



Date: May 3, 2017

To: All Nursing Facilities (NFs)

Subject: Provider Letter No. 17-18 – Abuse, Neglect, Exploitation, Misappropriation of Resident Property, and Other Incidents that Must Be Reported to the Texas Department of Aging and Disability Services (DADS) (Replaces PL 14-13)

This letter provides guidance for reporting incidents to DADS and:

- addresses sexual contact between residents when one person is without capacity; and
- adds two examples to conditions that pose a threat to resident health and safety, an outbreak of disease or illness and a non-functioning call system.

Please note that the examples in this letter are not all inclusive. Many other possible scenarios are reportable.

The law requires an owner or employee of a NF who has cause to believe that the physical or mental health or welfare of a resident has been or may be adversely affected by abuse, neglect or exploitation caused by another person to report the abuse, neglect or exploitation.¹

I. REPORTING RESIDENT ABUSE, NEGLECT, EXPLOITATION AND OTHER INCIDENTS TO DADS CONSUMER RIGHTS AND SERVICES (CRS)

A NF must report to DADS the following types of incidents:

1. ABUSE, defined in 40 TAC §[19.101](#)(1) and 42 CFR §483.12(c)(1) (F225):

A NF must report incidents of alleged abuse and all situations in which it has cause to believe that the physical or mental health or welfare of a resident has been or may be adversely affected by abuse caused by another person, to DADS. The DADS rules define abuse as “Negligent or willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical or emotional harm or pain to a resident; or sexual abuse, including involuntary or nonconsensual sexual

¹ See Texas Health and Safety Code §[260A.002](#); 40 TAC §[19.602](#)(a).

conduct that would constitute an offense under Penal Code [§21.08](#) (indecent exposure) or Penal Code [Chapter 22](#) (assaultive offenses), sexual harassment, sexual coercion, or sexual assault.”

A certified NF must ensure that all alleged violations of abuse are reported to the NF administrator and to other officials in accordance with Texas law no later than two hours after the allegation is made.²

Allegations or incidents of resident-to-resident behavior may or may not meet the definition of abuse.

Regarding resident-to-resident sexual activity, the law indicates that a sexual assault is without the consent of the other person if, “the actor knows that as a result of mental disease or defect the other person is at the time of the sexual assault incapable either of appraising the nature of the act or of resisting it.”³ Thus, if a NF resident engages in sexual activity with another NF resident, and he or she was without capacity to appraise the nature of the act or resist it at the time of the incident, a sexual assault has occurred and the NF must report the incident to DADS CRS.

2. NEGLECT, defined in 40 TAC [§19.101](#)(81) and 42 CFR §483.5 (F150) and §483.12(b) (F224):

A NF must report incidents of alleged neglect and all situations in it has cause to believe that the physical or mental health or welfare of a resident has been or may be adversely affected by neglect caused by another person to DADS. The DADS rules define neglect as “The failure to provide goods or services, including medical services that are necessary to avoid physical or emotional harm, pain, or mental illness.”

A certified NF must ensure that all alleged violations of neglect are reported to the NF administrator and to other officials in accordance with Texas law no later than two hours after the allegation is made, if the events that cause the allegation result in serious bodily injury.⁴

² See 42 CFR §483.12(c)(1) (F225).

³ See Texas Penal Code [§22.011](#)(a)-(b).

⁴ See 42 CFR §483.12(c)(1) (F225).

To determine whether it has committed neglect that it needs to report to DADS, a NF must conclude if an injury, emotional harm, or pain to or death of a resident was due to the NF's failure to provide services, treatment, or care to a resident. The following are examples of reportable neglect by a NF.

- A resident with a doctor's order for 1:1 supervision while ambulating due to an unsteady gait falls and fractures his hip. He did not receive the ordered supervision while he was walking immediately prior to the fall.
- A resident, according to his care plan, requires a two-person transfer from his bed to a chair. Only one staff person assists the resident in transferring him from his bed to a chair and the resident falls, resulting in extensive bruising to his thigh that the resident's physician determined to be a serious injury.
- A resident with a known history of physical aggression that has not been addressed by the NF punches another resident in the eye, causing a black eye. This is a reportable incident of neglect because the NF failed to address a known potential for continued aggression by the aggressive resident and it resulted in physical injury to another resident.
- A resident slips in urine left on the floor in the hallway and breaks his arm. Staff were aware that the urine was on the floor but failed to remove it or take precautions to prevent a person from slipping in it. The injury was accidental, but was due to neglect because staff inaction (failure to clean the urine from the floor) resulted in the injury to a resident. If there was urine on the floor, but staff immediately cleaned it up or placed barriers around it to prevent anyone from slipping in it until it could be cleaned up, the situation would be an accident hazard and not an injury due to neglect.
- A resident left the building without staff knowledge and an external person returned him to the NF. The NF was unaware that the resident was missing.
- Sexual activity involving a resident who *does not have* decision-making capacity to consent to sexual activity and another resident who *has* decision-making capacity to consent to sexual activity. This is a reportable incident of neglect because the NF failed to prevent sexual activity between a resident without decision-making capacity and a resident with capacity seeking a sexual partner.

3. EXPLOITATION, defined in 40 TAC §[19.101](#)(38) and 42 CFR §483.5 (F150):

A NF must report incidents of alleged exploitation and all situations in which it has cause to believe that the physical or mental health or welfare of a resident has been or may be adversely affected by exploitation caused by another person to DADS. The DADS rules define exploitation as "The illegal or improper act or process of a caregiver, family member, or other individual who has an ongoing relationship with a resident using the resources of the resident for monetary or personal benefit, profit, or gain without the informed consent of the resident."

The following are examples of exploitation.

- Requiring or implying that a resident needs to provide the caregiver gifts or money for regular care tasks or special errands.
- Coercing or deceiving a resident into signing a document.
- Underpaying a resident for a task that benefits another person, such as the resident crafts a quilt and a staff person only pays the resident \$1.00 for the quilt.
- Suspected theft of resident's money.

4. DEATH DUE TO UNUSUAL CIRCUMSTANCES:

A NF must report to DADS if the death of a resident involves unusual circumstances that indicate the death was from other than natural causes. Natural causes do not include instances of preventable incidents or injuries associated with neglect (e.g., an individual dies from aspiration not associated with pneumonia). The following are examples of deaths that a NF must report.

- A death due to a medication overdose, an administration of a wrong medication, or a failure to administer a medication.
- An accidental death caused by exposure to weather, being struck by a motor vehicle, drowning, strangulation by ligature, throttling, aspiration not associated with pneumonia, or other method, burns from fire or water, electrical shock, or a fall.
- A suicide.
- A death following a resident-to-resident altercation.
- A death due to an outbreak of infectious disease.
- A pattern of deaths.

5. MISSING RESIDENT:

A NF must report a missing resident to DADS if the resident is not located during a search of the NF, NF grounds, and immediate vicinity and circumstances place the resident's health, safety, or welfare at risk. The NF must make the report to DADS as soon as the NF becomes aware that the resident is missing and cannot be located. The following are examples of missing resident situations that a NF must report.

- A resident requires medications that, if not taken as scheduled, place the resident at risk of serious illness or death.
- The resident may be exposed to potential frostbite from freezing temperatures, heat stroke or heat exhaustion from hot temperatures, sunburn from sun exposure, or drowning from flooding.
- The resident is confused or otherwise incapable of assessing potential danger.
- The NF suspects foul play.

Regardless of the circumstances, a NF must report any resident missing for eight hours. In addition, the NF must contact the DADS CRS Section every day until the resident is found. Instructions for contacting CRS are listed on page 6. Please use the original intake number or web based number to avoid generating more intakes for the same incident.

6. MISAPPROPRIATION, defined in 40 TAC §[19.101](#)(82) and 42 CFR §483.5 (F150) and §483.12(b) (F224):

A NF must report to DADS any alleged misappropriation of funds. A misappropriation of funds is “[t]he taking, secretion, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any property, real, or personal, or anything of value belonging to or under the legal control of a resident without the effective consent of the resident or other appropriate legal authority, or the taking of any action contrary to any duty imposed by federal or state law prescribing conduct relating to the custody or disposition of property of a resident.”

A certified NF must also report to DADS the misappropriation of a resident's property. The misappropriation of resident property is “the deliberate misplacement, exploitation, or wrongful, temporary or

permanent use of a resident's belongings or money without the resident's consent."

The following are examples of misappropriation of funds. These examples are not all inclusive. There are many other possible scenarios that could be reportable.

- Forging a resident's signature and attempting to cash or cashing a resident's check without authorization.
- Theft of a resident's money or property.
- Using a resident's property like their own such as a resident's CD or television.
- Encouraging or allowing others to use a resident's property without his or her consent such as borrowing clothing for use by another resident.
- A resident's family inappropriately accessing or spending the resident's money or assets.

7. DRUG THEFT

A NF must report to DADS if the NF has reason to believe that drugs were stolen. A NF must also notify the local police department.

8. SUSPICIOUS INJURIES OF UNKNOWN SOURCE

A NF must report to DADS any suspicious injury to a resident of unknown source. CMS [Survey & Certification \(S&C\) 05-09](#) defines injuries of unknown source as follows:

A certified NF must ensure that all suspicious injuries of unknown source are reported to the NF administrator and to other officials in accordance with Texas law no later than two hours after the allegation is made, if the events that cause the allegation result in serious bodily injury.⁵

An injury should be classified as an "injury of unknown source" when both of the following conditions are met:

- The source of the injury was not observed by any person or the source of the injury could not be explained by the resident; **and**
- The injury is suspicious because of the extent of the injury or the location of the injury (e.g., the injury is located in an area not

⁵ See 42 CFR §483.12(c)(1) (F225).

generally vulnerable to trauma) or the number of injuries observed at one particular point in time or the incidence of injuries over time.

If a staff person witnessed an incident that resulted in an injury or the resident was able to explain the source of the injury, then the injury is an injury of known source and the NF is not required to report a suspicious injury of unknown source. If a resident cannot explain his or her injury and another person did not observe the incident that resulted in the injury but the injury does not meet the criteria of a suspicious injury, the NF is similarly not required to report a suspicious injury of unknown source.

In making a determination as to whether an unexplained injury meets the criteria of a suspicious injury, the NF should ask the following questions:

- Is the injury more extensive than what would normally be expected of a minor accidental trauma?
- Is the injury located in an area that is not normally subject to minor accidental trauma?
- Are multiple other injuries present?
- Has the individual experienced other injuries of unknown source over time?

The following are examples of suspicious injuries of unknown source.

- A resident who is unable to communicate has a black eye and no one witnessed the source of the injury.
- A resident who is diagnosed with dementia has several deep lacerations across the middle of her back. No one witnessed the source of the injury. The resident occasionally bumps into things, but has never experienced lacerations to her back before.

9. FIRES

A NF must report to DADS fires of any nature, including those resolved by NF staff, as incidents according to 40 TAC §[19.1914](#)(f)(1). A NF must call 1-800-458-9858 immediately after a fire. The NF must report all fires on the "Fire Report for Long Term Care NFs," DADS Form 3707, within 15 days after the fire. DADS Form 3707 can be viewed at <https://hhs.texas.gov/laws-regulations/forms/3000-3999/form-3707-fire-report-long-term-care-facilities>.

NFs must mail the completed DADS Form 3707 to the Survey Operations Architectural Unit, Mail Code E-250, P.O. Box 149030, Austin, Texas 78714-9030. A NF's completed Provider Investigation Report must be sent to the DADS CRS section. Instructions for submitting Provider Investigation Reports are below.

Additionally, a NF must submit a completed DADS Form 3613-A "DADS Provider Investigation Report" within five working days after making the phone report.

10. EMERGENCY SITUATIONS THAT POSE A THREAT TO RESIDENT HEALTH AND SAFETY, as defined in 40 TAC §[19.1923\(b\)\(1\)-\(2\)](#):

A NF must report to DADS any emergency situation that poses a threat to residents, staff or the public health and safety or that caused the death or serious injury of a resident, including situations for which the police or the local fire authority must be notified or summoned in order to maintain safety. The following are some examples of emergency situations that pose a threat to resident health and safety that must be reported.

- A sudden rise in the incidence of an infectious disease or illness;
- A sudden rise in deaths;
- bomb threat;
- tornado or hurricane that hits the building;
- flood;
- generator or emergency power failure;
- failure of the fire suppression system;
- failure of the fire alarm system;
- environmental conditions that compromise the NF's structure;
- air conditioning failure when outdoor temperature is or will be 90 degrees Fahrenheit or above;
- heating failure when outdoor temperature is or will be 65 degrees Fahrenheit or below;
- a non-functioning call system (Note: While a single non-functioning call light can lead to negative outcomes and potential citations depending upon how the NF addresses it, failure of a single light should not be considered an emergency situation for purposes of the reporting expectations addressed in this section of the letter. The reporting expectation in the example is focused on a more widespread call system failure.); and

- weapons (guns and any other weapon that could be used to hurt or threaten residents, NF staff, visitors, etc.) that an individual is carrying and does not immediately remove from the NF after being asked to do so by NF staff.

II. ADDENDUMS TO THE ABOVE INCIDENTS

A NF must make an addendum to its report to DADS regarding negative outcomes experienced by a resident who was involved in an incident that falls under sections 1 – 10. The following are examples of negative outcomes that require an addendum. When making an addendum, please use the original intake number or web based number to avoid generating more intakes for the same incident.

- Resident psychological distress related to the incident that does not resolve within eight hours. For example, a resident screams in terror and tries to hide when she sees people who resemble her attacker.
- A change in the condition of a resident related to the incident. For example, a resident is now non-ambulatory due to a fractured leg.

III. PROCEDURES FOR THE INITIAL REPORT OF INCIDENTS

NFs must report the following **immediately**, but not later than 2 hours after the allegation is made, if the events that cause the allegation involve abuse or result in serious bodily injury, or not later than 24 hours if the events that cause the allegation do not involve abuse and do not result in serious bodily injury, to the NF administrator and to the DADS CRS Section at (800) 458-9858 or online at

<https://www.dads.state.tx.us/services/crs/incidentforms/SRI/index.cfm>:

- An owner or employee of a NF who has cause to believe that the physical or mental health or welfare of a resident has been or may be adversely affected by abuse, neglect or exploitation caused by another person must report the abuse, neglect or exploitation.⁶
- A certified NF must report all alleged violations involving abuse, neglect, exploitation or mistreatment, including injuries of unknown source and misappropriation of resident property.⁷
- A NF must report the other reportable incidents listed in this letter to the DADS CRS Section at (800) 458-9858 or online at

⁶ See Texas Health and Safety Code §260A.003; 40 TAC §19.602(a).

⁷ See 42 CFR §483.12(c)(1) (F225).

<https://www.dads.state.tx.us/services/crs/incidentforms/SRI/index.cfm>
within 24 hours, after suspecting or learning of the incident.

The telephone and online report must include the following information:

- NF name;
- vendor/ID number;
- resident names;
- time and date of incident;
- what occurred;
- condition of residents, persons involved other than resident; and
- action taken by the NF to date.

If an owner or employee of a NF cannot reach a CRS Intake Specialist for the initial telephone report and chooses to leave the information on the CRS voicemail reporting system:

- leave a phone number where the owner or employee of a NF can be reached during hours other than regular business hours; or
- leave contact information for the intake specialist regarding whom to speak to in the NF about the incident during other than normal business hours.

IV. REQUIREMENT FOR NF INVESTIGATION OF INCIDENTS, PROTECTION, REPORT AND CORRECTIVE ACTION

A NF must thoroughly investigate the incidents it reports and must send a written report of the investigation to DADS within five working days of the incident.⁸

A certified NF must:

- prevent further potential abuse, neglect, exploitation, or mistreatment while the investigation is in progress;⁹
- report the results of all investigations to the NF administrator or his or her designated representative;¹⁰ and
- if the alleged violation is verified, the NF must take appropriate corrective action.¹¹

⁸ See 42 CFR §483.12(c)(2) and (4) (F225); 40 TAC §[19.602](#)(b)(2).

⁹ See 42 CFR §483.12(c)(3) (F225).

¹⁰ See 42 CFR §483.12(c)(4) (F225).

¹¹ See 42 CFR §483.12(c)(4) (F225).

The report must document on DADS Form 3613-A (Provider Investigation Report) a NF's actions when conducting an investigation and include:

- observations, interviews, and record reviews of all residents involved;
- interviews of all witnesses, including residents, staff and family members;
- notification of the physicians and, where appropriate, the families or responsible parties of the involved residents; and
- recording of all relevant physical findings.

V. PROCEDURES FOR SUBMITTING THE WRITTEN INVESTIGATION REPORT

Within five working days after making the initial report, the NF must send DADS Form 3613-A with statements and other relevant documentation to DADS. The NF must always include its Medicaid or DADS-assigned vendor number on the report. If the DADS Form 3613-A with statements and other relevant documentation does not exceed 15 pages, the NF may fax it toll-free to DADS at (877) 438-5827. Otherwise, the NF may send the report and attachments by email to crsprovider@dads.state.tx.us or by mail to:

Department of Aging and Disability Services
Consumer Rights and Services Section, E-249
ATTN: Intake Coordinator
P.O. Box 149030
Austin, TX 78714-9030

DADS Form 3613-A and instructions can be found at <https://hhs.texas.gov/laws-regulations/forms/3000-3999/form-3616-request-termination-services-provided-hcstxhtml-waiver>.

Failure to submit a completed provider investigation report within the required time period (five working days) may result in a change in priority from a professional review by CRS to an onsite investigation by a surveyor or investigator.

VI. EVENTS THAT DO NOT NEED TO BE REPORTED TO DADS CRS

A NF is not required to report the following events to DADS:

- Burglary of NF property, other than a burglary involving the theft of drugs.
- Theft of any property other than drugs not belonging to a resident.

If a NF has questions about these requirements and guidelines, please contact a NF program specialist with the Policy, Rules and Curriculum Development section at (512) 438-3161.

Sincerely,

[signature on file]

Mary T. Henderson
Associate Commissioner
Regulatory Services

MTH:cg