment providers for coordination of care, payor sources including, insurance companies or Managed Care Organizations (MCOs), regulatory agencies including Texas Health and Human Services (HHS), contracted consultants and other Business Associates, public health agencies, the Agency for limited use for marketing purposes, and as required by law.
 - a. The Agency will produce copies of its policies and procedures and records relating to the use or disclosure of PHI or ePHI within three (3) business days of the request by HHS.
5. The client or the client's representative will sign and date on the Consent form acknowledging this information has been provided.
 - a. The Agency's representative will sign and date the Consent form, also.
 - b. If the client is unable to sign/date the Consent form, the reason why will be provided on the form.
 - c. The original signed/dated Consent form 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.
- B. The client or the client's representative may contact the Privacy Officer in writing to request access to the client's paper or electronic records at any time during the course of care.
 1. The Agency will provide the requested information, whether on paper or electronically, within fifteen (15) days of receiving the request.
 2. The client or the client's representative may request that the Agency provide the information to protect his/her privacy and confidentiality by a particular method or in a particular location other than by the Agency's usual means.
 3. The written request will be placed in the client's record.
- C. The client may authorize in writing for others to have access to his/her record.
 1. The client may revoke this authorization in writing at any time.
- D. Additional considerations for the client or the client's representative to know include, but are not limited to the following:
 1. The client may request to restrict the use and disclosure of his/her PHI.
 2. The client may request a copy of his/her PHI.
 - a. The Agency will provide the requested information, whether on paper or electronically per the client's request, within fifteen (15) days of receiving the request.
 - b. The Agency may impose reasonable, cost-based fees for the cost of copying and postage.
 3. The client may request an accounting of the disclosures of his/her PHI.
 - a. The Agency has 60 days to provide information on when the PHI was accessed and by whom.

- b. The Agency must provide an accounting of the date, a description of the PHI disclosed, to whom it was disclosed, and the purpose for disclosures made up to six (6) years prior to the request.
 - 4. The sale of his/her PHI is prohibited.
 - 5. The Agency must notify him/her of a breach of unsecured PHI.
 - 6. If the Agency conducts fundraising, the client may opt out of receiving fundraising communications from the Agency.
 - 7. The client may restrict disclosures of PHI to a health plan with respect to health care for which the client has paid out of pocket in full.
 - a. The Agency has flexibility and may determine the following:
 - i. How to flag information that is the subject of a restriction; but, is not required to segregate the record;
 - ii. How the restriction requests for certain services, such as bundled services, are to be handled; and
 - iii. What reasonable efforts should be made to obtain payment from a client original form of payment has been dishonored, prior to resorting to billing the health plan for the service.
- E. The client or the client's representative may contact the Privacy Officer and request that his/her PHI be amended or corrected.
- 1. The request to amend PHI can be denied if it is determined the information is accurate and complete.
 - a. The client or the client's representative will be notified within 60 days of the decision.
 - b. If the accuracy of the information is still being disputed after the denial, the client or the client's representative will be provided an opportunity to file a statement of disagreement with the Agency.
 - c. The Privacy Officer will document the dispute and any subsequent disclosure of the disputed PHI.
 - 2. When corrections are made to the client's PHI, the Privacy Officer will make reasonable efforts to provide the corrected information to others who are known to have accessed that particular PHI before it was amended.
- F. The client may contact the Privacy Officer if s/he has any complaints or concerns relating to the privacy and security of his/her records without fear of discrimination, coercion, reprisal, or retaliation.

Procedure - Employees and Volunteers

- A. As part of an employee's and volunteer's orientation, s/he will be trained on the Agency's privacy policies and procedures as necessary and appropriate for him/her to carry out the assigned job functions in all of the Agency's workplaces.

1. Training will be updated as the result of changes in the Agency's policy or procedures and as a result of changes in state or federal regulations.
 - a. In the event there are no changes as listed above, retraining on the Texas HB 300 will take place every two (2) years.
 2. Employees and volunteers will be responsible for knowing, observing, and implementing this information about the confidentiality of clients' information within the workplace.
 - a. For the purpose of this Policy, the workplace, including electronic devices used in the course of business, and actions taken in the workplace, include, but are not limited to: records carried into a client's home, computers in the employee's or the volunteer's home with PHI, electronic devices that store or copy PHI, information kept in the employee's or volunteer's car and/or office, and any similar actions or locations.
 3. Employees and volunteers are expected to comply with the Agency's rules, federal regulations related to HIPAA, and related state regulations, including the Texas HB 300, as well as changes from other applicable authorities.
 - a. Compliance includes attending all of the Agency's trainings on HIPAA and the Texas HB 300.
 - b. If an employee or volunteer discloses any clients' PHI or PII, s/he will be subject to the Agency's Progressive Discipline Policy, up to and including termination.
 4. Documentation of the orientation and training will be kept in the individual's personnel file or in-service records.
 - a. The Privacy Officer will be responsible for ensuring and documenting that the Governing Body, management team, employees, and volunteers receive the initial orientation, along with a copy of the Agency's Notice of Privacy Practices, as well as ongoing training for federal and state HIPAA-related compliance.
- B. Additional non-computer related actions employees and volunteers will take to ensure the clients' privacy is protected include, but are not limited to:
1. Not talking about a client in front of another client or his/her representative or family;
 2. Not using the client's telephone for personal calls or to call the office about another client;
 3. Not using his/her personal cell phone to call the office from a client's home to talk about another client;
 4. Conducting any discussion involving client information privately and discreetly to avoid disclosure to unauthorized employees or volunteers without a need-to-know;
 5. Not calling out information in the office that might be considered personal such as the client's name and test results, medications, etc.;
 6. Not calling out the client's name from desk-to-desk or over the intercom to announce s/he is calling;
 7. Turning files over so someone without a need to know can't see the name on the file;
 8. Not leaving files or folders open or unattended; and

9. Locking file cabinets and/or the record room for the security of records and to protect them from access and/or retrieval by unauthorized personnel.

Procedure - Confidentiality in the Workplace

- A. The Security Officer will conduct an initial risk analysis of the Agency's systems containing PHI to ensure its security measures allow it to reasonably and appropriately comply with the HIPAA Security Rule, HITECH Rules, and the Texas HB 300.
 1. In deciding if its security measures are adequate, the Security Officer may consider the following about the Agency:
 - a. Its size, complexity, and capabilities;
 - b. Its technical infrastructure, hardware, and software;
 - c. The costs of the security measures; and
 - d. The likelihood and possible impact of potential risks to PHI.
 2. Periodically, the Security Officer will conduct risk analyses to evaluate the effectiveness of the Agency's security measures that have been put in place to find and/or mitigate any potential risks to the clients' PHI.
 - a. A risk analysis will be completed following impermissible uses and disclosures of PHI by the Agency or a Business Associate.
 3. The Security Officer will document the risk analyses findings and any actions taken to improve the security of the Agency's systems containing PHI, whether in a paper or electronic format.
 - a. The Security Officer will make the documentation available to those responsible for implementing the findings and to appropriate regulatory entities.
 - b. The Security Officer will review the documentation periodically and update it as needed in response to environmental or operational changes affecting the security of the clients' PHI.
 - c. The Security Officer will retain the required documentation for seven (7) years from its creation or the date when it was last in effect, whichever is later.
- B. The Agency will develop a Notice of Privacy Practices (Notice) containing the essential elements required by the HIPAA Standards.
 1. The Notice of Privacy Practices will be given to the client or the client's representative as noted above in Procedure - Clients A.3.
 2. The Notice of Privacy Practices will be displayed by posting the Notice:
 - a. In a prominent place in the office where people seeking services may be able to read the Notice; and
 - b. On the Agency's website.
- C. Additional non-computer related actions the Agency will take to ensure the clients' privacy is protected include, but are not limited to:

1. Any information needing to be faxed will have a cover sheet stating the confidential nature of the information with procedures to be followed in case of a transmission received in error.
 - a. The following information will not be faxed:
 - i. Occurrence/Incidence Reports;
 - ii. Employee Drug Screening Reports; and
 - iii. Employee/Client HIV testing results.
2. Information collected during Quality Assurance Performance Improvement (QAPI) activities is confidential; but, it may be shared in statistical reporting formats.
3. Records will be located in such areas so as to avoid unofficial use or access by unauthorized persons.
4. Guidelines will be implemented as to when release and/or removal of clients' records is allowed and are in Policy IM.5 Record Information Release and Removal that is incorporated here by reference.
5. Guidelines for copying a client's record include, but are not limited to:
 - a. The purpose for which the record is copied;
 - c. Which portions of the record may be copied;
 - d. The protection and security of the record by the employee/volunteer who made the copy; and
 - e. The destruction of the copies.
6. Client information boards will not be displayed in common office areas that are viewable to the public.

Procedure - Confidentiality Pertaining to Electronic Devices

- A. In addition to the privacy and security measures found throughout this Policy, the Agency will:
 1. Ensure the confidentiality, integrity, and availability of all PHI it creates, receives, maintains, or transmits;
 2. Protect against any reasonably anticipated threats or hazards to the security or integrity of PHI;
 3. Protect against any reasonably anticipated uses or disclosures of PHI other than those that are permitted by the HIPAA Security Rule; and
 4. Secure written contracts that include confidentiality clauses, HIPAA Privacy Rule obligations, and breach notification requirements from:
 - a. Persons that provide data transmission services with respect to PHI to the Agency and that require access on a routine basis to the PHI;
 - b. Billing companies who are billing via electronic means; and
 - c. Vendors offering client records to one or more individuals on behalf of the Agency.

5. Incorporate the PHI meaningful use concepts to:
 - a. Improve quality, safety, efficiency, and to reduce health disparities;
 - b. Engage clients and their families in improving their health;
 - d. Improve care coordination;
 - e. Improve public health; and
 - f. Ensure adequate privacy and security protection for PHI.
- B. The Security Officer will assign a login ID (user name) and password to each person authorized to have access to the Agency's electronic data.
 1. The Agency's computer data will be entered, accessed, or retrieved only by authorized persons.
 2. The Agency's computers, laptops, tablets, and other electronic devices will be locked when not in use and accessed only with the user's password.
 3. Passwords will be changed every three (3) months, after any untoward email encounter, and following any impermissible use (breach).
 4. Login IDs and passwords will not be shared, written down, or left in areas accessible to others.
 5. Authorized persons may utilize electronic signatures made and authenticated by the Agency's system to the extent the signature is valid under applicable law.
 6. Authorized persons will log off the electronic device at the end of the work session or whenever the device is not in his/her immediate possession.
 7. User access will be inactivated if the authorized person is on an extended leave of absence for more than thirty (30) days.
 8. Login IDs and passwords will be deleted and not used again when an authorized user is suspended, resigns, or is terminated.
- C. Additional electronic device related actions the Agency may take to ensure the clients' privacy is protected include, but are not limited to:
 1. Installing high-quality firewalls and up-to-date virus protection software;
 2. Instructing users not to open email from unknown sources or unexpected email with attachments;
 3. Incorporating computer backup modalities (i.e. online, backup disks, CDs, hard drives, etc.) for critical performance;
 - a. Computer data will be backed up daily.
 - b. One version of the backup will be kept in a secure place offsite such as in a bank safe deposit box.
 4. Using surge protectors, uninterruptable power supplies, or other backup systems to protect computers during power outages and/or power surges;
 5. Installing and enabling encryption;

6. Not installing or, if present, disabling file sharing applications;
 7. Turning computer screens away from public view, using privacy screens, or using screen savers to prevent unauthorized persons from viewing screens, intentionally or unintentionally;
 8. Having an automatic logoff to ensure unauthorized persons do not access data on unattended electronic devices; and
 9. Deleting and scrubbing devices with PHI before they are discarded.
- D. Authorized persons will be permitted access to the minimum amount of client PHI necessary to perform their duties.
1. Administrative personnel, including Supervisors, may have access to all information 24 hours a day, 7 days a week.
 2. Attendants may have access to client information at the office during office hours.
 3. Billing personnel may have access to information needed to process claims at the office during office hours.

Procedure - Confidentiality Pertaining to Business Associates

- A. The Agency will secure written contracts that include confidentiality clauses, Privacy Rule obligations, and breach notification requirements from its Business Associates and their subcontractors who create, receive, maintain, or transmit PHI.
- B. The Agency's Business Associates shall have access to the minimum amount of client PHI needed to accomplish the cited purpose as noted in the contract.
- C. The Agency's Business Associates, such as a Health Information Organization (HIO), may use and disclose PHI for its proper management and administration.
1. Data aggregation services related to the Agency's operations may be provided.
- D. The Agency's Business Associates may authorize their subcontractors to make HIPAA compliant uses and disclosures just as the Agency is permitted to make.
- E. The Business Associates are held to the same standards for breaches of information as the Agency is. In addition to the information that follows in the Breach section, the Business Associates and their subcontractors:
1. Are liable for their breaches;
 2. Will notify the Agency of a breach without reasonable delay and not less than 60 days from the discovery of a breach;
 3. Will be given an opportunity to correct any alleged material breach the Agency discovers within a specified period; and
 4. Will have the contract terminated by the Agency if it determines there has been a violation of the HIPAA Security Rule, the Texas HB 300, or a breach of confidentiality.

Procedure - Breaches

- A. In the event of an impermissible use or disclosure of PHI, the Security Officer or designee will provide notification to the Secretary of HHS per the HIPAA Breach Notification Rule unless the Security Officer determines there is a low probability the PHI has been compromised based on a risk assessment of at least the following factors:
1. The nature, extent, and identifiers of the PHI involved, including the types of identifiers and the likelihood of re-identification;
 2. The unauthorized person who used the PHI or to whom the disclosure was made;
 3. Whether the PHI was actually acquired or viewed; and
 4. The extent to which the risk to the PHI has been mitigated.
 5. The Security Officer will document and retain its risk assessment and determination.
- B. There are three exceptions to the definition of the word "breach:"
1. The unintentional acquisition, access, or use of PHI by an employee or person acting under the authority of the Agency or Business Associate if such acquisition, access, or use was made in good faith and within the scope of his/her authority;
 2. The inadvertent disclosure of PHI by a person authorized to access it at the Agency or Business Associate's to another person at the Agency or the Business Associate's who is authorized to access the PHI; and
 3. The Agency or Business Associate has a good faith belief the unauthorized person to whom the impermissible disclosure was made would not have been able to retain the information.
 4. The Agency or Business Associate must ensure the information cannot be further used or disclosed in a manner not permitted by the HIPAA Privacy Rule.
- C. The Agency will notify clients whose unsecured PHI has been breached as follows, taken directly from the Notification Requirements:
1. The Agency will provide the client with notice in written form by first-class mail, or alternatively, by e-mail if the client has agreed to receive such notices electronically.
 2. If the Agency has insufficient or out-of-date contact information for ten (10) or more clients, the Agency will provide substitute individual notice by either posting the notice on the home page of its website for at least 90 days or by providing the notice in major print or broadcast media where the clients likely reside.
 - a. The Agency will include a toll-free phone number that remains active for at least 90 days where clients can learn if their information was involved in the breach.
 3. If the Agency has insufficient or out-of-date contact information for fewer than ten (10) clients, the Agency may provide substitute notice by an alternative form of written notice, by telephone, or other means.
 - a. These individual notifications must be provided without unreasonable delay and in no case later than 60 days following the discovery of a breach.
 - b. The individual notifications must include, to the extent possible:

- i. A brief description of the breach;
 - ii. A description of the types of information that were involved in the breach;
 - iii. The steps affected clients should take to protect themselves from potential harm;
 - iv. A brief description of what the Agency is doing to investigate the breach, mitigate the harm, and prevent further breaches; and
 - v. Contact information for the Agency or the Business Associate, as applicable.
 - c. With respect to a breach by a Business Associate, while the Agency is ultimately responsible for ensuring clients are notified, the Agency may delegate the responsibility of providing the individual notices to the Business Associate.
 - i. The Agency and the Business Associate will consider which entity is in the best position to provide notice to the client, which may depend on various circumstances, such as the functions the Business Associate performs on behalf of the Agency and which entity has the relationship with the client.
4. If the Agency experiences a breach affecting the unsecured PHI of more than 500 clients in its licensure geographic service area, in addition to notifying the affected clients, it will provide notice in a press release to prominent media outlets serving that area.
 - a. This media notification must be provided without unreasonable delay and in no case later than 60 days following the discovery of a breach and must include the same information required for the individual notice described in 3b.
5. In case of a breach affecting the unsecured PHI of either more or less than 500 clients, the Agency will notify the Secretary of HHS by visiting the HHS website, filling out the breach report form, and electronically submitting the form.
 - a. If the breach affects 500 or more clients, the Agency will notify the Secretary without unreasonable delay and in no case later than 60 days following a breach.
 - b. If the breach affects fewer than 500 clients, the Agency may notify the Secretary of such breaches on an annual basis.
 - i. Reports of breaches affecting fewer than 500 clients are due to the Secretary no later than 60 days after the end of the calendar year in which the breaches are discovered.
6. If a breach of unsecured PHI occurs by a Business Associate, it must notify the Agency without unreasonable delay and no later than 60 days from the discovery of the breach.
 - a. To the extent possible, the Business Associate should provide the Agency with the identification of each client affected by the breach, as well as any other available information required to be provided by the Agency in its notification to the affected clients.
7. The Agency and its Business Associates, as applicable, have the burden of demonstrating that all required notifications have been provided or that a use or disclosure of unsecured PHI did not constitute a breach.

- a. Accordingly, with respect to an impermissible use or disclosure, the Agency or its Business Associate will maintain documentation that all required notifications were made, or, alternatively, will maintain documentation to demonstrate that notification was not required because:
 - i. Its risk assessment demonstrating a low probability that the PHI has been compromised by the impermissible use or disclosure; or
 - ii. The application of any other exceptions to the definition of “breach.”

Website Resources:

Breach notifications -

<http://www.hhs.gov/ocr/privacy/hipaa/administrative/breachnotificationrule/brinstruction.html>

Breach notification rule - <http://thefederalregister.com/2009/04/20/E9-8882.html>

HITECH Act - <https://www.hhs.gov/hipaa/for-professionals/breach-notification/index.html>

Summary of the HIPAA Privacy Rule -

<https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html>

Summary of the HIPAA Security Rule -

<https://www.hhs.gov/hipaa/for-professionals/security/laws-regulations/index.html>

Texas House Bill (HB) 300 (Enrolled) -

<https://capitol.texas.gov/BillLookup/Text.aspx?LegSess=82R&Bill=HB300>

Purpose

To ensure the Agency meets the clients' needs for services by complying with the admission processes of the Licensing Standards for Home and Community Support Services Agencies.

Policy

- A. The Agency will accept clients for Personal Assistance Services (PAS) based on a reasonable expectation that the client's personal care and functional needs can be met while the Agency is considerate of the principles of individual and family choice and control, as well as providing accessible and flexible services.
- B. The Agency will not discriminate in the provision of services with respect to age, race, color, religion, military status, gender preference, sex, marital status, national origin, disability, or source of payment.
- C. The Agency complies with applicable Federal conscience and anti-discrimination laws prohibiting exclusion, adverse treatment, coercion, or other discrimination against individuals or entities on the basis of their religious beliefs or moral convictions as found in the Department of Health and Human Services, Office for Civil Rights, Rule 45 CFR, Part 88, Protecting Statutory Conscience Rights in Health Care, effective May 2019.

Procedure

- A. When the Agency receives a referral, it will evaluate the following criteria to determine if the Agency can meet the client's needs.
 - 1. The client lives in the Agency's licensure geographic service area.
 - 2. The Agency is able to provide the services needed/requested.
 - 3. The environment is safe for providing services.
 - a. Personal Assistance Services can be provided in the client's home, school, place of employment, and other sites if requested by the client.
 - 4. If these criteria cannot be met, the Agency will not accept the referral.
 - a. The client and the referral source will be notified of the reason the referral could not be accepted.
 - b. The referral information and the reason it could not be accepted will be documented and archived for at least one (1) year.
- B. A representative of the Agency will conduct an evaluation to determine the services, hours, and schedule the client needs within three (3) working days of receiving the referral. (See the Agency's Policy TX.3 Individualized Service Plan (ISP) incorporated here by reference for the ISP process)
 - 1. If there is a delay, the reason will be noted in the client's record.
 - 2. The evaluation will be rescheduled.
- C. The Agency's representative evaluating the client for admission will go through the Admit Pack with him/her or the client's representative and will review each document with him/her. This information will be provided at the earlier of:
 - 1. The time the client is admitted to receive services from the Agency; or

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PE.1 Criteria for Client Admission

2. The time the Agency begins providing services to the client.
 3. The Agency's representative will review the Consent Form with the individual(s) to ensure understanding of the contents of the Admit Pack that include; but, are not limited to:
 - a. Client Rights or Rights of the Elderly;
 - b. The Agency's Policy on Abuse, Neglect, or Exploitation;
 - c. How to register a complaint against the Agency;
 - d. Advance Directives;
 - e. The Agency's Policy on Drugs in the Workplace;
 - f. Financial authorization;
 - g. HIPAA privacy rights;
 - h. The ISP detailing services, supplies, and equipment to be provided, hours, and frequency of supervision; and
 - i. Release of records.
 4. The client or the client's representative will sign and date on the Consent form acknowledging this information has been provided, explained, and is understood.
 - a. The Agency's representative will sign and date the Consent form, also.
 - b. If the client is unable to sign/date the Consent form, the reason why will be provided on the form.
 - c. The original signed/dated Consent form 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.
- D. The Agency will endeavor to initiate services within seven (7) calendar days.
1. If there is a delay, the reason will be noted in the client's record.
 2. The admission will be rescheduled.

Purpose

To conduct an accurate and consistent reevaluation of the client per the Texas Licensing Standards for Home and Community Support Services Agencies (HCSSA) found at Chapter §558.404.

Policy

A Supervisor will reevaluate each Personal Assistance Services (PAS) client on an ongoing basis, but no less than every 12 months, to determine if the Individualized Service Plan (ISP) continues to meet the client's needs.

Procedure

- A. A supervisory visit will be made per the frequency of supervision established during the initial and subsequent evaluations. Additionally:
 - 1. Supervisory visits will be made for changes in the client's condition.
 - 2. Supervisory visits will be made when there are changes in policies specified by the HCSSA licensure standards.
- B. During the supervisory visit, the Supervisor will:
 - 1. ask if the Attendant is following the ISP;
 - 2. determine if the ISP is meeting the client's needs, including the tasks, hours, schedule, and frequency of supervisory visits;
 - 3. evaluate the client's response to the care received; and
 - 4. if necessary, develop a revised ISP with the client's input that will meet the client's needs and improve his/her functional abilities.

Purpose

To ensure compliance with the Texas Licensure Standards for Home and Community Support Services Agencies for discharging a client as found in Chapters §558.217, §558.220, and §558.295.

Policy

The Agency will discharge a client per his/her request, when requested by a payor source, when the Agency can no longer provide the needed care at the level of intensity required by the client's condition, for dissolution of the Agency, or for related circumstances as described in Procedure A.2.

Procedure

- A. The circumstance of the discharge dictates whether or not the Agency must give prior notice to the client or his/her representative.
 - 1. If the Agency intends to discharge a client, it will:
 - a. Provide written notification to the client or the client's parent, family, spouse, significant other, or legal representative, and the client's physician or practitioner if s/he is involved in the Agency's care of the client;
 - b. Deliver the required written notice by hand or by mail:
 - i. If sent by mail, the written notice will be mailed at least eight (8) working days before the date of discharge in order to ensure delivery of the written notice no later than five (5) days before the date on which the client is to be discharged.
 - c. Speak with the client or the client's representative by telephone or in person to ensure the client knows about the discharge at least five (5) days before the date of discharge; and
 - d. If applicable, transfer a copy of the client's record to the receiving agency to ensure continuity of care and services.
 - 2. The Agency does not need to give prior written notice of a discharge if it is for any of the following reasons:
 - a. Upon the client's request;
 - b. If the client no longer lives in the Agency's licensure geographic service area;
 - c. If the client's medical needs require a discharge, such as for a medical emergency;
 - d. In the event of a disaster when the client's health and safety are at risk;
 - e. For the protection of its staff or a client after the Agency has made a documented reasonable effort to notify the client, the client's family, the client's physician or practitioner if s/he is involved in the Agency's care of the client, and appropriate state or local authorities of the Agency's concerns for staff or client safety;
 - f. According to the client's physician or practitioner if s/he is involved in the Agency's care of the client;
 - g. If the Agency voluntarily suspends services or permanently closes; or

h. If the client fails to pay for services, except as prohibited by federal law.

- B. The Agency will document the details of the discharge in the client's record including, but not limited to:
1. A copy of the written notice provided to the client or the client's parent, family, spouse, significant other, legal representative, and the client's physician or practitioner if s/he is involved in the Agency's care of the client;
 2. Documentation of the personal contact with the client if the required notice was delivered by mail;
 3. Documentation that the client's attending physician or practitioner was notified of the date of the discharge if s/he is involved in the Agency's care of the client;
 4. If applicable, information related to coordination of care with the receiving agency; and
 5. A discharge summary.

Purpose

To provide guidance when unlicensed personnel from the Agency provide private duty care in a facility.

Policy

- A. The Agency's unlicensed personnel may provide non-medical or custodial care to its clients in a facility according to the facility's rules for private duty providers.
- B. The Agency complies with applicable Federal conscience and anti-discrimination laws prohibiting exclusion, adverse treatment, coercion, or other discrimination against individuals or entities on the basis of their religious beliefs or moral convictions as found in the Department of Health and Human Services, Office for Civil Rights, Rule 45 CFR, Part 88, Protecting Statutory Conscience Rights in Health Care, effective May 2019.

Procedure

- A. If a client is going into a facility that permits private duty providers to care for a client there, the Agency's Supervisor meeting with the client, the client's family, or other client representative will explain that the Agency may offer non-medical or custodial services according to the facility's rules for private duty providers.
 - 1. The client, the client's family, or other client representative will be notified of the costs and payment schedule related to providing private duty care in a facility.
 - a. The client, the client's family, or other client representative will agree to the services and costs by signing and dating the appropriate form.
 - b. If the client is unable to sign/date the appropriate form, the reason why will be provided on the form.
 - c. The Agency's representative will sign and date the appropriate form, also.
 - d. The original signed/dated appropriate form will be kept in the client's record at the Agency and a copy will be given to the client, the client's family, or other client representative.
- B. If an employee and/or volunteer will be providing private duty care to a client in a facility, an Individualized Service Plan will be developed and s/he will be instructed about the tasks, hours, and schedule to be provided.
 - 1. The Agency's employees and/or volunteers will abide by the Agency's policies regarding client confidentiality, abuse and neglect, client rights, advance directives, and other applicable Agency policies acknowledged during orientation.
 - 2. Tasks may be assigned by the facility's nurses or the client, the client's family, or other client representative per the facility's rules.
 - 3. Employees and volunteers will be responsible for knowing, observing, and implementing this information in all contacts with the clients.
 - 4. Documentation of this training will be kept in the individual's personnel file.
- C. Clients receiving private duty care in a facility shall not be included on the client list of clients receiving services in their home.
 - 1. A separate list shall be kept by the Administrator or designee.

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. From July 1, 2023 – September 1, 2023, this process of reporting all alleged ANE by agency employees, volunteers, or contractors to both DFPS and HHSC will be required for all non-Medicaid reimbursed consumers ONLY, except as noted in procedure relating to if an agency has cause to believe that the alleged ANE was committed by someone other than HCSSA staff with an ongoing relationship with the consumer. (See Procedure Section D)

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.

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TX.2 Abuse, Neglect, and Exploitation

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:
- a. The Texas Health and Human Services Commission Regulatory Services:
 1. Toll free 1-800-458-9858; or
 2. Online via TULIP (Preferred method)
 3. Via email to ciicomplaints@hhs.texas.gov
 - b. 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
 - c. 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 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. HHSC at 1.800.458.9858 **or**
 - b. HHSC via email at ciicomplaints@hhs.texas.gov **or**
 - c. HHSC via TULIP at <https://txhhs.force.com/TULIP/s/>
 - 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, local law or state law enforcement agencies, 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 self-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.
4. If the suspected abuse, neglect or exploitation of the patient has occurred by someone other than HCSSA staff (e.g. a family member, friend, etc.); or if the agency has cause to believe that the consumer is in a state of self-neglect.
 1. Department of Family and Protective Services (DFPS) at 1-800-252-5400 or through the DFPS secure website at www.txabusehotline.org; **and**

References

TAC Title 26.1; Chapter 558.249; 558.250
Texas Human Resources Code, §48.002
Texas Family Code, §261.401
Department of Family and Protective Services
Update PL2023-12 (revised)

Purpose

To ensure an Individualized Service Plan (ISP) is developed, agreed to, and signed by the client or his/her family and by the Agency’s Supervisor per the Texas Licensing Standards for Home and Community Support Services Agencies found in §558.404 for Personal Assistance Services.

Policy

An Agency Supervisor will make an on-site visit to the location where the client’s services will be delivered primarily to determine the ISP, with input from the client or his/her family, that will consider client/family choice and control, as well as the client’s functional needs, while offering accessible and flexible services.

Procedure

- A. As part of the orientation of an Agency Supervisor, his/her role in developing the client’s ISP will be explained.
 - 1. S/he will be responsible for developing an ISP that meets the client’s functional needs, incorporate the client’s or his/her family’s choices, and are flexible.
 - 2. As a follow-up, this information will be reviewed with the Supervisor as needed or requested.
 - 3. Documentation of the orientation and training will be kept in the Supervisor’s personnel file.

- B. The Supervisor evaluating the client for admission will explain to him/her or the client’s family that the Agency offers personal assistance services that enable him/her to engage in the activities of daily living or to perform the physical functions required for independent living.
 - 1. S/he or the client’s family are encouraged to participate in the planning process.
 - 2. S/he or the client’s family have the right to request the ISP be revised.
 - 3. S/he or the client’s family have the right to decline care or services.
 - 4. The client or the client’s family will sign and date the ISP acknowledging agreement with the tasks, hours, and schedule on the ISP.
 - a. The Supervisor will sign and date the ISP, also.
 - b. If the client is unable to sign/date the ISP, the reason why will be documented.
 - c. The original signed/dated ISP will be kept in the client’s record at the Agency and a copy will be given to the client or the client’s family.

- C. The Supervisor will develop the ISP that will include, but not be limited to, the following:
 - 1. Types of services, supplies, and equipment to be provided;
 - 2. Location(s) of services;
 - 3. Frequency, scheduled hours, and duration of services;
 - 4. Planned date of service initiation;
 - 5. Charges for services rendered if the charges will be paid in full or in part by the client or significant other(s), or on request;

6. Plan of supervision of personnel; and
 7. Frequency of supervisory visits.
- D. The ISP will be reviewed and revised, if needed, by the Supervisor, with input from the client or his/her family. (See the Agency's Policy TX.6, Review and Revision of the Individualized Service Plan.)
- E. Supervisory visits will be made according to the frequency on the initial ISP, on ISPs revised to meet the client's needs, or as revised at the client's or his/her family's request.
1. Supervisory visits will be recorded on the appropriate form and will be placed in the client's record at the Agency.

Purpose

To ensure the client receives personal assistance services as determined by the Agency's Supervisor and the client or the client's family and documented on the Individualized Service Plan (ISP).

Policy

The Agency will initiate and provide personal assistance services to its clients per the ISP that was developed on or before admission to the Agency and any subsequent revisions.

Procedure

- A. The Supervisor will orient an Attendant to the client's ISP including the tasks, hours, and schedule in the primary location of the provision of services.
 - 1. The Attendant will be instructed to report to the Supervisor or designee information such as, but not limited to, the following:
 - a. If the Attendant can't work, the office should be notified as soon as possible in order that alternative arrangements can be made to provide services to the client;
 - b. Changes in the client's condition or needs, including hospitalization;
 - c. If the client is not at home when services should begin on any scheduled day; and/or
 - d. Suspicion of abuse, neglect, or exploitation.
 - 2. The orientation will be documented on the appropriate form and retained in the client's record.
- B. The Attendant will begin providing services on the planned date of service initiation that is on the ISP.
 - 1. If there is a delay in initiating services due to the client's request or conditions outside of the Agency's control, the reason will be documented in the client's record.
 - 2. Service initiation will be rescheduled.
- C. If the Attendant must be replaced, the new Attendant(s) will be oriented as described above.
- D. The Attendant will record his/her time in/time out on the appropriate form or electronically as instructed by the Supervisor.
 - 1. The tasks performed may be documented, also, as instructed by the Supervisor.
 - 2. The Attendant will sign/date the documentation of the delivery of services.
 - 3. The record will be turned in to the Supervisor or designee for review and approval at the end of the Attendant's services in the payroll cycle.
 - 4. After the payroll is processed, the documentation that services have been provided according to the ISP will be placed in the client's record.
- E. Services will continue to be provided as indicated on the initial ISP or a revised ISP unless there is an interruption due to reasons listed below that include, but are not limited to:
 - 1. The client requests no or fewer services on a scheduled day;
 - 2. The client is not at home when services are scheduled; or

3. Reasons beyond the Agency's control such as acts of nature and other disasters.
 4. All service interruptions and any rescheduled visits will be documented in the client's record.
- F. The Supervisor will make supervisory visits per the frequency on the ISP, or more often based on the client's needs, and will evaluate the effectiveness of the ISP including, but not limited to, the following:
1. The tasks and hours on the ISP are meeting the client's needs; and
 - a. If they are not, the ISP will be revised so his/her needs are met.
 2. The Attendant is delivering the tasks and working the scheduled hours.
 - a. If not, the Attendant will be counselled per the Agency's Progressive Discipline Policy, up to and including termination.
 3. The supervisory visit documentation will be placed in the client's record.
- G. The Agency may provide services to a client outside the Agency's licensed service area but within the state of Texas.
1. The Agency may provide the services for no more than 60 consecutive days unless the Agency expands its service area per the licensure standards.
 2. The client must reside in the Agency's service area and be receiving services from the Agency at the time the client leaves the Agency's service area.
 3. The Agency will document the start and end dates for services outside of its licensed service area in the client's record.
 4. The Agency will take into consideration regulations or requirements established by the client's private or public funding source.
 5. If a client notifies the Agency that s/he is leaving the Agency's service area and the Agency does not provide services outside of its service area, the Agency will inform the client that leaving its service area will require the Agency to:
 - a. Place the client's services on hold until s/he returns to the Agency's service area;
 - b. Transfer the client to an agency of his/her choice; or
 - c. Discharge him/her.