MEMORANDUM
Department of Aging and Disability Services
Regulatory Services Policy * Survey and Certification Clarification

TO: Regulatory Services
Regional Directors, State Office Managers, Adult Day Care Facility (ADC), Assisted Living Facility (ALF), Home and Community Support Services Agency (HCSSA) providing services to children under the age of 18, In-patient Hospice, and Nursing Facility (NF) Program Managers

FROM: Mary T. Henderson
Assistant Commissioner
Regulatory Services

SUBJECT: S&CC 14-04 - Employee Misconduct Registry (EMR), Medication Aide Registry (MAR), and Nurse Aide Registry (NAR) Referral Process

APPLIES TO: ADC, ALF, HCSSA providing services to children under the age of 18, In-patient Hospice and NF Program State and Regional Survey Staff

DATE: August 21, 2014

This memorandum provides guidance on:

- reportable conduct committed by an ADC, ALF, HCSSA, or NF unlicensed employee and the process for making a referral to the EMR;
- abuse or neglect of a resident, or misappropriation committed in a NF by a medication aide (MA), violations of the MA permit requirements committed in any facility by an MA and the process for making a referral to the MAR; and
- abuse or neglect of a resident or misappropriation (ANE) committed in a NF by a certified nurse aide (CNA) and the process for making a referral to the NAR.

Examples of reportable conduct that can be used as guidance may be found in the following attachments:

- **Attachment 1 (A-C):**
  - Failure to protect from abuse;
  - Failure to Prevent Neglect; and
  - Failure to protect from psychological harm;

- **Attachment 2 (D-G):**
  - Failure to protect from undue adverse medication consequences and/or failure to provide medications as prescribed;
  - Failure to provide adequate nutrition and hydration to support and maintain health;
  - Failure to protect from widespread nosocomial infections; e.g., failure to practice standard precautions, failure to maintain sterile techniques during invasive procedures and/or failure to identify and treat nosocomial infections; and
Failure to correctly identify individuals.

The examples in the attachments are for guidance and is not an inclusive list.

I. EMR

A. BACKGROUND: The EMR is a means of tracking abuse, neglect or exploitation of a resident or misappropriation of resident resources or property (ANE) that rises to the level of reportable conduct committed by unlicensed employees in facilities that DADS regulates. The EMR covers unlicensed employees who provide direct care services, personal care services, active treatment, attendant care, and any other personal services to a resident. DADS investigates allegations of ANE in a NF, ADC, and an ALF. DADS also investigates allegations of ANE in a HCSSA when the alleged victim is under the age of 18 or is an inpatient hospice patient in a HCSSA licensed under the Texas Health and Safety Code (HSC) Chapter 142. A substantiated finding of ANE that results in a finding of reportable conduct is entered in the EMR.

B. REASON FOR AN EMR REFERRAL:
Upon determination of a finding of abuse or neglect of a resident or misappropriation of resident property by an unlicensed employee, Regulatory Services (RS) staff recommends a referral to the EMR if the ANE rises to the level of reportable conduct.

Reportable Conduct Definition. An employee of a facility or agency who is not licensed to perform the services the employee performs may be referred to the EMR when the employee has committed an act of reportable conduct. The HSC Chapter 253, EMR, Sec. 253.001(5), defines the term “Reportable Conduct” to include:

- abuse or neglect that causes or may cause death or harm to an individual using the consumer-directed service option or a consumer;
- sexual abuse of an individual using the consumer-directed service option or a consumer;
- financial exploitation of an individual using the consumer-directed service option or a consumer in an amount of $25 or more; and
- emotional, verbal, or psychological abuse that causes harm to an individual using the consumer-directed service option or a consumer.

While reportable conduct defines the acts of ANE that are the threshold for making a referral to the EMR, the licensing rules for each facility and agency type define what acts constitute ANE or misappropriation of property in a facility setting.

C. STATUTE AND TAC REFERENCES: See the table on the last page.

D. EMR REFERRAL PROCESS
   1. Investigation of Allegations Against Unlicensed Employees – Regional Survey Staff Responsibilities
(a) The surveyor or investigator conducts an on-site survey to investigate an allegation of ANE. During the investigation, the surveyor or investigator reviews the following documents, maintaining confidentiality:

- Residents’ clinical records
- Facility complaint documentation
- Personnel files
- Any other indicated documents

(b) The surveyor or investigator interviews the following individuals:

- The resident
- The resident’s physician
- The resident’s family or legally authorized representative
- Facility staff
- Any other indicated persons

(c) The surveyor or investigator documents the findings and turns in a referral packet to the regional enforcement unit. The referral packet must include the following items as applicable to the regional survey program area:

- Report of Investigation
  - Form CMS-2567, Statement of Deficiencies and Plan of Correction, and/or
  - DADS Form 3724, Statement of Licensing Violations and Plan of Correction
- Complaint intake forms
- Signature page form
- DADS Form 2380, Inspection Team Work Sheet, or Form CMS-807, Surveyor Note, as applicable
- Photographs, if taken
- Interview statements
- Facility/Agency policies and procedures
- Facility/Agency documentation of the complaint, if available
- Any other documentation that substantiates the allegation
- All correspondence
- Individual information sheet

2. Informal Review (IR) – Regional Enforcement Unit Responsibilities

(a) The regional office sends a written notice to the facility’s unlicensed employee with a preliminary finding of ANE. The written notice includes:

- A summary of the findings and facts on which the findings are based;
- A statement of DADS intent to refer the employee to the EMR; and
- A statement that the unlicensed employee has the right to an IR to dispute the findings.

(b) The unlicensed employee must submit a written request for an IR and any supporting documentation that refutes the allegation to the regional office within 10 calendar days after the date of receipt of the written notice.

(c) If requested, the regional office schedules the IR with the unlicensed employee. The regional office may conduct the IR via telephone or personal appearance.
(d) When an IR is requested and conducted, the regional office notifies the unlicensed employee of its decision within 2 working days after the date the IR is held and follows the procedures below based on the outcome:

- Findings Overturned – the regional office sends the unlicensed employee a written notice of reversal of the proposed findings. No further action is taken.
- Findings Upheld – the regional office sends the unlicensed employee a written notice of adverse action that affirms the findings and notifies him/her that the referral process will proceed. The regional office submits copies of the referral packet to the Professional Credentialing Enforcement Unit (PCEU).

(e) When an unlicensed employee fails to request an IR or fails to appear at a scheduled IR, the regional office sends a letter to the unlicensed employee informing the unlicensed employee that the referral process will proceed. The regional office submits a copy of the referral packet to the PCEU.

3. Formal Hearing – PCEU Responsibilities

(a) Upon receipt of the referral packet, the PCEU sends a notice letter advising the employee of the opportunity for a formal hearing with the State Office of Administrative Hearings (SOAH).
(b) The employee must request a hearing within 30 calendar days after receipt of the adverse action notice letter.
(c) If a formal hearing is requested, the Health and Human Services Commission (HHSC) Appeals Division forwards the request to the SOAH to schedule and conduct a formal hearing. If a formal hearing is conducted, the DADS General Counsel notifies the employee of the final order within 120 days after the date the request was received. The PCEU enters findings that are upheld in the EMR.
(d) If an employee fails to request a hearing within the specified time frame, withdraws the request for a hearing or the appeal is dismissed for any reason, the PCEU enters the finding in the EMR.

II. MAR

A. BACKGROUND:
Health and Safety Code, Chapter 242, Subchapter N requires DADS to administer a program for the issuance, denial, renewal, suspension, emergency suspension and revocation of a medication aide permit.

B. REASON FOR AN MAR REFERRAL
An MA who commits an act of abuse or neglect of an NF resident, misappropriates the property of an NF resident or commits an act that violates the MA permitting standards in Texas Administrative Code, Title 40, Part 1, Chapter 95 in any facility may be referred to the MAR. DADS may revoke, suspend, or deny renewal of a MA’s permit. DADS may place the MA on probation or reprimand the MA.
Upon determination of a preliminary finding of abuse or neglect of a resident, or misappropriation of resident property, or violation of the MA permitting standards, RS staff recommend referral to the Medication Aide Registry.

C. STATUTE AND TAC REFERENCES See the table on the last page.

D. MAR REFERRAL PROCESS

1. Investigations of Allegations Against MAs-Regional Survey Staff Responsibilities
   (a) The surveyor or investigator conducts an on-site survey to investigate an allegation of ANE or an allegation of violation of the MA requirements. During the investigation, the surveyor or investigator reviews the following documents, maintaining confidentiality:
      - Residents’ clinical records
      - Facility complaint documentation
      - Personnel files
      - Any other indicated documents
   (b) The surveyor or investigator interviews the following individuals:
      - The resident
      - The resident’s physician
      - The resident’s family or legally authorized representative
      - Facility staff
      - Any other indicated persons
   (c) The surveyor or investigator documents the findings and turns in a referral packet to the regional enforcement unit. The referral packet must include the following items as applicable to the regional survey program area:
      - Report of Investigation
        Form CMS-2567, Statement of Deficiencies and Plan of Correction, and/or
        DADS Form3724, Statement of Licensing Violations and Plan of Correction
      - Complaint intake forms
      - Signature page form
      - DADS Form 2380, Inspection Team Work Sheet, or Form CMS-807, Surveyor Note, as applicable
      - Photographs, if taken
      - Interview statements
      - Facility/Agency policies and procedures
      - Facility/Agency documentation of the complaint, if available
      - Any other documentation that substantiates the allegation
      - All correspondence
      - Individual information sheet

2. IR - Regional Enforcement Unit Responsibilities
(a) The regional office sends a written notice to an MA with preliminary findings of abuse or neglect of a resident, or misappropriation of a resident's property in a NF or violation of the MA permitting standards in any facility. If the referral is for ANE, this act will occur concurrently with the referral of the individual to the NAR. The written notification includes:

i) a summary of the findings and facts on which the findings are based;  
ii) a statement of DADS intent to refer the MA to the MAR; and  
iii) a statement that the MA has the right to an IR to dispute the findings.

(b) An MA must submit a written request for an IR and any supporting documentation refuting the allegations to the regional office within 10 calendar days after the date of receipt of the regional notice.

(c) If requested, the regional office schedules the IR with the MA. The IR may be conducted via telephone or in person.

(d) When an IR is requested and conducted, the regional office notifies the MA of its decision within 2 working days after the date the IR is held and follows the procedures below based on the outcome:

- Findings Overturned - regional office sends the MA a written notice of the reversal of the proposed findings. No further action is taken.
- Findings Upheld - regional office sends the MA a written notice of adverse action that affirms the findings and notifies the MA that the referral process will proceed. The regional office submits copies of the referral packet to the PCEU.

(e) When an MA fails to request an IR or fails to appear or conduct the IR by phone, the regional office sends a letter to the MA informing the MA that the referral process will proceed. The regional office submits a copy of the referral packet to the PCEU.

3. Formal Hearing-PCEU Responsibilities

(a) Upon receipt of the referral packet, the PCEU sends a notice letter advising the MA of the opportunity for a formal hearing with SOAH.

(b) The MA must request a hearing within 30 days after receipt of the adverse action notice letter.

(c) If a formal hearing is requested, HHSC Appeals Division forwards the request to the SOAH to schedule and conduct a hearing. If a formal hearing is conducted, DADS General Counsel notifies the MA of the final decision within 120 days after the date the request was received. The PCEU enters the findings that are upheld on the MAR.

(d) If an MA fails to request a hearing within the specified time frame, the MA withdraws his or her request for a hearing or the appeal is dismissed for any reason, the PCEU enters the findings on the MAR.

III. NAR
A. BACKGROUND:
DADS as a state survey agency maintains the nurse aide registry required by Title 42, Code of Federal Regulations (CFR) §483.156. When a finding alleges an act of ANE by a CNA, DADS offers the nurse aide an IR at the regional level and a formal hearing at the state office level prior to entry of a finding and revocation in accordance with 42 CFR §488.335.

B. REASONS FOR A REFERRAL. A CNA that commits an act of abuse or neglect against a NF resident or commits an act of misappropriation of resident property in a NF may be referred to the NAR for revocation of the CNA’s nurse aide certificate. If a CNA is also an MA, a dual referral should be made as described in Section II above. Upon determination of a preliminary finding of abuse or neglect of a resident or misappropriation of resident property by a CNA, RS staff recommend referral to the NAR.

C. STATUTE AND TAC REFERENCES: See the table on the last page.

D. NAR REFERRAL PROCESS

1. Investigations of Allegations Against CNAs-Regional Survey Staff Responsibilities
   (a) The surveyor or investigator conducts an on-site survey to investigate an allegation of ANE. During the investigation, the surveyor or investigator reviews the following documents, maintaining confidentiality:
      • Residents’ clinical records
      • Facility complaint documentation
      • Personnel files
      • Any other indicated documents
   (b) The surveyor or investigator interviews the following individuals:
      • The resident
      • The resident’s physician
      • The resident’s family or legally authorized representative
      • Facility staff
      • Any other indicated persons
   (c) The surveyor or investigator documents the findings and turns in a referral packet to the regional enforcement unit. The referral packet must include the following items as applicable to the regional survey program area:
      • Report of Investigation
        Form CMS-2567, Statement of Deficiencies and Plan of Correction, and/or
        DADS Form 3724, Statement of Licensing Violations and Plan of Correction
      • Complaint intake forms
      • Signature page form
      • DADS Form 2380, Inspection Team Work Sheet, or Form CMS-807, Surveyor Note, as applicable
      • Photographs, if taken
      • Interview statements
 Facility/Agency policies and procedures
 Facility/Agency documentation of the complaint, if available
 Any other documentation that substantiates the allegation
 All correspondence
 Individual information sheet

2. IR - Regional Enforcement Unit Responsibilities
(a) The regional office sends a written notice to a CNA with preliminary findings of ANE. The written notification includes:
   i) a summary of the findings and facts on which the findings are based;
   ii) a statement of DADS intent to refer the CNA to the NAR; and
   iii) a statement informing the CNA that they have a right to an IR to dispute the findings.
(b) A CNA must submit a written request for an IR and any supporting documentation refuting the allegations to the regional office within 10 calendar days after the date of receipt of the written notice.
(c) If requested, the regional office schedules the IR with the CNA. The IR may be conducted via telephone or in person.
(d) When an IR is requested and conducted, the regional office notifies the CNA of its decision within 2 working days after the date the IR is held and follows the procedures below based on the outcome:
   • Findings Overturned - regional office sends the CNA a written notice of the reversal of the proposed findings. No further action is taken.
   • Findings Upheld - regional office sends the CNA a written notice of adverse action that affirms the findings and notifies the CNA that the referral process will proceed. The regional office submits a copy of the referral packet to the PCEU.
(e) When a CNA fails to request an IR or fails to appear at a scheduled IR, the regional office sends a letter informing the CNA that the referral process will proceed. The regional office sends a copy of the referral packet to the PCEU.

3. Formal Hearing-PCEU Responsibilities
(a) Upon receipt of the referral packet, the PCEU sends a notice letter advising the CNA of the opportunity for a formal hearing with SOAH.
(b) The CNA must request a hearing within 30 days after receiving the adverse action notice letter.
(c) If a formal hearing is requested and conducted, HHSC Appeals Division forwards the request to SOAH to schedule and conduct a formal hearing. If a formal hearing is conducted, the DADS General Counsel notifies the CNA of the final order within 120
days after the date the request was received. The PCEU enters findings that are upheld on the NAR.

(d) If a CNA fails to request a hearing within the specified time frame, withdraws the request for a hearing or the appeal is dismissed for any reason, the PCEU enters the findings on the NAR.

**TAC REFERENCES**

<table>
<thead>
<tr>
<th>License Type</th>
<th>TAC</th>
<th>ANE definition</th>
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| ADC          | §98.2 | (1) Abuse--The negligent or willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to an elderly or disabled person by the person's caretaker, family member, or other individual who has an ongoing relationship with the person, or sexual abuse of an elderly or disabled person, including any involuntary or nonconsensual sexual conduct that would constitute an offense under §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.

(27) Exploitation--An illegal or improper act or process of a caretaker, family member, or other individual, who has an ongoing relationship with the elderly person or person with a disability, using the resources of an elderly person or person with a disability for monetary or personal benefit, profit, or gain without the informed consent of the elderly person or person with a disability.

(47) Neglect--The failure to provide for oneself the goods or services that are necessary to avoid physical harm, mental anguish, or mental illness; or the failure of a caregiver to provide these goods or services.

| ALF          | §92.2 | (1) Abuse--(A) for a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes, the term has the meaning in Texas Family Code §261.401(1), which is an intentional, knowing, or reckless act or omission by an employee, volunteer,
or other individual working under the auspices of a facility or program that causes or may cause emotional harm or physical injury to, or the death of, a child served by the facility or program as further described by rule or policy; and

(B) for a person other than one described in subparagraph (A) of this paragraph, the term has the meaning in Texas Health and Safety Code §260A.001(1), which is:

(i) the negligent or willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to a resident by the resident's caregiver, family member, or other individual who has an ongoing relationship with the resident; or

(ii) sexual abuse of a resident, 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 resident's caregiver, family member, or other individual who has an ongoing relationship with the resident.

(19) Exploitation--
(A) for a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes, the term has the meaning in Texas Family Code §261.401(2), which is 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 a facility or program as further described by rule or policy; and
(B) for a person other than one described in subparagraph (A) of this paragraph, the term has the meaning in Texas Health and Safety Code §260A.001(4), which is the illegal or improper act or process of a caregiver, family member, or other individual who has an ongoing relationship with the resident.
resident using the resources of a resident for monetary or personal benefit, profit, or gain without the informed consent of the resident.

(37) Neglect--
(A) for a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes, the term has the meaning in Texas Family Code, §261.401(3), which is 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 served by the facility or program as further described by rule or policy; and (B) for a person other than one described in subparagraph (A) of this paragraph, the term has the meaning in Texas Health and Safety Code §260A.001(6), which is 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 caregiver to provide such goods or services.

<table>
<thead>
<tr>
<th>HCSSA</th>
<th>§97.249 Self-Reported Incidents of Abuse, Neglect, and Exploitation</th>
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<tbody>
<tr>
<td></td>
<td>(a)The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.</td>
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<tr>
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<td>(1) Abuse, neglect, and exploitation of a client 18 years of age and older have the meanings assigned by the Texas Human Resources Code, §48.002.</td>
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<td>(2) Abuse, neglect, and exploitation of a child have the meanings assigned by the Texas Family Code, §261.401.</td>
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<td>(3) Employee means an individual directly employed by an agency, a contractor, or a volunteer.</td>
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<td>(4) Cause to believe means that an agency knows, suspects, or receives an allegation regarding abuse, neglect, or exploitation.</td>
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<tr>
<th>NF</th>
<th>§19.101</th>
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<tbody>
<tr>
<td></td>
<td>(1) Abuse--negligent or willful infliction of injury,</td>
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<tr>
<td>Definitions</td>
<td>unreasonable confinement, intimidation, or punishment with resulting physical or emotional harm or pain to a resident; or sexual abuse, including involuntary or nonconsensual sexual 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.</td>
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<td>(38) Exploitation--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.</td>
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<td>(81) Neglect--The failure to provide goods or services, including medical services that are necessary to avoid physical or emotional harm, pain, or mental illness.</td>
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<td><strong>MAR</strong> TAC Chapter 95 §95.101(c) Definitions.</td>
<td>(c)(1) Abuse--The willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish.</td>
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<td>(c)(10) Misappropriation of resident property--The deliberate misplacement, exploitation, or wrongful temporary or permanent use of a resident's belongings or money without the resident's consent.</td>
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<td>(c)(11) Neglect--The failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.</td>
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<td><strong>NAR</strong> TAC Chapter 94 §94.2 Definitions</td>
<td>(1) Abuse--The willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish.</td>
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<td>(17) Misappropriation of resident property--The deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings</td>
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or money without the resident's consent.

(18) Neglect--The failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.

<table>
<thead>
<tr>
<th>Statute</th>
<th>Chapter</th>
<th>ANE definition</th>
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<tr>
<td>Health and Safety Code (HSC)</td>
<td>Chapter 242 CONVALESCENT AND NURSING HOMES AND RELATED INSTITUTIONS</td>
<td>Health and Safety Code, Sec. 242.608. RULES FOR ADMINISTRATION OF MEDICATION. The board by rule shall establish:</td>
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<td>(1) minimum requirements for the issuance, denial, renewal, suspension, emergency suspension, and revocation of a permit to administer medication to a resident; (2) curricula to train persons to administer medication to a resident; (3) minimum standards for the approval of programs to train persons to administer medication to a resident and for rescinding approval; and (4) the acts and practices that are allowed or prohibited to a permit holder.</td>
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<tr>
<td>Health and Safety Code (HSC)</td>
<td>Chapter 260A REPORTS OF ABUSE, NEGLECT, AND EXPLOITATION OF RESIDENTS OF CERTAIN FACILITIES</td>
<td>The terms below are applicable to employees in a NF. HSC Chapter 260A relating to Sec. 260A.001(1) relating to Definitions states, in this chapter:</td>
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<td>- “Abuse” means:</td>
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<td>o the negligent or wilful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to a resident by the resident's caregiver, family member, or other individual who has an ongoing relationship with the resident; or</td>
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<td>o sexual abuse of a resident, including any involuntary or nonconsensual sexual conduct</td>
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that would constitute an offense under Section 21.08, Penal Code (indecent exposure), or Chapter 22, Penal Code (assaultive offenses), committed by the resident's caregiver, family member, or other individual who has an ongoing relationship with the resident;

• "Exploitation" means the illegal or improper act or process of a caregiver, family member, or other individual who has an ongoing relationship with the resident using the resources of a resident for monetary or personal benefit, profit, or gain without the informed consent of the resident; and

• "Neglect" means 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 caregiver to provide such goods or services.

• Texas Health and Safety Code (HSC) Chapter 260A, Sec. 260A.001(5) relating to Definition, the term “Facility” includes an institution as that term is defined by Section 242.002;

| Texas Human Resources Code (HRC) | Chapter 48 INVESTIGATIONS AND PROTECTIVE SERVICES FOR ELDERLY AND DISABLED PERSONS | In accordance with Texas Human Resources Code (HRC) Sec. 48.002(2)-(4) relating to Definition, except as otherwise provided under Section 48.251, the terms below mean the following:

• “Abuse" means:
  • the negligent or willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to an elderly or disabled person by the person's caretaker, family member, or other individual who has an ongoing |
relationship with the person; or
- sexual abuse of an elderly or disabled person, 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.

- “Exploitation” means the illegal or improper act or process of a caretaker, family member, or other individual who has an ongoing relationship with an elderly or disabled person that involves using, or attempting to use, the resources of the elderly or disabled person, 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 elderly or disabled person.

- “Neglect” means 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.

If you have questions concerning this memorandum, please contact a policy specialist in the Policy, Rules and Curriculum Development Unit at (512) 438-3161.

Sincerely,

Mary T. Henderson
C: Linda Lothringer, E-348
    Dana McGrath, E-341
    Susan E. Davis, E-341
    Regional Directors
### Attachment 1 – Reportable Conduct Examples (A-C)

<table>
<thead>
<tr>
<th>Issue</th>
<th>Triggers</th>
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| **A Failure to protect from abuse.** | 1. Serious injuries such as head trauma or fractures;  
2. Non-consensual sexual interactions; e.g., sexual harassment, sexual coercion or sexual assault;  
3. Unexplained serious injuries that have not been investigated;  
4. Staff striking or roughly handling an individual;  
5. Staff yelling, swearing, gesturing or calling an individual derogatory names;  
6. Bruises around the breast or genital area; or Suspicious injuries; e.g., black eyes, rope marks, cigarette burns, unexplained bruising. |
| **B Failure to Prevent Neglect** | 1. Lack of timely assessment of individuals after injury;  
2. Lack of supervision for individual with known special needs;  
3. Failure to carry out doctor’s orders;  
4. Repeated occurrences such as falls which place the individual at risk of harm without intervention;  
5. Access to chemical and physical hazards by individuals who are at risk;  
6. Access to hot water of sufficient temperature to cause tissue injury;  
7. Non-functioning call system without compensatory measures;  
8. Unsupervised smoking by an individual with a known safety risk;  
9. Lack of supervision of cognitively impaired individuals with known elopement risk;  
10. Failure to adequately monitor individuals with known severe self-injurious behavior;  
11. Failure to adequately monitor and intervene for serious medical/surgical conditions;  
12. Use of chemical/physical restraints without adequate monitoring;  
13. Lack of security to prevent abduction of infants;  
14. Improper feeding/positioning of individual with known aspiration risk; or  
15. Inadequate supervision to prevent physical altercations. |
| **C Failure to protect from psychological harm** | 1. Application of chemical/physical restraints without clinical indications;  
2. Presence of behaviors by staff such as threatening or demeaning, resulting in displays of fear, unwillingness to communicate, and recent or sudden changes in behavior by individuals; or  
3. Lack of intervention to prevent individuals from creating an environment of fear. |
### Attachment 2 – Reportable Conduct Examples (D-G)

<table>
<thead>
<tr>
<th>Issue</th>
<th>Triggers</th>
</tr>
</thead>
<tbody>
<tr>
<td>D Failure to protect from undue adverse medication consequences and/or failure to provide medications as prescribed.</td>
<td>1. Administration of medication to an individual with a known history of allergic reaction to that medication; 2. Lack of monitoring and identification of potential serious drug interaction, side effects, and adverse reactions; 3. Administration of contraindicated medications; 4. Pattern of repeated medication errors without intervention; 5. Lack of diabetic monitoring resulting or likely to result in serious hypoglycemic or hyperglycemic reaction; or</td>
</tr>
<tr>
<td>E Failure to provide adequate nutrition and hydration to support and maintain health.</td>
<td>1. Food supply inadequate to meet the nutritional needs of the individual; 2. Failure to provide adequate nutrition and hydration resulting in malnutrition; e.g., severe weight loss, abnormal laboratory values; 3. Withholding nutrition and hydration without advance directive.</td>
</tr>
<tr>
<td>F Failure to protect from widespread nosocomial infections; e.g., failure to practice standard precautions, failure to maintain sterile techniques during invasive procedures and/or failure to identify and treat nosocomial infections</td>
<td>1. Pervasive improper handling of body fluids or substances from an individual with an infectious disease; 2. High number of infections or contagious diseases without appropriate reporting, intervention and care; 3. Pattern of ineffective infection control precautions; or 4. High number of nosocomial infections caused by cross contamination from staff and/or equipment/supplies.</td>
</tr>
<tr>
<td>G Failure to correctly identify individuals.</td>
<td>1. Administration of medication or treatments to wrong individual.</td>
</tr>
</tbody>
</table>