



**House Select Committee on Services for Individuals
Eligible for Intermediate Care Facility Services**

February 12, 2008

**Adult Protective Services Investigations
in MH and MR Settings**

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Adult Protective Services**

Overview of Adult Protective Services (APS) Investigations

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

- Mental Health and Mental Retardation settings
- In-home settings

Purpose of APS MH and MR Investigations

APS' role in protecting MH and MR clients from abuse, neglect and exploitation is:

- Conducting an unbiased investigation in response to reported allegations
- Providing objective findings to the provider to take appropriate action to protect their consumers

APS does not

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

History

- Prior to 1992 MHMR facilities conducted internal investigations of abuse, neglect and exploitation.
- In 1992 the 72nd Legislature transferred investigations to APS to avoid a conflict of interest.

Authority to Investigate

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

Allegation Types

Abuse as defined by 40 TAC §711.11 includes:

- Act or failure to act performed knowingly, recklessly, or intentionally, including incitement to act, which caused or may have caused physical injury or death to a person served;
- Act of inappropriate or excessive force or corporal punishment, regardless of whether the act results in an injury to a person served;
- Use of chemical or bodily restraints not in compliance with federal and state laws and regulations;
- Sexual abuse; or
- Act or use of verbal or other communication including gestures to curse, vilify, or degrade a person served or threaten a person served with physical or emotional harm.

Neglect as defined by 40 TAC §711.19 includes:

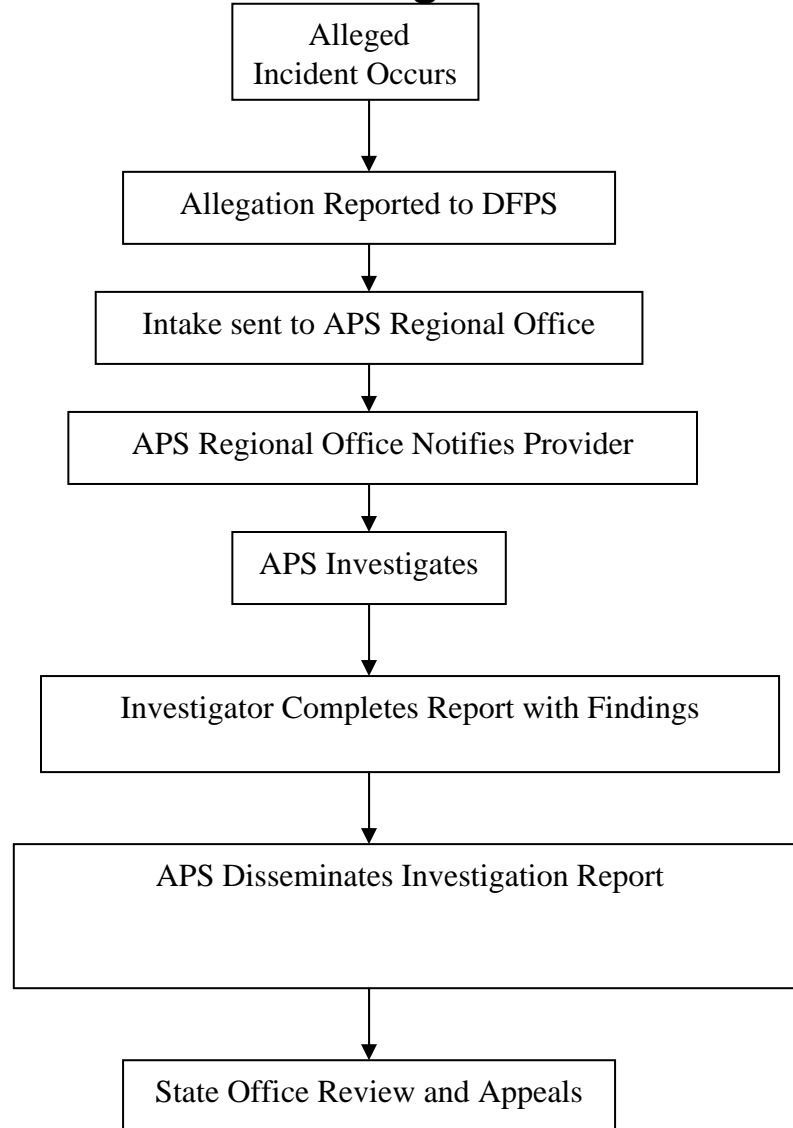
A negligent act or omission by any individual responsible for providing services in a facility rendering care or treatment that:

- Caused or may have caused physical or emotional injury or death to a person served.
- Placed a person served at risk of physical or emotional injury or death.

Exploitation as defined by 40 TAC §711.17 includes:

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

Overview of Investigations Process



Reporting and Notification Process

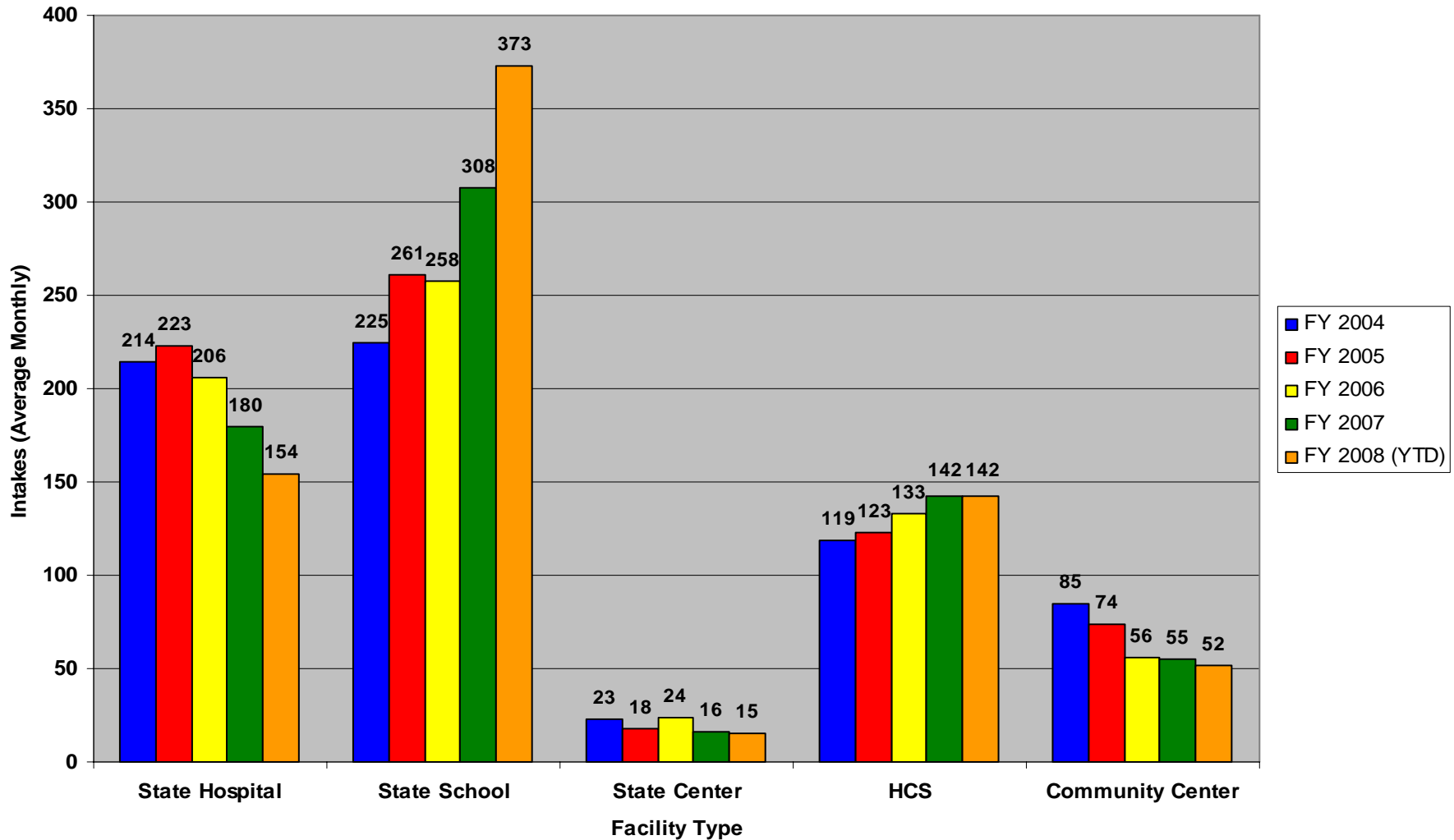
Employees, agents, or contractors must report allegations of abuse, neglect, or exploitation to DFPS Statewide Intake (SWI) immediately or within one hour.

SWI receives reports via a 24-hour toll-free abuse hotline dedicated to receiving allegations regarding MH and MR clients and also via the internet.

Within one hour of receipt, SWI routes reports to local APS offices who then 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.

MH and MR Intakes by Facility Type and Fiscal Year



Investigation 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

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

- Face-to-face contact with the alleged victim
- Interviews with alleged perpetrators and relevant witnesses
- Obtaining written statements
- Taking or obtaining relevant photographs/diagrams
- Reviewing relevant information in client records
- Reviewing relevant administrative forms such as incident reports, client injury reports, and timesheets

Release of Findings and Report

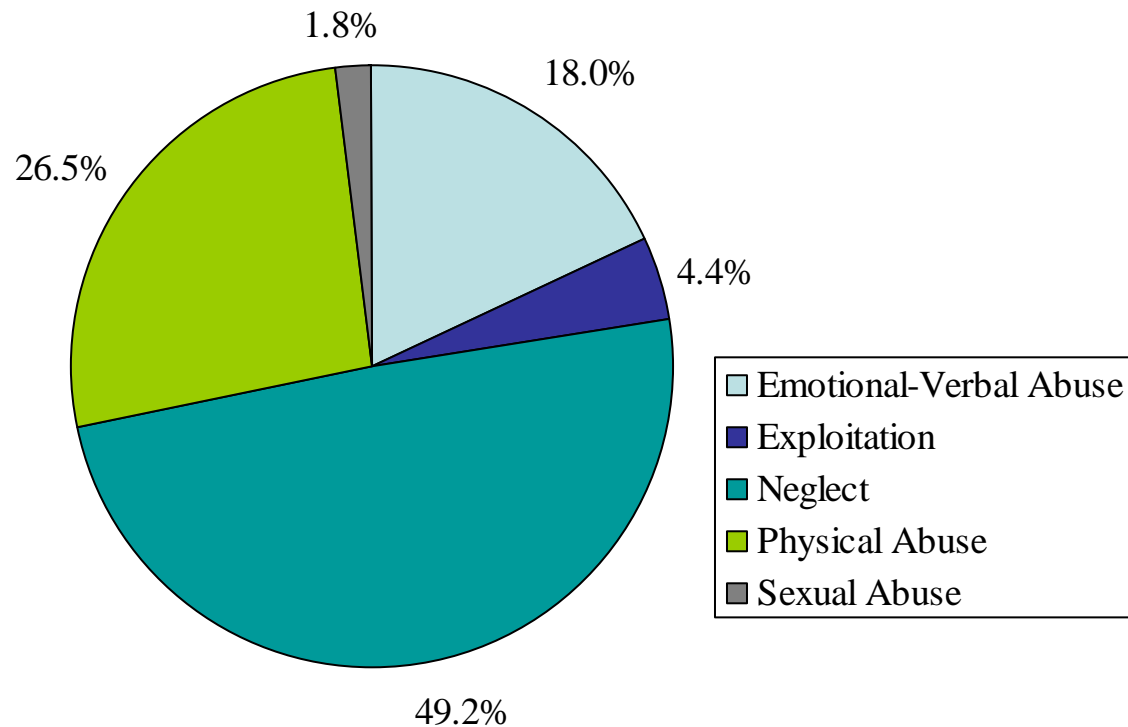
Upon completion of an investigation, the investigator prepares a written report that makes one of four potential findings:

- Confirmed - Preponderance of evidence indicates that an incident occurred
- Unconfirmed - Preponderance of evidence indicates that an incident did not occur
- Inconclusive - No preponderance of evidence supporting or refuting an allegation
- Unfounded - Allegation is spurious or patently without factual basis

The report is released to the:

- Appropriate provider officials;
- The Department of Aging and Disability Services State Office, in cases of state schools and waiver providers; and
- Law enforcement officials in confirmed cases that could constitute a criminal offense

FY 2007 Confirmed Allegations by Type: All MH and MR Settings



Reviews and Appeals

- APS notifies the reporter (if known) of the finding of the investigation and the method for appealing the findings.
- A reporter, person served, legal guardian of the person served, or Advocacy, Inc. may appeal the findings.
- An administrator or contractor may request a review of the finding of an investigation.
- APS State Office conducts reviews and appeals and may change the findings.

Fiscal Year 2007 Data

Allegations received	13,330
Completed investigations	8,088
Confirmed allegations	1,326
Confirmed investigations	897

Questions