

El Paso - Ambulatory Clinic Policy and Procedure

Title: MANAGEMENT OF THE SUSPECTED ABUSE VICTIM	Policy Number: EP 6.4
Regulation Reference: Joint Commission: PC.01.02.09, RI.01.06.03; Tx Family Code, Chapters 91, 92 and 261; Tx. Hum. Res. Code, Chapter 48; DSHS Rider 23	Effective Date: 5/2014

Policy Statement:

It is the policy of the Texas Tech University Health Sciences Center at El Paso (TTUHSC at El Paso) to provide staff with adequate information to help recognize the signs of suspected abuse victims (child, elderly, disabled, and domestic), the requirements of reporting abuse, and available assistance for the victims.

Scope and Distribution:

This policy applies and will be distributed to all TTUHSC at El Paso ambulatory clinics, also known as Texas Tech Physicians of El Paso.

Procedure:

1. Health Care Professionals (HCP) will assess patients for physical, sexual, mental, and emotional abuse/neglect. If abuse and/or neglect are suspected, the HCP will assess the patient, and record detailed observations of the patient's mental, physical, and emotional status in the medical record. (See appropriate attachment for Child, Elderly, Disabled or Domestic Abuse).
2. The HCP will document all vital or "confessional" statements made by the patient, during the patient's clinic visit, using the patient's exact words. If no statements are made, the reporting will be based on physical evidence alone, as indicated.
3. Treatments will be carried out as indicated.
4. The HCP will notify the appropriate law enforcement agency as required by law and document in the medical record the time and agency notified. Both child and elder/disabled abuse must be reported.
 - a. Suspected Child Abuse/ Mandatory Reporting (See Recognizing and Reporting Child Abuse, Attachment 6.4 A) TTUHSC adopts the DSHS Child Abuse Screening, Documenting, and Reporting Policy for Contractors/Providers by reference in this policy and will comply with all provisions of the DSHS policy.

As contractors/providers of certain Department of State Health Services (DSHS) programs, the HCP must also fill out the DSHS Child Abuse Reporting Form (Attachment 6.4 D) when reporting or screening for child abuse. The HCP has a non-delegable duty and cannot rely on anyone else to make the report. This duty can be satisfied if the HCP has documented confirmation that the abuse has already been reported by another HCP.

For those 14, 15, 16, using the affirmative defense, screening will be documented on the DSHS Child Abuse Reporting Form. There is no affirmative defense of a minor under the age of 14.

A report must be made when:

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- i. A person has cause to believe that a child's physical or mental health or welfare has been or may be adversely affected, or that a child may have died, as a result of abuse or neglect by any person. Tex. Family Code, §261.101.; or
- ii. Circumstances which trigger the responsibility of the provider to determine if a report of abuse is required include but are not limited to:
 1. Minors who are postpartum, pregnant or have a child; and
 2. Minors who request a pregnancy test
- iii. Circumstances which may trigger the responsibility to determine if a report of abuse is required include but are not limited to:
 1. Minors seeking birth control;
 2. Minors who report they have an STD;
 3. Minor who is married and reports sexual contact with a person who is not her or his spouse.
- iv. If the perpetrator is the spouse of the married minor at the time of the sexual contact, no report is required.
- v. 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 by not limited to, victims of an offense under Penal Code §21.11 or §22.011.
 1. There is no affirmative defense for abuse of a minor under the age of 14.
 2. 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 threat against the victim at the time of the offense.
 3. 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.

It may not be necessary to make a report if the child is 14-16 years old and engaged in sexual contact with a partner of the opposite sex, not more than three (3) years older than the child and no duress, force or threat was used. Tex. Family Code, §261.101 and Tex. Penal Code, § 21.11. Screening must be done using the DSHS Child Abuse Reporting Form that will then be placed in the Medical Record.
- vi. 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) & §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 Family Code. See Statutory reference.

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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. 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.

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.

Each contractor/provider shall ensure that its employees, volunteers, or other staff reports a minor less than 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.

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.

Texas Family Code Chapter 261 can be found at:

<http://www.statutes.legis.state.tx.us/docs/FA/html/FA.261.htm>

Texas Penal Code Chapter 21, etc. can be found at:

<http://www.statutes.legis.state.tx.us/docs/PE/html/PE.21.htm#21.11>

- vii. Reports of abuse or indecency with a child shall be made to:
1. Texas Department of Family and Protective Services (DFPS):
 - a. Texas Abuse Hotline at 1-800-252-5400 operated 24 hours a day, 7 days a week.
 - b. By DFPS fax at 1-800-647-7410
 - c. Online at <https://www.txabusehotline.org/>; or
 2. Any local or state law enforcement agency; or
 3. The state agency that operates, licenses, certifies, or registers the facility in which the alleged abuse occurred; or
 4. 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.
- viii. The DSHS Child Abuse Reporting Form (See attachment 6.4D) must be used for all screening and reporting of suspected abuse. This form is an official DSHS form and must not be modified. The Child Abuse Reporting Form will become part of the medical record and should also be maintained separately for review by DSHS Monitors.

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The DSHS child abuse reporting requirements can be found at:
<http://www.dshs.state.tx.us/childabusereporting/default.shtm>

- b. Suspected Elderly or Disabled Abuse Mandatory Reporting (See Recognizing and Reporting Elder or Disabled Abuse, Attachment 6.24 B)

A person having cause to believe that an elderly or disabled person is in the state of abuse, neglect or exploitation (including financial) or believes that the physical or mental health or welfare has or may be adversely affected by abuse or neglect shall immediately make a report. Tex. Hum. Res. Code, § 48.001 and Tex. Health and Safety Code, § 242.122

The report can be made to the following sources:

- i. 911 for all emergency situations;
 - ii. Texas Department of Family and Protective Services (DFPS) at **1-800-252-5400** for statewide intake; or
 - iii. <https://www.txabusehotline.org> which takes 24 hours to process. You MUST include the "s" in <https://> above to access the site. Users will then be prompted for a user name and a password.
- c. Domestic or Adult Victim of Suspected Family Violence (See Recognizing and Reporting Adult Victims of Family Violence, Attachment 6.24 C)
- i. A person who witnesses family violence is encouraged to report the family violence to a local law enforcement agency. Otherwise, reporting family violence constitutes a breach of confidentiality unless there is probability of imminent physical injury to the patient, physician, or to others or immediate mental or emotional injury to the patient. If a reasonable belief as to this is formed, the HCP should report this to law enforcement only. Tex. Fam. Code §91.001, 92.001.
 - ii. A HCP who treats a person for injuries that the HCP has reason to believe were caused by family violence shall:
 1. Immediately provide the person with written information regarding the nearest family violence shelter which is written in both English and Spanish. (See the Domestic Violence Notice, 6.24E specific to your campus).
 2. Document in the person's medical record:
 - a. The fact that the person has received the information provided under subsection 1); and
 - b. The reason for the medical professional's belief that the person's injuries were caused by family violence.

5. Departments shall maintain a record of reports made of abuse or neglect.

- a. For reports made by phone, a log will be kept containing the following:
 - i. Date of report.
 - ii. Person's medical record number (if applicable).
 - iii. Name of the person that submitted the report.
 - iv. Agency the report was submitted to.

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- b. For reports made by fax machine, the fax confirmation sheet stapled to a copy of the reporting form will serve as record for the report.
- c. For reports made on-line, the printed confirmation page or printed copy of the confirmation e-mail will serve as record for the report.

All information obtained will be confidential between the primary care givers and the patient and will not be released without the patient's authorization unless otherwise authorized by law.

Attachments:

- 6.4A: Recognizing and Reporting Child Abuse,*
- 6.4B: Recognizing and Reporting Elder or Disabled Abuse,*
- 6.4C: Recognizing and Reporting of Adult Victims of Family Violence,*
- 6.4D: DSHS Child Abuse Reporting Form, and*
- 6.4E: El Paso Domestic Violence Notices*

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