



## Long-Term Care Regulatory Provider Letter

<b>Number:</b> PL 19-23 (ALF) (Replaces PL 14-22)
<b>Title:</b> Types of Incidents Providers Must Report to the Texas Health and Human Services Commission
<b>Provider Types:</b> Assisted Living Facility
<b>Date Issued:</b> October 14, 2019

### 1.0 Subject and Purpose

The Texas Health and Human Services Commission (HHSC) is issuing this letter to remind assisted living facility (ALF) providers of their duty to report to HHSC as it relates to abuse, neglect, and exploitation, and to certain other incidents, and to provide examples of incident types that HHSC considers falling within requirements for an ALF to report to HHSC. This letter replaces PL 14-22.

### 2.0 Policy Details & Provider Responsibilities

#### 2.1 Incidents that ALFs Must Report to HHSC and the Time Frames for Reporting

An ALF must comply with applicable statutory and rule requirements and time frames for reporting certain incidents to HHSC. Attachment 1 to this letter provides additional explanation and examples of required reporting in connection with the incident types bulleted below, and the chart contained in this subsection reflects the deadlines for making required reports to HHSC. The following incident types include both the general categories of abuse, neglect, and exploitation and some of the more specific types of incidents that may be likely to arise and require reporting within those categories, which HHSC has nonetheless listed separately to highlight them for purposes of this letter and its accompanying chart and attachment:

- Abuse

- Neglect
- Exploitation
- A missing resident
- Drug diversion
- Fire
- Resident injury or death from an unknown source

## 2.2 Required reporting time lines

The following table describes the required reporting timeframes to HHSC, Complaint and Incident Intake, for each incident type. The ALF must also follow the specific reporting requirements, in addition to applicable timeframes, that apply to the type of report under 26 TAC §553.102 or §553.62(c)(1):

Type of Incident	When to Report
<ul style="list-style-type: none"> <li>• Abuse</li> <li>• Neglect</li> <li>• Exploitation</li> <li>• Fire causing resident injury or death</li> <li>• Missing resident</li> <li>• Drug diversion</li> <li>• Resident or injury or death from an unknown source</li> </ul>	<ul style="list-style-type: none"> <li>• Orally, immediately (within 24 hours) on learning of the incident</li> <li>• No later than the fifth calendar day after the oral report, send HHSC a written report of the ALF's investigation on Form 3613-A</li> </ul>
<ul style="list-style-type: none"> <li>• Fire causing property damage</li> </ul>	<p>By telephone, within 72 hours after the fire is extinguished. After the telephone report, submit a complete written report to HHSC on Form 3707.</p>

## 3.0 Background/History

State law requires an owner or employee of an ALF 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<sup>1</sup>. An ALF must report all suspected or alleged incidents involving abuse, neglect, exploitation or mistreatment and including injuries of unknown source. An ALF must report these incidents to the HHSC CII section.

## **4.0 Resources**

Attachment: Definitions and Examples of Abuse, Neglect, and Exploitation and other Reportable Incidents

## **5.0 Contact Information**

If you have any questions about this letter, please contact the Policy, Rules and Training Section by email at [PolicyRulesTraining@hhsc.state.tx.us](mailto:PolicyRulesTraining@hhsc.state.tx.us) or call (512) 438-3161.

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<sup>1</sup> See Texas [Health and Safety Code §260A.002](#)

## ATTACHMENT

### **Definitions and Examples of Abuse, Neglect, Exploitation, 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. In determining whether an incident must be reported, an ALF must carefully review both the conditions and time frames for reporting, and the definitions of applicable terms used in the stated requirement.

#### **Death from Abuse or Neglect:**

If the death of a resident involves unusual circumstances that give an ALF or any of its staff, volunteers, contractors, or other representatives cause to believe that the death is associated with any form of abuse or neglect,<sup>2</sup> such persons must report the death and alleged abuse or neglect to HHSC, and an ALF is responsible for ensuring that they do. Examples include:

- death due to medication overdose, administration of wrong medication, or failure to administer a medication;
- death caused by exposure to weather; being struck by a motor vehicle or killed in a motor vehicle collision on ALF property or involving any ALF vehicle, staff, contractor, volunteer, or another ALF resident; drowning; strangulation (by ligature, aspiration or positional asphyxiation); burns (fire, water or chemical); electrical shock, or a fall;
- suicide;
- death following a resident-to-resident altercation; or
- death from aspiration not associated with pneumonia.

#### **Other Abuse:**

An ALF must report abuse when it “has cause to believe that the physical or mental health or welfare of a resident has been or may be adversely affected by” the abuse.

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<sup>2</sup>Abuse, neglect, and exploitation are defined in [Health and Safety Code §260A.001 and 26 Texas Administrative Code \(TAC\) §553.2.](#)

Abuse<sup>3</sup> includes “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.” Under this definition, an ALF would be required to report the following incident of alleged abuse to HHSC.

A resident who uses a walker for balance 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 manager learned that the resident had an argument with another resident, with whom the injured resident has an ongoing relationship. The other resident pushed the injured resident, causing him to fall backwards and hit his head. The injured resident was transported to the hospital where a physician determined the resident’s injury was serious.

“Abuse” is also defined to include “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.”

Regardless of alleged “actual consent,” any sexual conduct that would constitute sexual assault if nonconsensual that an ALF has cause to believe an ALF employee has committed against a resident is nonconsensual as a matter of law; must be considered adverse to the resident’s welfare, regardless of any physical injury; and must be reported to HHSC as an incident of sexual abuse. Likewise, if, for example, an ALF has cause to believe that an ALF resident has engaged in conduct with another ALF resident which, if nonconsensual, would constitute sexual assault, without that resident’s consent and knowing that the resident is physically unable to resist, or knowing that, because of the resident's mental status, the resident is without capacity to appraise the nature of the act or resist it at the time of the incident, a sexual assault has occurred, the ALF must report it as an incident of sexual abuse to HHSC.

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<sup>3</sup> Abuse is defined in the [H&SC 260A.001](#)

### **Other Neglect:**

Neglect<sup>4</sup> includes “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.”

If an ALF has cause to believe that a resident's physical or mental health or welfare has been or may be adversely affected, including through resulting injury, emotional harm, pain, or death of a resident, by the failure of the ALF to provide the goods or services to the resident to avoid such physical or emotional harm or pain, the ALF must report such an incident of alleged neglect to HHSC.

For example, if a resident's service plan requires two people to assist with a transfer from the resident's bed to a chair, an ALF must report an incident in which only one staff member assists the resident in such a transfer, resulting in the resident falling, with extensive bruising to the resident's thigh.

### **Exploitation:**

Exploitation includes “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.”

For example, if an ALF has cause to believe that a staff member has coerced or deceived a resident into signing a document to add the staff member as a co-owner of the resident's checking account, the ALF must report the incident of alleged exploitation to HHSC.

### **Missing Resident:**

A facility must file a report when a missing resident is not located after a search of the facility, facility grounds and immediate vicinity and when there are circumstances that place the resident's health, safety or

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<sup>4</sup> Neglect is defined in the [H&SC 260A.001](#)

welfare are at risk. Examples of situations that may place the resident at risk include the following:

- A resident requires medications that, if not taken as scheduled, place the resident at risk of serious illness or death.
- Extreme weather conditions expose a resident to potential freezing, heat prostration, drowning from flooding, etc.
- The resident is confused or otherwise incapable of assessing potential danger.
- There is suspicion of foul play.

Regardless of the circumstances, a facility must report the resident missing. In addition, the facility must contact the HHSC CII if the resident has been found or has new information on the missing resident. A facility must also report any resident who has been missing and is found seriously injured or dead.

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.

### **Drug Diversions:**

Section [553.41\(j\)](#) includes required safeguards for an ALF to adhere to relating to medication security and, if the ALF stores controlled substances, policies and procedures to address the prevention of drug diversion. HHSC considers an ALF to have cause to believe that resident health or welfare is at risk when medication is missing or stolen, and that such risk is associated, at a minimum, with failures in the ALF's required safeguards relating to such medications. Therefore, an ALF must report to HHSC if the facility has reason to believe that drugs are missing or were stolen.

### **Fires:**

An ALF must immediately report any fire causing injury or death to a resident. If a fire causes damage to the ALF or equipment, without causing injury or death to a resident, the ALF must report the fire to

HHSC within 72 hours after the fire is extinguished.<sup>5</sup> After reporting the fire to HHSC by telephone, the ALF must fully complete and submit a written report to HHSC on Form 3707, Fire Report for Long Term Care Facilities.

If the circumstances of the fire meet the conditions for required abuse or neglect reporting to HHSC, the ALF must also follow all applicable abuse and neglect reporting requirements under [26 TAC §553.102](#), including conducting an investigation of the allegation and sending a written report to HHSC, Complaint and Incident Intake, on Form 3613-A, SNF, NF, ICF/IID, ALF, DAHS and PPECC Provider Investigation Report, no later than the fifth day after the oral report. Where multiple reporting requirements apply, the ALF must meet all applicable requirements, including the strictest time frames and requirements among those applicable requirements.

### **Injuries of unknown source:**

HHSC considers an ALF to have cause to believe that a suspicious resident injury of unknown source is associated with abuse or neglect, which requires the ALF to report the incident to HHSC, CII.

Characteristics of a “suspicious resident injury of unknown source” include the following:

- The ALF does not know of a person who observed the occurrence of the injury and the resident is unable or unwilling to explain the source of the injury; and
- The injury is suspicious because of the:
  - extent or severity of the injury;
  - location of the injury (e.g., the injury is not in an area typically affected by common accidental trauma, such as bumping into hard objects or corners); or
  - number of injuries observed at one point in time or the number of incidents of injury over time.

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<sup>5</sup> [26 TAC 553.62\(c\)\(1\)](#).