



Date: April 24, 2017

To: Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICFs/IID) Exempt from Licensure

Subject: Provider Letter No. 17-03 — Guidelines for Reporting Abuse, Neglect and Exploitation (ANE) to the Texas Department of Family and Protective Services (DFPS) and Reporting Incidents to the Texas Department of Aging and Disability Services (DADS) (**Replaces Provider Letters 13-29 and 13-26**)

DADS is replacing Provider Letters 13-29 and 13-26 with this letter to clarify guidance on reporting ANE to DFPS by an ICF/IID exempt from licensure (referred to in this letter as a "facility"). In addition this letter clarifies guidance on reporting and investigating incidents that are reportable to DADS. DADS also updated this letter to include a checklist a facility may use when reporting an allegation of ANE.¹

Reporting Suspected ANE to DFPS

If a person, including an employee or agent of a facility knows or suspects a resident has been subjected to ANE by someone other than another resident of the facility, the person must report the allegation to DFPS immediately, if possible, but no more than one hour after the person knows or suspects ANE ([40 TAC §711.201](#)). The allegation must be reported to 1-800-647-7418 or [online](#) ([40 TAC §711.201](#)).

Any person who suspects or has knowledge of ANE can report it directly; he or she should not request an intermediary, such as the facility director, a qualified intellectual disability professional, or a nurse make the report.

Once the facility makes a report, it must:

- Preserve and protect any evidence of the alleged ANE in accordance with instructions from DFPS ([40 TAC §711.201](#)).
- Cooperate with the DFPS investigator during the investigation (40 TAC §711.201).
- Protect the alleged victim and other residents from the alleged perpetrator to prevent further potential abuse while the investigation is in process ([42 CFR §483.420\(d\)\(3\) \(W155\)](#));
- Maintain the DFPS preliminary and final investigation reports for a DADS surveyor to review.

¹ The checklist is a support tool and does not replace a provider's responsibility to be familiar with and comply with the full text of the rules.

In addition, a facility must:

- Develop and implement policies and procedures for reporting alleged ANE to DFPS and other incidents to DADS ([40 TAC §90.42\(e\)\(1\)](#)).

If a reported allegation does not meet the [DFPS criteria](#) for conducting an investigation, DFPS will forward the allegation to the facility to investigate. The facility must then conduct an investigation and maintain the written report for a DADS surveyor to review.

DFPS Adult Protective Services will conduct an in-home investigation if a resident of a facility was allegedly abused, neglected or exploited by a family member or by a person who is not an employee of the facility and while the facility was not responsible for the resident's supervision. Under these circumstances, the facility is not required to investigate the allegation. However, the facility must convene the interdisciplinary team of the alleged victim to address the alleged perpetrator's access to the alleged victim while an investigation is being conducted. If the interdisciplinary team recommends that a restriction be placed on an alleged perpetrator's access to the alleged victim, the facility's specially constituted committee must review and approve the restriction before it is implemented and the facility must document the restriction in the alleged victim's record.

Reporting Incidents to DADS

A facility must report the following incidents to DADS Consumer Rights and Services by calling (800) 458-9858 within one hour after suspecting or learning of the incident ([40 TAC §9.225\(b\)](#)):

- Alleged (Class I) physical abuse of an individual, as defined in [Chapter 711](#) that caused or may have caused serious physical injury.
- Alleged (Class I) sexual abuse of an individual, as defined in [Chapter 711](#).
- Sexual activity between individuals resulting from coercion, physical force, or taking advantage of the disability of a resident.
- Sexual activity involving an individual who is less than 18 years of age.
- The pregnancy of an individual.
- Individual-to-individual aggression that results in serious physical injury.
- The death of an individual.
- The inability to locate an individual if the individual's health or safety is at risk; or the individual's location has been unknown for more than eight hours.

The facility must ensure a thorough investigation of the incident is conducted and send a written investigation report on [Form 3613A](#) within five working days after reporting the incident to DADS.

If DFPS is investigating the reportable incident, the facility must send the preliminary DFPS investigation report to DADS on [Form 3613A](#) within five working days after reporting the incident to DFPS. The facility must send the final DFPS investigation report to DADS on [Form 3613A](#) upon receipt from DFPS.

[Form 3613A](#) must be sent to:

Texas Department of Aging and Disability Services

Consumer Rights and Services — Complaint Intake Unit

P.O. Box 149030, Mail Code E-249

Austin, TX 78714-9030

FAX: (877) 438-5827 (toll free); (512) 438-2722; or (512) 438-2724

DO NOT Report the Following Incidents to DADS:

- Neglect allegations – report the allegation to DFPS.
- Accidental injuries – if neglect is suspected, report the suspicion to DFPS.
- Injuries of unknown origin – if there is reason to suspect an injury of unknown origin was the result of abuse or neglect, report the suspicion to DFPS.
- Self-injurious behavior – if neglect is suspected, report the suspicion to DFPS.
- Drug diversions – notify the local police department.
- Burglary of a facility – notify the local police department.
- Theft of facility property – notify the local police department.
- Routine hospitalizations due to illness – promptly notify the client's legally authorized representative of any significant illnesses (42 CFR §483.420(c)(6) (W148)).

A flow chart showing the reporting requirements and a checklist to use when reporting an allegation of ANE or an incident are attached to this letter.

If you have questions about this letter, please contact an ICF/IID policy specialist in the Policy, Rules and Curriculum Development section at (512) 438-3161.

Sincerely,

[signature on file]

Mary T. Henderson
Associate Commissioner
Regulatory Services

MTH:cg

Attachments

ANE Reporting Checklist¹

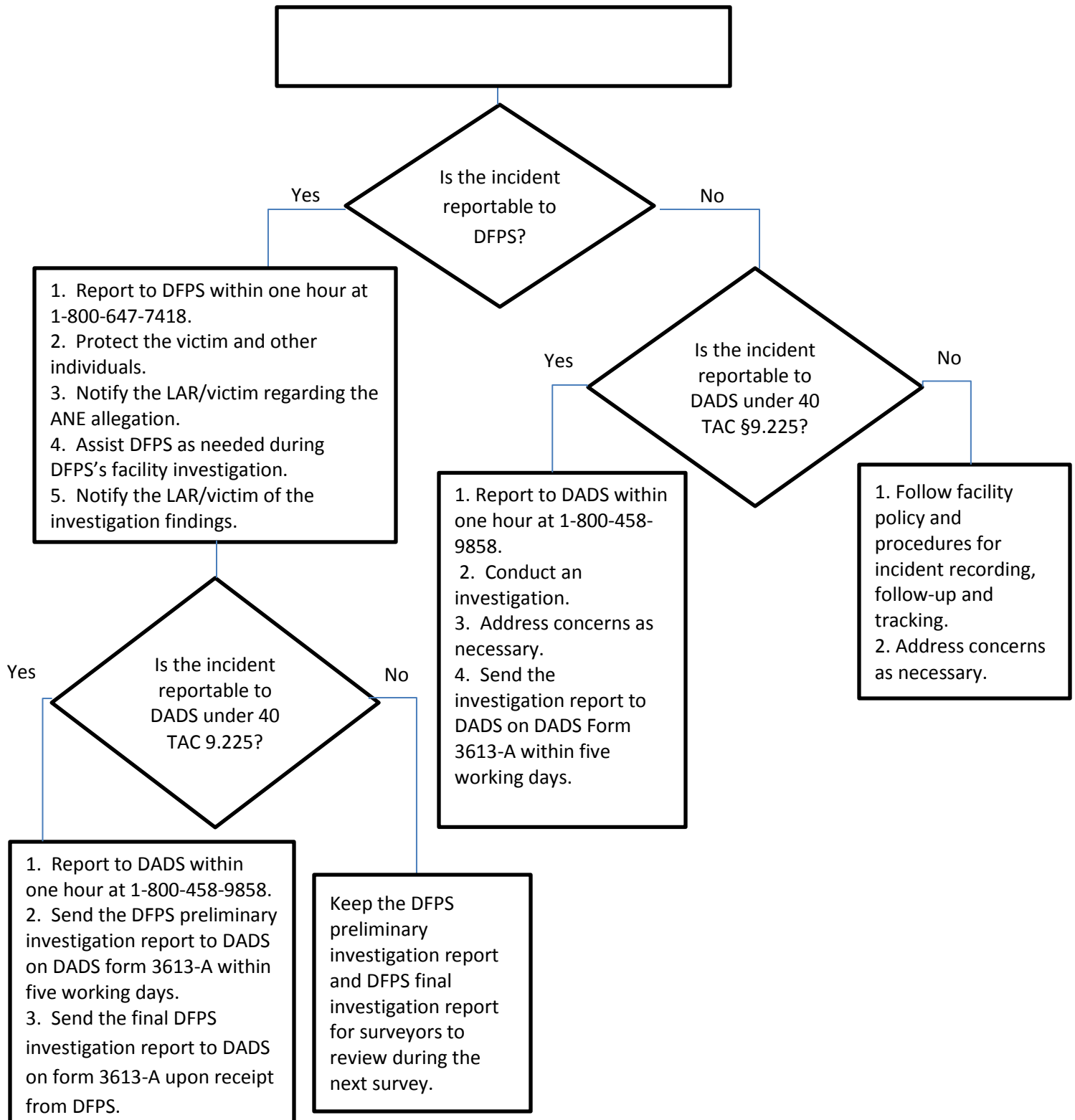
- Provide physical and/or emotional care to the alleged victim immediately but no later than one hour after learning of the alleged abuse, neglect or exploitation (ANE).
- Report the alleged ANE to the Texas Department of Family and Protective Services (DFPS) immediately but no later than an hour after knowledge or suspicion of the ANE. (See note at bottom of this checklist.)
- Protect the alleged victim and individuals living in the facility from contact with the alleged perpetrator.
- If the alleged ANE occurred away from the facility and the alleged perpetrator is not an employee of the facility, convene the interdisciplinary team (IDT) to address the alleged perpetrators access to the alleged victim.
- If restrictions result from the IDT meeting, convene the specially constituted committee.
- Document any restrictions in the alleged victim's record.
- Notify the alleged victim and the alleged victim's legally authorized representative (LAR) in person or by phone within 24 hours of learning of the alleged ANE and of the investigator's findings.
- Notify the LAR in writing by certified mail if unable to notify in person or by phone.
- Take prompt and appropriate disciplinary action against an employee if DFPS confirms an allegation of ANE.
- Convene the IDT if necessary to address identified needs (i.e. trauma informed care, exercising rights, making false allegations etc.) for the victim or other residents.
- Correct any identified systems failure.

¹ This checklist is a support tool and does not replace a provider's responsibility to be familiar with and comply with the full text of the rules.

- Maintain DFPS's preliminary report and final investigation report for review by surveyors during the annual recertification survey.

Note: If DFPS returns an allegation that does not meet its criteria for ANE or if DFPS forwards a complaint that is listed in [40 TAC 711.7](#), conduct a thorough investigation and keep the report for surveyors to review during the next recertification survey. Do **not** send the investigation report to the Texas Department of Aging and Disability Services (DADS) Consumer Rights and Services, unless the incident is a DADS reportable incident, according to [40 TAC §9.225](#) or [40 TAC §90.213](#).

Unlicensed ICFs/IID Reporting and Investigation Requirements Flow Chart (PL 17-03)¹



¹ Alleged ANE reportable to DFPS (defined in 40 TAC [Chapter 711](#))

40 TAC 9.225 requires the following incidents to be reported to DADS.

1. Alleged (Class I) physical abuse of an individual, as defined in Chapter [711](#) that caused or may have caused serious physical injury.
2. Alleged (Class I) sexual abuse of an individual, as defined in Chapter [711](#).
3. Sexual activity between individuals resulting from coercion, physical force, or taking advantage of the disability of an individual.
4. Sexual activity involving an individual who is less than 18 years of age;
5. The pregnancy of an individual'
6. Individual-to-individual aggression that results in serious physical injury;
7. The death of an individual;
8. The inability to locate an individual if:
 - (A) the individual's health or safety is at risk; or
 - (B) the individual's location has been unknown for more than eight hours .

Unlicensed ICFs/IID Reporting and Investigation Requirements Flow Chart (PL 17-03)

Allegation Made or Incident Identified

Is the incident reportable to DFPS?

If yes,

1. report to DFPS within one hour at 1-800-467-7418
2. Protect the victim and other individuals.
3. Notify the LAR/victim regarding the ANE allegation.
4. Assist DFPS as needed during DFPS's facility investigation.
5. Notify the LAR/victim of the investigation findings.

Is the incident reportable to DADS under 40 TAC §90.225

If yes,

1. Report to DADS within one hour at 1-800-458-9858.
2. Send the DFPS preliminary investigation report to DADS on DADS form 3613-A within five working days.
3. Send the final DFPS investigation report to DADS on form 3613-A upon receipt from DFPS.

If no, keep the DFPS preliminary investigation report and DFPS final investigation report for surveyors to review during the next survey.

If the incident is not reportable to DFPS, is it reportable to DADS under 40 TAC 90.225?

If yes,

1. Report to DADS within one hour at 1-800-458-9858.
2. Conduct an investigation.
3. Address concerns as necessary.
4. Send the investigation report to DADS on DADS form 3613-A within five working days.

If no,

1. Follow facility policy and procedures for incident recording, follow-up and tracking.
2. Address concerns as necessary.