



Adult Protective Services

Investigations of Abuse, Neglect, and Exploitation in HCS, TxHmL, and ICF-MR Programs

*Presentation to the Private Providers Association of Texas
October 8, 2008*

Texas Department of Family and Protective Services

Objectives

- I. Overview of APS and Role in MH&MR Investigations

- II. Overview of Provider Responsibilities to Ensure Protection of Clients

- III. Discuss Current Issues

APS Mission

The mission of Adult Protective Services (APS) is to protect older adults and people with disabilities from abuse, neglect, and exploitation.

Overview of Adult Protective Services

APS conducts two types of investigations of abuse, neglect, and exploitation of older adults (age 65+) and persons with disabilities:

- In-home Settings
- Mental Health and Mental Retardation Programs

Purpose of APS MHMR Investigations

Adult Protective Services' (APS) role in protecting mental health (MH) and mental retardation (MR) clients from abuse, neglect and exploitation is:

- Conducting unbiased, thorough investigations in response to reported allegations
- Providing objective findings to the provider to take appropriate action to protect their consumers

APS does not:

- Have operational authority over providers
- Proactively investigate or regulate providers

Legal Responsibility for APS

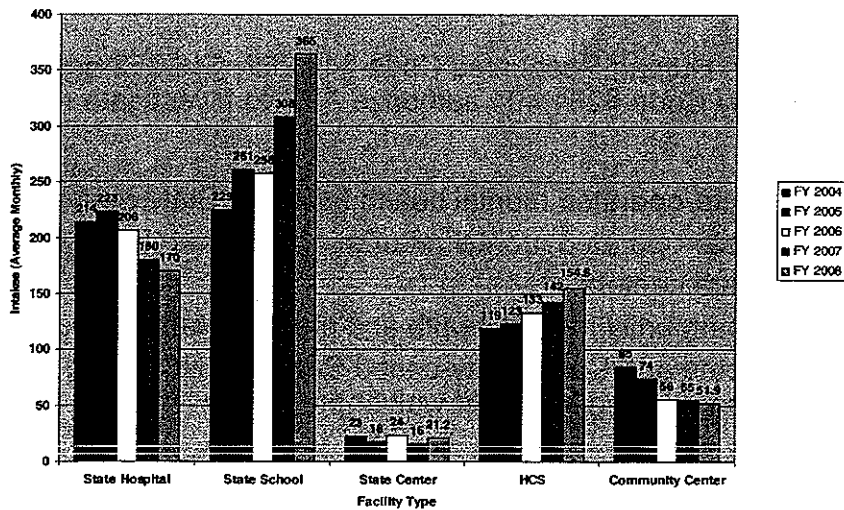
Texas Human Resources Code §48.252, §48.352 and Family Code §261.404 authorize APS to investigate reports in:

- State-operated mental health facilities (State hospitals)
- State-operated mental retardation facilities (State schools)
- State centers
- Community mental health and mental retardation centers
- Home and Community-based Services (HCS) and Texas Home Living Medicaid waiver programs

Program Administration

- The APS program has approximately 110 staff in the MH&MR program.
- Investigators are required to hold a Bachelor's degree.
- Investigator Training:
 - field and classroom training to develop skills, knowledge, and abilities
 - on-going training to prepare for various levels of certification for career progression
 - participate in continuing education

MH and MR Intakes by Facility Type and Fiscal Year



FY08 MH&MR Investigations and Allegations

	Total	Confirmed
Allegations	17,416	1,353
Investigations	8,876*	885

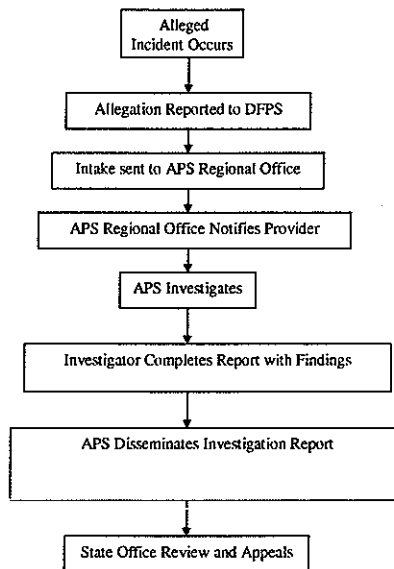
*Note: Data as of 9/7/08

FY08 HCS Investigations

- APS completed 1,806 **investigations** of abuse, neglect and exploitation in HCS settings. An investigation can include multiple **allegations**.
- APS confirmed 423 **allegations** of abuse, neglect or exploitation.
- HCS confirmed allegations comprise 31.3% of all confirmed allegations of abuse, neglect, or exploitation in the MH&MR system.

FY08 Community Center Investigations

- APS completed 614 **investigations** of abuse, neglect and exploitation in Community Centers. An investigation can include multiple **allegations**.
- APS confirmed 144 **allegations** of abuse, neglect and exploitation.
- Community Center confirmed allegations comprise 10.6% of all confirmed allegations of abuse, neglect and exploitation in the MH&MR system.



Definitions

- Physical Abuse – an act or failure to act that caused or may have caused physical injury, including inappropriate/excessive force and chemical restraint.
- Sexual Abuse – sexual assault/conduct and obscene activities as defined in the Texas Penal Code.

Note: Not verbatim as defined in the TAC.

Definitions

- Verbal/Emotional Abuse – the use of verbal or other communication to curse, vilify, degrade or threaten with physical or emotional harm.
- Neglect – an act or omission which caused or may have caused physical/emotional injury or death or risk of the same.

Note: Not verbatim as defined in the TAC.

Definitions

- Exploitation – the illegal or improper act or process of using a person or their resources for monetary or personal benefit, profit, or gain.

Note: Not verbatim as defined in the TAC.

Duty to Report

State law requires reporting knowledge or suspicion of abuse, neglect, or exploitation. Reports must be made within one hour.

- Failure to report is a Class A Misdemeanor
- False reporting is a Class B Misdemeanor

How to Report

Reports are received through Statewide Intake (SWI) - the DFPS hotline for reporting allegations of abuse, neglect, or exploitation.

- Toll Free Number: 800-647-7418
- Web Reporting: www.txabusehotline.org

***Note:** The web reporting system should be used to report instances of abuse or neglect that do not require an emergency response.

Reporting and Notification Process

Within one hour of receipt by SWI, local APS offices notify:

- The administrator of the facility, center, or waiver provider;
- Law enforcement if the report alleges sexual abuse, serious physical injury, or death; and
- Law enforcement of all reports involving a child.

Investigation and Reporting Process

Based on allegation priority, the investigation must meet the following requirements:

Priority	Face-to-Face Client Contact	Investigation Concluded*
1	Within 24 Hours	Within 14 Days
2	Within 3 Days	Within 14 Days
3	Within 7 Days	Within 21 Days

*Unless granted an official extension

APS may refer an investigation to the provider in cases such as rights, clinical issues, or administrative issues not involving abuse, neglect or exploitation.

APS sends an investigation status report (Five-day Report) to the administrator/designee for investigations in ICF-MR facilities.

Investigation and Reporting Process

The APS investigator gathers evidence to determine if an allegation is valid by:

- Interviewing victims and witnesses
- Taking photos of injuries, physical evidence, and incident scene; and
- Gathering relevant documentary evidence.

Investigation and Reporting Process

Upon completion of the investigation, the investigator then analyzes the evidence and formulates a report that:

- Accurately describes the evidence;
- Assesses credibility;
- Determines a probable version of events;
- Shows why the evidence does/does not fit the definition of ANE; and
- Shows reasoning behind all judgments made.

The investigator then sends the completed report to the administrator/designee.

Employee Misconduct Registry

APS reports acts that meet the criteria for "reportable conduct" committed by unlicensed staff to the EMR. This affects staff who work in a:

- HCS program as defined in 40 TAC §711.3 (19)
- HCS program operated by a community center or local authority

Provider Responsibilities

The provider is responsible for safeguarding the protection of the client. The provider responsibilities are outlined in the abuse, neglect rules in the Texas Administrative Code.

The abuse/neglect rules for HCS and TxHmL are:

40 TAC, Part 1, Chapter 9, Subchapter D (HCS) and Subchapter N (TxHmL)

The abuse/neglect rules in Local Authorities and Community Centers are:

40 TAC, Part 1, Chapter 4, Subchapter L

Provider Responsibilities

The provider is responsible for:

- Notifying the client and guardian of the allegation and investigation finding;
 - Providing a copy of the de-identified case record to the client and/or guardian, if requested;
 - Informing the client how to request an appeal of the finding; and
 - Requesting a review of the finding if he/she does not agree with the APS finding.
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Provider Responsibilities

A client can request an appeal of the finding by calling the Appeals Hotline at 1-888-778-4766.

A provider can request a review of the investigation finding by completing the DFPS "Request for Review of Finding" form and mail, with a copy of the complete case record to:

Assistant Commissioner of Adult Protective Services
Department of Family and Protective Services
P.O. Box 149030
Mail Code E-561
Austin, Texas 78714-9030

Where We Are Today

Increased interest by the public and media on state school (especially) and HCS residential settings.

Legislative interest:

- House Select Committee on Services for Individuals Eligible for ICF-MR Services
- Senate Health and Human Services Committee
- State audit of ICF-MR programs

Current Issues

- The State Auditor recently reviewed the program and made recommendations related to documentation and process issues, which do not have a direct impact on the quality of investigations.
- APS continues to work internally and with DADS and DSHS to improve the quality of investigations.
- The CDS option for clients has made it more difficult to distinguish which APS program has the authority to investigate.
- The APS case management system, IMPACT, is client-centered in design rather than provider driven. This limits the ability to report data on certain types of community settings.
- Should APS conduct investigations of abuse neglect, and exploitation investigations in licensed ICFs-MR? What are the implications?

Other Issues or Questions

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