



## Long-Term Care Regulation Provider Letter

<b>Number:</b> PL 2024-14 (Replaces PL 2019-17)
<b>Title:</b> Abuse, Neglect, Exploitation, Misappropriation of Resident Property and Other Incidents that a Nursing Facility (NF) Must Report to the Health and Human Services Commission (HHSC)
<b>Provider Type:</b> Nursing Facilities (NF)
<b>Date Issued:</b> August 29, 2024

### 1.0 Subject and Purpose

This letter provides guidance for reporting incidents to HHSC and adds information about when providers must report communicable disease to Complaint and Incident Intake (CII). It also clarifies the types of events that are not reportable to HHSC, and updates rule references. To aid providers in understanding the reporting requirements, this letter includes:

- Attachment 1, describing reporting requirements and providing examples to help determine what constitutes a reportable incident.
- Attachment 2, a flow chart to assist in decisions about making reports.

### 2.0 Policy Details & Provider Responsibilities

#### 2.1 Incidents that a NF Must Report to HHSC

A NF must report to CII the following types of incidents, in accordance with applicable state and federal requirements:

- Abuse<sup>1</sup>
- Neglect<sup>2</sup>
- Exploitation<sup>3</sup>
- Death due to unusual circumstances<sup>4</sup>
- A missing resident
- Misappropriation<sup>5</sup>
- Drug theft
- Suspicious injuries of unknown source<sup>6</sup>

- Fire<sup>7</sup>
- Emergency situations that pose a threat to resident health and safety<sup>8</sup>
- Communicable disease situations that are an unusual or abnormal event that poses a threat to resident health and safety<sup>9</sup>

Section 2.3 of this letter clarifies types of events that a NF is **not** required to report to CII.

## 2.2 Communicable Disease Reporting

Generally, a NF is not required to report cases of communicable diseases to CII. A NF must report occurrences of [notifiable conditions](#) to the Department of State Health Services (DSHS) or their local health department. NFs are only required to report to CII if an unusual or abnormal occurrence of a communicable disease poses a threat to resident health and safety, such as a significantly higher than usual number of cases of a communicable disease. The NF would also report any instances of communicable disease cases that occurred due to abuse or neglect, as abuse or neglect are required to be reported in any circumstance.

Please note that COVID-19 is no longer a notifiable condition, meaning that a NF is no longer required to reports cases of COVID-19 to CII or DSHS. However, there are **two exceptions**: NFs must report new COVID-19 cases to CII if:

- there is a higher-than-normal incidence of the disease that represents a normal or unusual occurrence that poses a threat to resident health and safety; or
- the disease occurred due to abuse or neglect.

## 2.3 Events that a NF Does Not Need to Report to CII

A NF is not required to report to CII:

- serious bodily injury or other injury that is NOT suspicious or of unknown source and that is NOT related to abuse;
- serious bodily injury or other injury that is NOT suspicious or of unknown source and that is NOT related to neglect, exploitation, or mistreatment;

- injury that is not suspicious or of unknown source;
- emergency situations that do not pose a threat to resident health;
- deaths that are not under unusual circumstances (these are reported according to [§554.606](#));
- communicable disease situations that do not pose a threat to resident health and safety (these are reported according to [§554.1601\(d\)\(2\)](#) and 25 TAC, Chapter 97, [Subchapter A](#)); or
- burglary of NF property, other than a burglary involving the theft of resident drugs.

### 2.4 Reportable Incidents and Timeframes

This table describes required reporting timeframes for each incident type. It also describes events a NF is not required to report:

Type of Incident	When to Report <sup>10</sup>
<p><b>Do Report:</b></p> <ul style="list-style-type: none"> <li>• abuse (with or without serious bodily injury<sup>11</sup>)</li> <li>• <b>an incident that results in serious bodily injury</b> and that involves any of the following:                             <ul style="list-style-type: none"> <li>• neglect</li> <li>• exploitation</li> <li>• mistreatment</li> <li>• injuries of unknown source</li> <li>• misappropriation of resident property</li> </ul> </li> </ul>	<p>Immediately, but not later than two hours after the incident occurs or is suspected.</p>
<p><b>Do Report:</b>                      an incident that <b>does not result in serious bodily injury</b> but that involves any of the following:</p> <ul style="list-style-type: none"> <li>• neglect</li> <li>• exploitation</li> <li>• a missing resident</li> <li>• misappropriation of resident property</li> <li>• drug theft</li> <li>• fire</li> <li>• emergency situations that pose a threat to resident health and safety</li> <li>• a death under unusual circumstances</li> <li>• communicable disease situations that pose a threat to resident health and safety (see subsections 2.2 and 2.3 for details).</li> </ul>	<p>Immediately, but not later than 24 hours after the incident occurs or is suspected.</p>

**Do Not Report:**

- an injury that is not suspicious or of unknown source
- an injury that is not related to abuse, neglect, exploitation, or other mistreatment
- emergency situations that do not pose a threat to resident health and safety secondary to proper management through facility [emergency preparedness](#)
- deaths that do not occur under unusual circumstances (which are reported according to [§554.606](#))
- communicable disease situations that do not pose a threat to resident health and safety (which are reported according to [§554.1601\(d\)\(2\)](#) and 25 TAC, Chapter 97, [Subchapter A](#)).

See [Attachment 1](#) for examples related to incident situations.

See [Attachment 2](#) for a flow chart guide for when to report ANE and other incidents and events, and when reporting is not necessary.

## 2.5 How to Make a Report

To initiate a report, please refer to [PL 2018-20 Incident Reporting Requirements](#) for the information that a provider must include in an initial incident report made to HHSC CII and in the provider investigation report, [HHSC Form 3613-A](#), submitted to CII. Also, [PL 2023-13](#) provides current information about incident reporting methods, forms, and additional resources. Providers are encouraged to report online through the TULIP system at <https://txhhs.my.site.com/TULIP/s/login/>.

## 3.0 Background/History

State and federal law requires an owner or employee of a NF that 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 (ANE) caused by another person to report the abuse, neglect, or exploitation.<sup>12</sup> NFs must report all suspected or alleged incidents involving abuse, neglect, exploitation, or mistreatment, including injuries of unknown source and misappropriation of resident property.<sup>13</sup> A NF must report these incidents to CII.

## 4.0 Resources

[Attachment 1](#): Definitions and Examples of ANE and Other Reportable Incidents

[Attachment 2](#): Flow Chart for Reporting ANE and Other Reportable Incidents

[Notifiable Conditions | Texas DSHS](#)

[Provider Letter 2018-20 Incident Reporting Requirements.](#)

[Provider Letter 2023-13 Changes to Initial Self-Reporting Methods and Provider Investigation Report Form 3613/3613A.](#)

[S&C: 11-30-NH Reporting Reasonable Suspicion of a Crime in a Long-Term Care Facility \(LTC\): Section 1150B of the Social Security Act.](#)

[Provider incident self-reporting for all program/agency types](#)

## 5.0 Contact Information

If you have any questions about this letter, please contact the Policy and Rules Section by email at [LTCRPolicy@hhs.texas.gov](mailto:LTCRPolicy@hhs.texas.gov) or call (512) 438-3161.

## Attachment 1: Definitions and Examples of ANE and other Reportable Incidents

Please note this document is intended as guidance only. The examples in this attachment are not all inclusive. Many other possible scenarios are reportable.

### Abuse:

HHSC rules define abuse as:

"The 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 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."<sup>14</sup>

CMS defines abuse as:

"The willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish. Abuse also includes the deprivation by an individual, including a caretaker, of goods or services that are necessary to attain or maintain physical, mental, and psychosocial well-being. Instances of abuse of all residents, irrespective of any mental or physical condition, cause physical harm, pain or mental anguish. It includes verbal abuse, sexual abuse, physical abuse, and mental abuse including abuse facilitated or enabled through the use of technology."<sup>15</sup>

Note: Allegations or incidents of resident-to-resident behavior may or may not meet the definition of abuse depending on whether a resident acted willfully. As the CFR states: "Willful, as used in the definition of 'abuse,' means the individual must have acted deliberately, not that the individual must have intended to inflict injury or harm."<sup>16</sup>

Example of abuse:

A resident is found in the living room of the facility, bleeding from a wound to his head and with shallow breathing. In speaking with the resident, the nursing facility administrator (NFA) learned that he had an argument with a

staff member, who pushed him and caused him to fall backwards. The injured resident was transported to the hospital where it was determined the injury was serious.

**Neglect:**

HHSC 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."<sup>17</sup>

CMS defines neglect as, "the failure of the facility, its employees or service providers to provide goods and services to a resident that are necessary to avoid physical harm, pain, mental anguish, or emotional distress."<sup>18</sup>

To determine whether neglect may have occurred, a NF must decide if an injury, emotional harm, pain, or death of a resident was due to the NF's failure to provide goods or services to a resident.

Example of neglect:

A resident, per his care plan, requires a two-person transfer from his bed to a chair. Only one staff member assists the resident in transferring him from his bed to a chair and the resident falls, resulting in extensive bruising to his thigh that was determined to be a serious injury.

**Exploitation:**

HHSC 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."<sup>19</sup>

CMS defines exploitation as, "taking advantage of a resident for personal gain through the use of manipulation, intimidation, threats, or coercion."<sup>20</sup>

Example of exploitation:

A staff member coerces a resident into signing a document to add the staff member to the resident's checking account.

**Misappropriation:**

HHSC rules define misappropriation as, “the 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.”<sup>21</sup>

CMS defines misappropriation of resident property as, “the deliberate misplacement, exploitation, or wrongful, temporary, or permanent use of a resident’s belongings or money without the resident’s consent.”<sup>22</sup>

Example of misappropriation: A staff member takes a ring, watch, or other piece of property out of the resident’s room and keeps it or forges a resident’s signature and cashes a resident’s personal check without authorization.

**Injuries of unknown source:**

Note: an injury should be classified as an “injury of unknown source” when ALL of the following conditions are met:

- The source of the injury was not observed by any person; and
- 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 generally vulnerable to trauma); or
  - the number of injuries observed at one point in time; or
  - the incidence of injuries over time.<sup>23</sup>

If a resident cannot explain their injury and another person did not observe the incident that resulted in the injury, but the injury is not suspicious based on the criteria above, the NF is not required to report it. For example, a resident has a minor “skinned” knee, but can’t remember if or when they fell.

Example of an injury of unknown source that must be reported:



A resident has bruising on their left cheek bone area that was determined to be non-serious. No one witnessed the source of the injury. Although the injury was determined to be non-serious, the injury is suspicious because of the location of the injury.

**Drug theft:**

Example of drug theft: A resident is only given a quarter of her prescribed pain medication and a facility staff member takes the rest.

**Death due to unusual circumstances:**

Example of a death due to unusual circumstances:

A resident dies from exposure to extreme weather.

**Missing resident:**

Example of a missing resident:

A resident is not in his room when staff wake residents up in the morning and the bed appears not to have been slept in. Staff search the facility and cannot find the resident.

**Emergency situations that pose a threat to resident health and safety:**

Example of an emergency situation that poses a threat to resident health and safety:

Failure of the heat or air-conditioning systems.

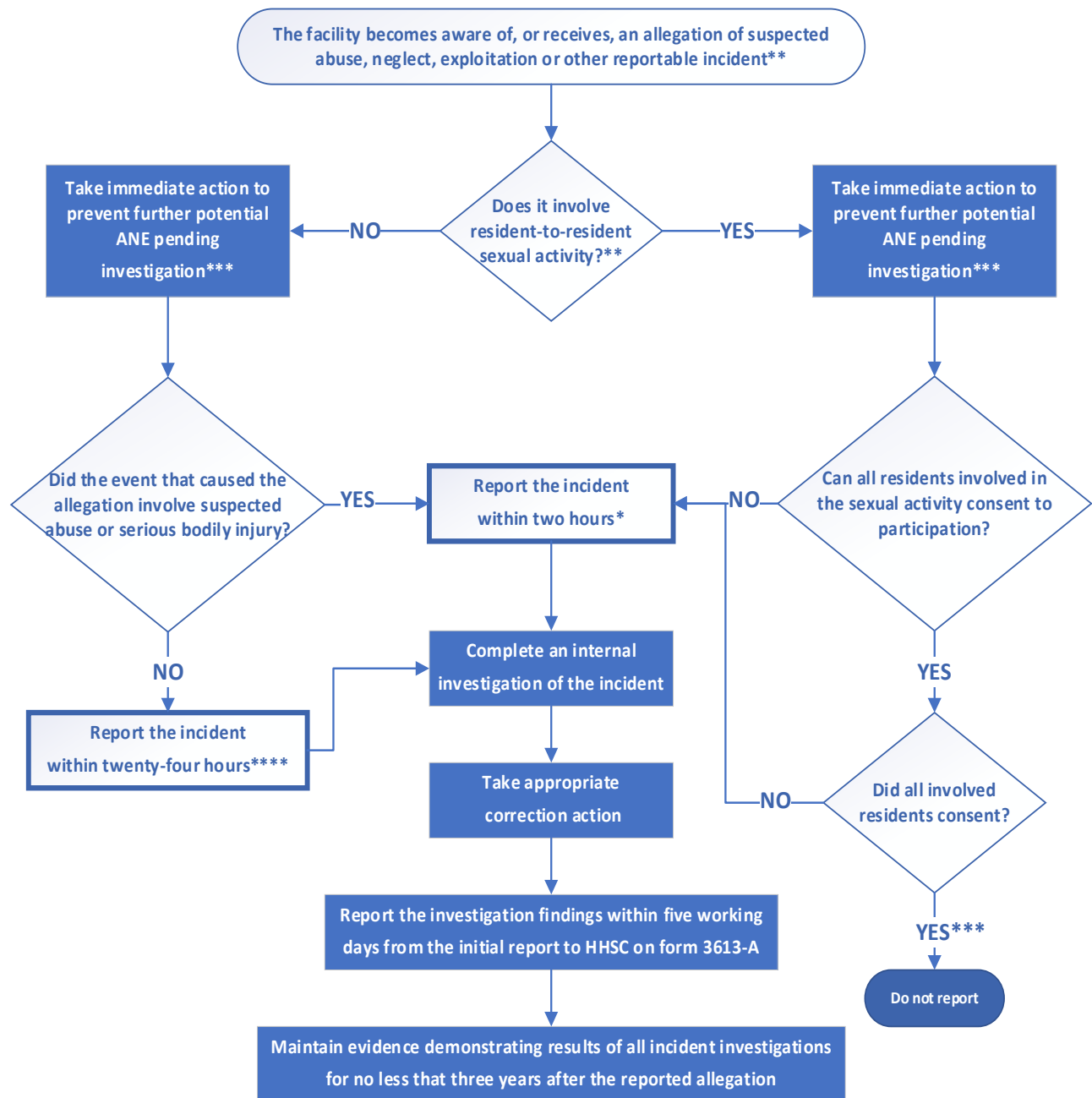
**Communicable disease situations that pose a threat to resident health and safety:**

Example of a communicable disease situation that poses a threat to resident health and safety:

In a facility with a census of 50 residents, 12 residents were diagnosed as having influenza, leading to pneumonia in four of the diagnosed residents who required hospitalization. The facility previously had instances in which less than five residents were diagnosed with influenza, but 12 cases among

50 residents resulting in serious complications in four, is an abnormal occurrence. It could pose a threat to the health and safety of the residents diagnosed and to other residents. The number or percentage is a higher than usual occurrence of serious complications of influenza and could potentially infect other residents, causing an even greater number of cases and complications.

## Attachment 2: How to Report Abuse, Neglect, Exploitation (ANE), Other Incidents and Sexual Activity



**KEY:**

- \* If it meets the definition of abuse
- \*\* When actions by a resident are not willful, but may be perceived as a threat to self or others – the facility should assess for neglect
- \*\*\* Assess, care plan, and intervene
- \*\*\*\* If it does not meet definition of abuse

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<sup>1</sup> Defined in 26 TAC [§554.101\(1\)](#), 42 Code of Federal Regulations (CFR) [§483.5](#) and [F540](#). Also read 42 CFR [§483.12\(c\)\(1\)](#) and F609. All endnote references to F-tags are located in CMS State Operations Manual, [Appendix PP](#). A separate link is not provided for each F-tag.

<sup>2</sup> Defined in 26 TAC [§554.101\(85\)](#), 42 CFR [§483.5](#), and F540. Also [§483.12\(c\)\(1\)](#) and F609.

<sup>3</sup> Defined in 26 TAC [§554.101\(42\)](#), 42 CFR [§483.5](#), and F540. Also [§483.12\(c\)\(1\)](#) and F609.

<sup>4</sup> Read 26 TAC [§554.1010\(c\)\(3\)](#).

<sup>5</sup> Defined in 26 TAC [§554.101\(83\)](#), 42 CFR [§483.5](#), and F540. Also read [§483.12\(c\)\(1\)](#) and F609.

<sup>6</sup> Defined in F609; 42 CFR [§483.12\(b\)\(5\)](#) and 42 CFR [§483.12\(c\)\(1\)](#) and [\(c\)\(4\)](#); also read F607.

<sup>7</sup> Read 26 TAC [§554.1914\(f\)\(1\)](#), 26 TAC [§554.1923\(b\)](#)

<sup>8</sup> Read 26 TAC [§554.1914\(f\)\(2\)](#), 26 TAC [§554.1923\(b\)](#)

<sup>9</sup> Read 26 TAC [§554.1923\(b\)](#).

<sup>10</sup> Read 42 CFR [§483.12\(c\)\(1\)](#).

<sup>11</sup> Serious Bodily Injury is defined in F607.

<sup>12</sup> Read Texas Health and Safety Code [§260A.002](#); 26 TAC [§554.602\(a\)](#).

<sup>13</sup> Read 42 CFR [§483.12\(c\)\(1\)](#) and F609.

<sup>14</sup> Read 26 TAC [§554.101.\(1\)](#)

<sup>15</sup> Defined in 42 CFR [§483.5](#) and F609.

<sup>16</sup> Read 42 CFR [§483.5](#)

<sup>17</sup> Read 26 TAC [§554.101\(85\)](#).

<sup>18</sup> Read 42 CFR [§483.5](#) and F540.

<sup>19</sup> Read 26 TAC [§554.101\(42\)](#).

<sup>20</sup> Read 42 CFR [§483.5](#) and F540.

<sup>21</sup> Read 26 TAC [§554.101\(83\)](#).

<sup>22</sup> Read 42 CFR [§483.5](#) and F540.

<sup>23</sup> Read F609.