

Legal Responsibility for Adult Protective Services

Statutory References:

Federal: Title XX, Social Security Act
 State: Human Resources Code, Chapters 40 and 48
 Texas Family Code, Title V
 Health and Safety Code, Chapter 532 and Chapters 591-596

Major Provisions:

- Mandatory reporting of abuse, neglect, and exploitation of elderly persons and adults with disabilities
- Receipt and investigation of all reports (unless patently false); initiation of investigations within 24 hours of receipt of report
- Responsibility for investigations of abuse and neglect of persons served by or through Texas Department of Mental Health and Mental Retardation (TXMHMR) facilities and community MHMR centers, and home and community-based waiver (HCS-W) programs
- Responsibility for other state agencies to investigate
- Responsibility for guardianship of persons with disabilities who age out of Child Protective Services (CPS) conservatorship and are unable to manage their own affairs
- Assessment of the adult's capacity to understand the situation and the degree of danger it presents
- Provision or arrangement of the services needed, which may include guardianship, to prevent or alleviate maltreatment
- Honoring the individual's right to self-determination and using the least restrictive alternative in the provision of protective services
- Authority to seek court orders when necessary to gain access to the individual, to prevent interference with the provision of voluntary protective services, to provide emergency protective services, to access records or documents, and to initiate emergency protective services (e.g., a removal) after hours and on holidays without a court order
- Requirement to notify law enforcement if the investigation reveals that an elderly or disabled person has been abused in a manner that constitutes a criminal offense
- Confidentiality of case records

Factors Contributing to Maltreatment and Neglect:

- Aging population
- Growing number of younger persons with disabilities
- Alcohol and drug dependency
- Unemployment
- Lack of affordable housing
- De-institutionalization of persons who are mentally ill and/or mentally retarded when community support is not adequate
- Inadequate access to health care
- Pathological family relationships/violence as a coping mechanism in society
- Physical and mental stress of caregiving in traditionally non-violent, caring households
- Denial of benefits, such as SSI and Medicaid, to elderly and disabled immigrants and to persons with disabilities related to chemical addiction