

APPENDIX 1

DSHS Child Abuse Screening, Documenting, and Reporting Policy For Contractors/Providers

Reporting Generally

- I. A professional as defined in the law is required to report not later than the 48th hour after the hour the professional has cause to believe the child has been or may be abused as defined in §261.001(1) or 261.401, Family Code, or is the victim of the offense of indecency with a child and the professional has cause to believe the child has been abused as defined in §261.001(1), Family Code.
- II. A non-professional shall make a report immediately after the non-professional has cause to believe that the child's physical or mental health or welfare has been adversely affected by abuse.
- III. A report shall be made regardless of whether the contractor/provider staff suspects or knows that a report may have previously been made.
- IV. Reports of abuse or indecency with a child shall be made to:
 - a. Texas Department of Family and Protective Services (DFPS):
 - i. Texas Abuse Hotline at 1-800-252-5400 operated 24 hours a day, 7 seven days a week,
 - ii. by DFPS fax at 1-800-647-7410,
 - iii. online at <https://www.txabusehotline.org/Default.aspx>; or
 - b. any local or state law enforcement agency; or
 - c. the state agency that operates, licenses, certifies, or registers the facility in which the alleged abuse occurred; or
 - d. the agency designated by the court to be responsible for the protection of children.
When the alleged or suspected abuse involves a person responsible for the care, custody, or welfare of the child, the report **must be made to DFPS**.
- V. The law requires that the following information, **if known**, be reported:
 - a. name and address of minor;
 - b. name and address of the minor's parent or person responsible for the care, custody, or welfare of the child if not the parent; and
 - c. any other pertinent information concerning the alleged or suspected abuse, such as the child's school, name and age of the alleged abuser, and description of the child's condition or injury. If a contractor does not routinely collect other kinds of information that DFPS or local law enforcement may request, the contractor/provider

is not required by law or the DSHS policy to ask the client for that information.

Additional information included in the report, however, can be helpful to DFPS or law enforcement in investigating the situation.

- VI. Reports can be made anonymously; however, contractors/providers are encouraged to provide their contact information so that the receiving agency can conduct a thorough investigation, including follow-up with the contractor/provider, if necessary.
- VII. Confidentiality
 - a. A contractor/provider may not reveal whether or not the child has been tested for or diagnosed with HIV or AIDS, unless the child is under the age of 13 years and such test result or diagnosis is relevant to the report of abuse.
 - b. Family Code §261.001 states that reporting requirements apply regardless of professional confidentiality and licensing laws and rules for professionals. It is not a breach of confidentiality to report child abuse.
 - c. For those programs also governed by federal laws, regulations, and policies, the federal grantors do not consider it a breach of confidentiality to follow state laws on reporting of child abuse.
 - d. Family Code §261.201 provides that reports of abuse to DFPS as well as the identity of the person making the report are confidential and may be disclosed only for purposes consistent with the Family Code and applicable state or federal law or regulations. The law is not absolutely clear on what discretion law enforcement has regarding disclosure of the identity of the person making the report. DSHS recommends contractors/providers discuss this with their own legal counsel and/or local law enforcement about how this will be handled.
- VIII. If the identity of the minor is unknown (e.g., the minor is at the contractor/provider's office to anonymously receive testing for HIV or an STD), no report is required.
- IX. For DSHS monitoring purposes, contractors shall document that an affirmative defense as defined for purposes of compliance with this policy exists concerning a minor who is under the age of 17 and who was determined to have been abused as defined by the Family Code §261.101, including but not limited to, victims of an offense under Penal Code §21.11 or §22.011.
 - a. There is no affirmative defense for abuse of a minor under the age of 14.
 - b. An acceptable affirmative defense for abuse as defined in the Penal Code §21.11 (sexual indecency with a child) may be that the actor was not more than three years older than the victim, and of the opposite sex, and the actor did not use duress, force or a threat against the victim at the time of the offense.
 - c. An acceptable affirmative defense for abuse as defined in the Penal Code §22.011 (sexual assault) may be that the actor was not more than three years older than the victim at the time of the offense and the victim was a child 14 years of age or older.

- X. Circumstances which trigger the responsibility of the contractor/provider to determine if a report of abuse is required include but are not limited to:
 - a. Minors who are postpartum, pregnant, or have a child; and
 - b. Minors who request a pregnancy test.
- XI. Circumstances which may trigger the responsibility to determine if a report of abuse is required include but are not limited to:
 - a. Minor seeking birth control: DSHS does not require a contractor/provider to report abuse based solely on a minor's request for birth control. The contractor/provider must determine whether acts have occurred which constitute abuse and may determine whether any affirmative defense applies, based on all information available from the contractor/provider's routine treatment of the minor.
 - b. Minor who self-reports that he or she has a sexually transmitted disease (STD): DSHS does not require a contractor/provider to report abuse based solely on the statement of a minor that he or she has an STD. If test results from a physician or someone working under a physician's orders confirms a diagnosis of an STD, the contractor/provider must report or determine an affirmative defense to prosecution. However, without a medically confirmed diagnosis of an STD, the contractor/provider must determine whether acts have occurred which constitute abuse and may determine whether any affirmative defense applies, based on all the information available from the contractor/provider's routine treatment of the minor.
 - c. Minor who is married and is the subject of a report of sexual contact with a person who is not her or his spouse.
- XII. If the perpetrator is the spouse of the married minor at the time of the sexual contact, no report is required under DSHS policy.
 - a. Contractors/providers may, but are not required to, request documentation that a minor is married or divorced. The contractor/provider may choose to rely on statements by the minor as to his/her marital status.
- XIII. A court order for emancipation of a minor for general purposes makes the person who is otherwise 16 years old an adult for all legal purposes under Texas law. A court order of emancipation for limited purposes means the 16-year old person has certain legal capacities, such as the ability to own and/or manage property, to sue and be sued in court, or to execute contracts, but not others exercised by adults, such as voting.
 - a. If a contractor/provider has reason to believe that a 16-year old minor is the subject of an order of emancipation for general or all purposes, based on review of the order itself and/or a statement from the minor, no report of child abuse should be made.
 - b. If a contractor/provider has reason to believe that a 16-year old minor is the subject of an order of emancipation for limited purposes, based on review of the order itself and/or a statement from the minor, a report of child abuse should be made if supported by the facts.

Reporting Suspected Sexual Abuse

- I. Each contractor/provider shall ensure that its employees, volunteers, or other staff reports a minor under 14 years of age who is pregnant or has a confirmed STD acquired in a manner other than through perinatal transmission or transfusion. A sexually transmitted disease is any disease that is transmitted by any sexual activity as described in §§21.01, 21.11, and 22.011 of the Penal Code, whether reportable or not.
- II. The Texas Family Code, Chapter 261, requires reporting of various types of sexual abuse. Instances of reportable abuse include but are not limited to, the actions described in: Penal Code, §21.11(a) relating to indecency with a child; Penal Code, §21.01(2) defining "sexual contact"; Penal Code, §43.01(1) or (3) – (5); or Penal Code, §22.011(a)(2) relating to sexual assault of a child; or Penal Code, §22.021(a)(2) relating to aggravated sexual assault of a child.
- III. The DSHS Child Abuse Reporting Form shall be used in the following manner:

(1) to fax reports of abuse to DFPS or law enforcement and to document the report in the client record;

(2) to document reports made by telephone;

(3) to document decisions not to report based on the existence of an affirmative defense.

(4) to document the report and maintain in client's record even when report is completed online at <https://www.txabusehotline.org/Default.aspx>

All forms or online print-outs (confirmation of reporting) shall be retained by the contractor/provider in a manner required by the program and are subject to DSHS monitoring. All forms or online print-outs concerning clients less than 14 years of age as described in item I. of this section will be examined during monitoring and must be readily available to the DSHS monitoring staff.

[Please note: Section III was modified slightly from the DSHS policy in order to ensure that the DSHS Child Abuse Reporting Form be used in all instances, even when an on-line report regarding suspected abuse or neglect is used as the mechanism for reporting.]