

MEMORANDUM OF UNDERSTANDING BETWEEN

Texas Department of Mental Health and Mental Retardation (TDMHMR),
Texas Department of Human Services (TDHS), and
Texas Department of Protective and Regulatory Services (TDPRS)

concerning

Reportable Incidents in State Schools, State Centers,
State Operated Community-based MHMR Services,
and Community Mental Health and Mental Retardation Centers
with Intermediate Care Facilities for the Mentally Retarded (ICFMR)

A. Definitions. For purposes of this memorandum of understanding, the following terms have the following meanings:

(1) Chief executive officer (CEO) — The superintendent or director of a state school or state center or the executive director of a community mental health and mental retardation center (CMHMRC) with intermediate care facilities for the mentally retarded, or his/her designee.

(2) Death under unusual circumstances — A death which occurs under circumstances including, but not limited to, the following: unnatural death; death by unlawful means or suspicion of death by unlawful means; absence of witnesses; suicide or suspicion of suicide; or death within 24 hours of admission to the facility/community center.

(3) Serious physical injury — An injury determined to be serious by the examining physician. Examples of serious physical injury may include the following: fracture; dislocation of any joint; internal injury; any contusion larger than two and one half inches in diameter; concussion; second or third degree burn.

(4) Sexual abuse — Any sexual activity, including sexual exploitation, or sexual assault as defined in §22.011 of the Texas Penal Code, involving an employee, agent, or contractor, and a person served. Sexual activity includes kissing with sexual intent; hugging with sexual intent; stroking with sexual intent; or fondling with sexual intent; oral sex or sexual intercourse; request or suggestion or encouragement by staff for performance of sex with the employee himself or herself or with another person served.

B. Reportable incidents. The following incidents will be reported to the ICFMR/RC Department, Long Term Regulatory, Texas Department of Human Services (TDHS).

(1) Any act or failure to act performed knowingly, recklessly, or intentionally, including incitement to act, which caused or may have caused serious physical injury to a person served.

(2) Sexual abuse by staff of a person served.

(3) Client-to-client sexual abuse resulting from coercion, physical force, or taking advantage of the disability of the person receiving services (e.g., sexual activity in which one party is not capable of giving consent or is not consenting), and any sexual activity involving a child under 18 years of age.

(4) Any pregnancy of a person served, regardless of the identity of the perpetrator, provided there is medical verification that conception could have occurred while the individual was receiving services at the TDMHMR facility, community-based service, or community center ICFMR program.

(5) Client-to-client aggression that results in a serious injury.

(6) Any death of a client under unusual circumstances.

C. Responsibilities of the Texas Department of Mental Health and Mental Retardation (TDMHMR).

(1) Within 24 hours of becoming aware of an incident or allegation outlined in paragraph B, the CEO will accomplish notification of the ICFMR/RC Department by calling the ICFMR/RC Department at (512) 834-6671 or 1-800-292-2065 and providing information as outlined in the ICFMR Intake Form. The CEO or designee will provide any additional information required by the ICFMR/RC Department.

(2) The CEO will be responsible for informing facility employees of their obligation to report incidents of abuse, neglect, or exploitation to the Texas Department of Protective and Regulatory Services (TDPRS).

(3) If a reportable incident as defined in this MOU is reported to TDPRS for investigation, the CEO or designee will:

(a) provide a summary of the investigation to date [as outlined in paragraph (D)(2)] to the ICFMR/RC Department within five working days of reporting the incident; and

(b) provide a copy of the final investigative report [as outlined in paragraph (D)(3) and (4)] to the ICFMR/RC Department upon receipt from TDPRS.

(4) If a reportable incident as defined in this MOU is reported to TDPRS for investigation but TDPRS refers the incident back to the CEO for administrative action, the CEO will:

(a) provide a copy of the referral form to the ICFMR/RC Department upon receipt from TDPRS; and

(b) conduct an investigation and submit a final report to the ICFMR/RC Department within five working days of receipt of the referral.

(5) If a reportable incident as defined in this MOU is not suspected to involve abuse, neglect, or exploitation and is not reported to TDPRS for investigation, the CEO will be responsible for initiating an investigation. All such incidents must be investigated and a final report forwarded to the ICFMR/RC Department within five (5) working days.

D. Responsibilities of the Texas Department of Protective and Regulatory Services (TDPRS).

(1) Allegations of abuse, neglect, or exploitation in TDMHMR facilities will be reported to the TDPRS for investigation as outlined in 25 TAC Chapter 404, Subchapter A (relating to Abuse, Neglect, and Exploitation in TDMHMR Facilities) and 40 TAC Chapter 710, Subchapter A (relating to Abuse, Neglect, and Exploitation of Persons Served in TDMHMR Facilities).

(2) If an allegation of abuse, neglect, or exploitation in a facility covered by this MOU that is reported to the TDPRS falls within the categories of reportable incidents as defined by this

MOU, TDPRS will provide the CEO with a summary of the investigation to date within 5 working days of initiating an investigation. The summary will consist of the TDPRS Intake Form with a notation by the TDPRS investigator indicating the status of the investigation.

(3) TDPRS will complete its investigation within 14 calendar days of receipt of the allegation, except that extensions of the completion date may be requested and granted in 14 calendar day increments.

(4) Upon completion of the investigation, TDPRS will submit the complete investigative report to the CEO.

E. Responsibilities of the Texas Department of Human Services (TDHS) ICFMR/RC Department.

The Texas Department of Human Services, as part of its responsibility as the Medicaid state survey agency for the ICFMR/RC program, will accept allegations that a Medicaid-certified ICFMR/RC is not in compliance with the Medicaid conditions of participation and will take appropriate action in response to these allegations, including visiting the facility if necessary.

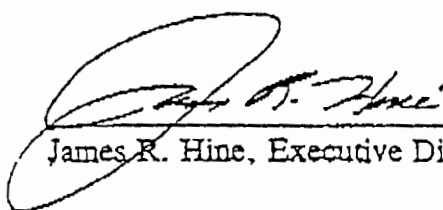
F. Effective date. This agreement is executed by the undersigned persons in their capacities as stated below, to be effective March 25, 1996. The agencies will review and, if necessary, revise this MOU before March 25, 1997.

Texas Department of Mental Health and
Mental Retardation (TDMHMR)

Texas Department of Protective and
Regulatory Services (TDPRS)

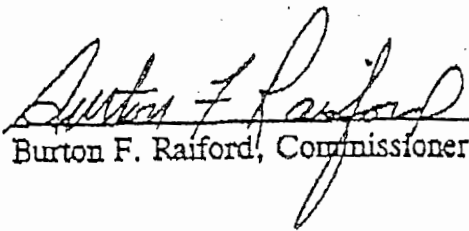


Don Gilbert, Commissioner



James R. Hine, Executive Director

Texas Department of Human Services (TDHS)



Burton F. Ralford, Commissioner