

Section 9 Subject 9.3	Clinical Policies Patients' Rights	10/15/92 -Originated 06/20/14 -Reviewed w/ changes -Reviewed w/o changes
Policy 9.3.9	Reporting Suspected Abuse, Neglect and Exploitation of Children, the Elderly and/or Disabled Persons	- Nursing Service and Care Management - Authors

Reporting Suspected Abuse, Neglect, and Exploitation of Children, the Elderly and/or Disabled Persons

Definitions

Abuse: mental, emotional, physical, or sexual injury to a child, person 65 years or older, or adult with disabilities, or failure to prevent such injury.

Child: unmarried, under 18 years of age.

Disabled: a person with a mental, physical, or developmental disability that substantially impairs the person's ability to provide adequately for the person's care or protection, and who is either 18 years of age or older, or under 18 years of age but who has had the disabilities of minority removed.

Elderly: 65 years of age or older.

Exploitation: misusing the resources of a person 65 years or older or an adult with disabilities for personal or monetary benefit. This includes taking Social Security or SSI (Supplemental Security Income) checks, abusing a joint checking account, and taking property and other resources.

Family Violence: any act or serious threat by one member of a family or household intended to physically harm, bodily injure, or sexually assault another family member. The term also includes child abuse.

Neglect of a child: failure to provide a child with food, clothing, shelter and/or medical care; and/or leaving a child in a situation where the child is at risk of harm.

Neglect of a person 65 years or older or an adult with disabilities: results in starvation, dehydration, over- or under-medication, unsanitary living conditions, and lack of heat, running water, electricity, medical care, and personal hygiene.

For detailed definitions more closely mirroring the statutory definitions, please click on the following links:

- [Child abuse and neglect](#)
 - [Abuse, neglect and exploitation of the elderly or disabled](#)
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Policy

Texas laws requires any person who believes or suspects that (1) a child is being abused or neglected, or (2) a person sixty-five years of age or older or adult with disabilities is being abused, neglected, or exploited, to immediately report the circumstances to the Texas Department of Family and Protective Services (DFPS).

UTMB recognizes the importance of early intervention and reporting in accordance with Texas law.

Accordingly all patients are [assessed for signs and symptoms of abuse, neglect, assault and exploitation](#) during their initial admission or visit and reassessment.

A person making a report may do so confidentially, and is immune from civil or criminal liability if they make the report in good faith. However, any person who suspects abuse or neglect but fails to report it may be subject to criminal penalties, discipline by the appropriate state licensing board, and/or institutional discipline up to and including termination.

[Family violence](#) (including spouse or domestic partner abuse) may also be an indication of abuse or neglect.

NOTE: This policy does not apply if the suspected victim is a competent adult between the ages of 18 and 65, in which event the authorities may be notified only at the patient's request or with their consent.

Duty to Report

Child Abuse and Neglect

[Texas Family Code Chapter 261](#) requires any person having cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect by any person to immediately make a report to DFPS.

Any minor **under fourteen years of age** who has engaged in sexual activity (e.g., is pregnant, has a sexually transmitted disease, or states he or she has been sexually active) with an individual to whom the minor is not married is considered to be the victim of abuse.

Any minor **under seventeen years of age** is considered a victim of

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**Duty to Report,
continued**

abuse if he or she has engaged in sexual activity with an individual who (a) is more than three years older than the minor; (b) is the same sex as the minor; (c) used duress, force, or threatened the minor; or (d) is a convicted sex offender. *NOTE: the three-year age difference listed above in (a) is an affirmative defense that can be established in a court of law, not the emergency room. Mandatory reporting still applies, and age verification of the perpetrator should be done by the appropriate investigating law enforcement agency.*

Additional reporting requirements also apply to “**professionals**” (e.g., teachers, nurses, doctors, day-care employees, employees of a clinic or health care facility that provides reproductive services, juvenile probation officers, and juvenile detention or correctional officers):

- Professionals must make a report within forty-eight hours of first suspecting that a **child** has or may have been abused or neglected.
- This duty to report cannot be delegated, and the professional cannot rely on another person to make the report.

Abuse, Neglect and Exploitation of Elderly or Disabled Persons

[Texas Human Resources Code Chapter 48](#) requires any person having cause to believe that an elderly or disabled person is being abused, neglected, or exploited to immediately make a report to DFPS.

There are two ways to report suspected abuse, neglect and exploitation to DFPS:

- **By phone:** DFPS Abuse Hotline (24/7)
1-800-252-5400
- **Online:** www.txabusehotline.com

Staff suspecting abuse, neglect or exploitation should also consult with:

1. The inpatient’s care manager (in the hospital setting); or
2. Their immediate supervisor and the attending physician (in the ambulatory setting), who will then determine whether to consult with the ambulatory care manager.

Suspected abuse, neglect or exploitation perpetrated by a UTMB employee may also be reported to the employee’s supervisor, the Department of Risk Management, or other state agencies as appropriate.

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Documentation

Documentation must reflect all assessment findings, including:

1. Location and extent of physical injuries, if present
2. The patient's statement of how the injury occurred;
3. Statements from others of how the injury occurred, if available;
4. Notification of physician;
5. Notification of appropriate authorities, if applicable; and
6. The patient or guardian's plan for maintaining a safe environment.

Disclosure to state authorities will be recorded in the MYUTMB Accounting of Disclosures Database in accordance with [IHOP Policy 6.2.26 Patient Rights Related to Protected Health Information](#).

Immunity

A person acting in good faith who reports or assists in the investigation of a report of alleged abuse or neglect, or who testifies or otherwise participates in judicial proceeding arising from a report, petition, or investigation of alleged abuse or neglect, is immune from civil or criminal liability that might otherwise be incurred or imposed.

A person who reports the person's own abuse or neglect of a child, elderly person or disabled person, or who acts in bad faith or with malicious purpose in reporting alleged abuse or neglect is not immune from civil or criminal liability.

A person who knowingly makes a false report with the intent to deceive, or who has cause to believe a child, elderly person, or disabled person may be adversely affected by abuse or neglect and knowingly fails to report may be subject to criminal penalties.

Consent for Examination and Treatment

Except as noted below, a physician, dentist, or psychologist having reasonable grounds to believe that a child's physical or mental condition has been adversely affected by abuse or neglect may examine the child without the consent of the child, the child's parents, or other person authorized to consent to the child's treatment. Such examination may include X-rays, blood tests, photographs, and penetration of tissue necessary to accomplish those tests.

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Consent for Examination and Treatment, continued

A physician, dentist or psychologist may NOT examine a child without first obtaining consent if the child is over sixteen (16) years of age and refuses to consent, or consent for the child is prohibited by a court order.

Any medical facility or physician examining or treating a child, elderly person, or disabled person suspected to be the victim of abuse, neglect or exploitation is not liable for any damages arising from the examination or treatment, except those damages resulting from negligence by the facility or the physician.

Emergency Action

Children

DFPS has limited authority, if the situation so warrants because there is an immediate danger to the physical health or safety of a child, to take the child into emergency custody without first obtaining a court order. If DFPS does not take the child into emergency custody and there is reason to believe there is an immediate danger to the physical health or safety of the child, employees should contact UTMB Legal Affairs and/or Hospital Administration. Legal Affairs personnel are available during non-working hours through the on-call administrator.

Adults/Disabled Persons

If a patient is incapable of understanding the nature of the services offered because of mental or physical impairment and therefore cannot agree to receive or reject protective services, DFPS may petition the appropriate court with jurisdiction in the county in which the patient resides for an emergency order authorizing service. If the court is closed at the time, DFPS may take the patient into emergency custody and move them to safer surroundings, authorize medical treatment, and order or provide other services necessary to remove conditions creating the threat to life.

Unless DFPS obtains an emergency order (or takes the patient into emergency custody because the court is closed at the time), services may not be provided to an elderly or disabled person who has the capacity to consent to receive protective services and who withdraws or refuses consent to receive protective services.

Staff Education and Training

The Education Resource Center (ERC) and the Department of Care Management are available to provide in-service education for UTMB staff regarding the identification and reporting of abuse and neglect.

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References

[Texas Department of Family and Protective Services](#)

[DFPS Quick Reference Flyer](#)

[DSHS Child Abuse Screening, Documenting, and Reporting Policy for Contractors/Providers \(January 2009\)](#)

Texas Family Code

[Chapter 32 \(Consent to Treatment of Child by Non-Parent or Child\)](#)

[Chapter 261 \(Investigation of Report of Child Abuse or Neglect\)](#)

[Chapter 262 \(Procedures in by Governmental Entity to Protect Health and Safety of Child\)](#)

Texas Human Resources Code

[Chapter 48 \(Investigations and Protective Services for Elderly and Disabled Persons\)](#)

UTMB Handbook of Operating Procedures

[IHOP 6.2.26 Patient Rights Related to Protected Health Information](#)

[IHOP 9.3.2 Consent to Photograph, Video/Audio Record and/or Televised Patients](#)

[IHOP 9.3.34 Sexual Assault Examination and Collection of Forensic Evidence for the Adult or Adolescent Patient](#)

[Useful assessment criteria for identifying signs and symptoms of abuse, neglect, assault and exploitation](#)

[Regional Maternal and Child Health Program Policy 13.7, Assessment and Screening of Domestic Violence](#)
