

MEMORANDUM

Department of Aging and Disability Services (DADS) Regulatory Services Policy * Internal Memorandum

TO: Regulatory Services
Regional Directors, Regional Program Managers, and State Office Managers

FROM: Veronda L. Durden
Assistant Commissioner
Regulatory Services

SUBJECT: **IM 05-08** – Joint Investigation of Nursing Home Abuse and Neglect Allegations

APPLIES TO: Licensed Nursing Facilities

DATE: March 22, 2005

Senate Bill 1074, 78th Texas Legislature, Regular Session, amended Health and Safety Code (HSC) Chapter 242 and the Code of Criminal Procedure to require the Department of Aging and Disability Services (DADS) and local law enforcement agencies to jointly investigate certain allegations of nursing facility abuse or neglect. This IM outlines the procedure to follow when an allegation involves a joint investigation.

DADS notifies local law enforcement agencies about all immediate (investigate within 24 hours) allegations of nursing home abuse and neglect described in HSC §242.126 (c)(1) to provide law enforcement the opportunity to join DADS employees in conducting investigations. HSC §242.135 requires law enforcement to acknowledge the report of abuse or neglect and begin a joint investigation within 24 hours of receipt of the report. HSC §242.126 and §242.135 do not require representatives of each agency to be physically present during all phases of an investigation; nor do they require that each agency participate equally in each activity conducted in the course of an investigation. In most instances, DADS will notify local agencies of the allegations either by phone or facsimile and will provide the name and phone number of a DADS employee who will be conducting an on-site investigation. Law enforcement agencies can exercise discretion in determining the extent of their involvement in the joint investigations.

Provider Responsibilities

See Provider Letter #05-13.

Regional Director Responsibilities

Each region must verify accuracy of their law enforcement agency list, contacts, and telephone and facsimile numbers. This list includes law enforcement in municipalities and sheriff departments for rural areas.

Although each law enforcement agency should have received prior notification through newsletters within their agency, the Regional Director or designee, or the Regulatory Services regional attorney must telephone each agency to clarify the role of the law enforcement agency.

Immediately after the surveyor's entrance to the facility to investigate an immediate (investigate within 24 hours) allegation of abuse or neglect, the regional office faxes the facsimile cover sheet (see attachment) and the immediate investigation notice to the appropriate law enforcement agency. No de-identification of the resident is required. The regional office will provide the name and phone number of the surveyor who will conduct the on-site investigation. The facsimile confirmation sheet is verification that notification was made within the required 24-hour time frame. When the surveyor entry happens outside of normal business hours and facsimile transmission is not possible, the surveyor notifies law enforcement by telephone.

If the law enforcement agency contact declines participation in the investigation process, the surveyor must document this information in his notes.

Procedure

1. Provider reports allegation/incident of abuse or neglect to Intake Coordinator. The Intake Coordinator determines if the allegation/incident of abuse or neglect requires immediate investigation.
2. Report is communicated to region.
3. Region assigns surveyor to investigate.
4. Surveyor enters facility within 24 hours of receipt of report.
5. Upon entrance at the facility during normal business hours (8:00 a.m. to 5:00 p.m.), the surveyor contacts the regional office to notify local law enforcement. The regional office faxes notification to the city police or other municipal law enforcement agency if the facility is located within a municipality. Otherwise, the regional office faxes notification to the sheriff's office of the county where the facility is located using the attached fax transmission cover sheet. The allegation report is also faxed to the law enforcement agency.
6. If the investigation is not initiated during normal business hours, the surveyor contacts local law enforcement via telephone upon arrival at the facility and informs the law enforcement representative that DADS will be investigating allegations of abuse or neglect requiring immediate response. This contact is documented in the surveyor notes. The attached fax transmission cover sheet and allegation report are sent the next business day.
7. Regional staff must document pre-investigation, local law enforcement notification in CARES. Select Compliance Review → Notification → Other → Select Chief of Police or Sheriff. In "reason," select pre- or post-investigation notification, document type (mail or facsimile) and date sent. Additional notes may be added in the clipboard section. (*Please note this post-investigation data will preempt the pre-investigation information previously data entered.*)
8. Local law enforcement contacts DADS and lets the region know whether it will conduct an on-site investigation. In any event, DADS' investigation should not be postponed and should proceed normally.

9. Surveyor completes investigation, and the region sends the report to local law enforcement as per existing procedures.
10. If local law enforcement decides to investigate, its report is given to DADS.

Contact Information

Please contact Charline Stowers or Kim Legendre at (512) 438-2011 if you would like additional information about DADS complaint procedures. Please contact Amy Castaneda at (512) 438-5207 or the Regulatory Services regional attorney regarding legal questions. Refer to <http://www.capitol.state.tx.us/statutes/hs.toc.htm> to view the referenced statutes.

If you have any further questions related to the process, please contact Cheryl Danielson, Program Specialist, Policy Development and Support, at (512) 438-3123.

Veronda L. Durden

VLD:ca:mdv:cd

Attachment: Fax transmission cover sheet.

c: Chris Adams, E-348
Carol Ahmed, E-342
Anthony Chapple, E-342
Regional Directors

Department of Aging and Disability Services

(Your local address, phone, and fax)

FAX TRANSMISSION COVER SHEET

Date:

To: (Police Department or Sheriff's Office)

Fax: (Designated FAX number of law enforcement agency)

Re: Attached allegations of abuse/neglect at (Nursing Facility)

Sender: Regulatory Services

YOU SHOULD RECEIVE _____ PAGE(S), INCLUDING THIS COVER SHEET. IF YOU DO NOT RECEIVE ALL THE PAGE(S), PLEASE CALL _____.

_____ Employees of DADS have begun an investigation of the attached allegations of abuse/neglect at the referenced nursing facility. Notice of these allegations is being provided to your agency in accordance with section 242.126(l) of the Texas Health & Safety Code. If your agency desires to participate in our investigation, please call _____, team leader, at cell phone # _____ or _____, program manager, at _____.

_____ Employees of DADS notified your agency of the attached allegations of abuse/neglect at the referenced nursing facility on _____. As a follow-up to that notification, written notice of these allegations is being provided to your agency in accordance with section 242.126(l) of the Texas Health & Safety Code.

CONFIDENTIALITY NOTICE:

The information in and/any documents accompanying this message transmission is confidential and may be legally privileged. The information is intended only for the use of the person or entity recipient named above. If you have received this transmission in error, please notify us immediately by telephone to arrange for the original documents to be returned to us. You are hereby notified that any disclosure, copying, distribution or the taking of any action by relying on the contents of this information by anyone other than the named recipient is strictly prohibited.

In the event your agency elects not to participate in this investigation, we will submit a copy of our final written investigative report for your review.

PLEASE DO NOT DISCLOSE THE IDENTITY OF ANY LISTED COMPLAINANT.