

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 591-595

Major Provisions:

- Mandatory reporting of abuse, neglect, and exploitation of adults who are elderly (defined as age 65 and older) or 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, neglect, and exploitation of persons receiving services in state operated mental health and mental retardation facilities (State Hospitals, State Schools, and State Centers) and/or state contracted settings (Community MH and MR Centers, Home and Community-based Services programs, and Texas Home Living Waiver Program) that serve adults and children with mental illness or mental retardation.
- Responsibility for referring reports to other state agencies when DFPS is not the appropriate investigating agency.
- Provision or arrangement of services needed to prevent or alleviate abuse, neglect and/or exploitation.
- Enhancing and developing community resources in an effort to increase awareness of abuse, neglect and exploitation and to address increasing needs of APS consumers
- Responsibility for referring adult victims of abuse, neglect and/or exploitation to the Department of Aging and Disability Services (DADS) for guardianship services when these persons appear to lack the capacity to consent to services. Guardianship is the least restrictive alternative that will ensure the person's safety and well-being when no other guardian is available.
- Assessment of factors that may indicate an adult's possible lack of capacity to consent to services and pursuit of a medical evaluation if indicated.
- 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 person or adult with a disability has been abused, neglected, or exploited in a manner that constitutes a criminal offense.
- Confidentiality of case records.

Other Programmatic Information:

Factors Contributing to Abuse, Neglect, and Exploitation:

- Aging population
- Growing number of younger persons with disabilities
- Alcohol and drug dependency
- Poverty
- Lack of affordable housing and high costs of utility bills
- De-institutionalization of persons who are mentally ill and/or mentally retarded when community support is not adequate

- Inadequate access to health care and costly medications
- 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 some elderly and disabled immigrants

Challenges:

- Affordable and safe housing for elders and adults with disabilities
- Waiting lists and other limitations in the availability of in-home care and home health care
- Shortage of resources to serve persons denied long-term care and other benefits under welfare reform
- Gaps in surrogate decision-making processes for incapacitated persons in hospitals, nursing homes and community-based settings
- Inadequate community services for persons discharged from state hospitals and schools
- Lack of statewide access to preventative or early intervention services such as long-term case management for elderly persons and adults with disabilities who are at risk, but not yet experiencing abuse, neglect, or exploitation
- Hiring and maintaining a skilled workforce while the availability of caseworkers and specialized geriatric social work training is not keeping pace with the ever-increasing number of older Americans