

Home & Community Support Services Agencies Regulatory Compliance for Administrators November 15, 2021

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This session covers topics outlined in HCSSA Licensure rule related to information on licensing standards and applicable state or Federal Laws, including, Texas Health & Safety Code. Chapter 142(HCSSA) and Chapter 250.(NAR and Criminal History Checks of Employees and Applicants). Rule Reference: 558.259 (c)(1), and 558.259 (c)(2),(A),(B),(C)&(G); and 558.259 (d)(2)&(4).

HCSSA Administrator Key Licensure Standards

Part II

Key Regulations – Agency Administration

§558.241 Management (License holder responsibilities)

- Conduct of agency, adoption, implementation, enforcement, and monitoring to ensure compliance with agency policies required by Chapter 558.
- Ensure agency policies comply with applicable Statute, and that provisions are administered to provide safe, professional and quality health care.
- Must comply with enforcement orders imposed by Chapter 558 or by the HHS Commissioner.
- Ensure the applicant; a controlling person of the applicant; a person with a disclosable interest; an affiliate of the applicant; the administrator; the alternate administrator; and the chief financial officer must not have convictions described in Chapter 99 of Title 40, during the timeframes outlined in section §558.11.

Key Regulations – Agency Administration

§558.11 Timeframes

- On the date of the application:
 - is subject to denial or refusal as described in Chapter 99 of this title (relating to Denial or Refusal of License) during the time frames described in that chapter;
 - has an unsatisfied final judgment in any state or other jurisdiction;
 - is in default on a guaranteed student loan (Education Code, §57.491); or
 - is delinquent on child support obligations (Family Code, Chapter 232);

Key Regulations – Agency Administration

§558.11 Timeframes (continued)

- For two years preceding the date of the application, has a history in any state or other jurisdiction of any of the following: an unresolved federal or state tax lien;
 - an eviction involving any property or space used as an inpatient hospice agency; or
 - an unresolved final Medicare or Medicaid audit exception;

Key Regulations – Agency Administration

§558.11 Timeframes (continued)

- For 12 months before the date of the application, has a history in any state or other jurisdiction of any of the following:
 - denial, suspension or revocation of a HCSSA license or a license for a health care facility;
 - surrendering a license before expiration or allowing a license to expire instead of the licensing authority proceeding with enforcement action;
 - a Medicaid or Medicare sanction or penalty relating to the operation of an agency or a health care facility;
 - operating an agency that has been decertified in any state under Medicare or Medicaid; or
 - debarment, exclusion or involuntary contract cancellation in any state from Medicare or Medicaid.

Key Regulations – Agency Administration

[§558.242](#) Organizational Structure and Lines of Authority

- Prepare and maintain a current written description of the agency's organizational structure (chart or a narrative) that must include:
 - services provided;
 - governing body, administrator, supervising nurse, advisory committee, interdisciplinary team, and staff, as appropriate, based on services provided by the agency;
 - lines of authority and the delegation of responsibility down to and including the client care level.

Key Regulations – Agency Administration

§558.243 Administrative and Supervisory Responsibilities

- License holder or designee must designate an individual who meets the qualifications and conditions set out in §558.244 of this chapter (relating to Administrator Qualifications and Conditions and Supervising Nurse Qualifications) to serve as the administrator of the agency.
- License holder or designee must designate in writing an alternate administrator who meets the qualifications and conditions of an administrator to act in the absence of the administrator.

Key Regulations – Agency Administration

§558.243 Administrative and Supervisory Responsibilities

- Responsible for implementing and supervising the administrative policies and operations of the agency and for administratively supervising the provision of all services to agency clients on a day-to-day basis; and must:
 - manage the daily operations;
 - organize and direct the agency's ongoing functions;
 - administratively supervise the provision of quality care;
 - supervise to ensure implementation of agency policy and procedures;
 - ensure documentation of services is accurate and timely;

Key Regulations – Agency Administration

§558.243 Administrative and Supervisory Responsibilities

- employ or contract with qualified personnel;
- ensure adequate staff education and evaluations according to §558.245(b) relating to Staffing Policies;
- ensure accuracy of public information materials and activities;
- implement an effective budgeting and accounting system that promotes the health and safety of the agency's clients; and
- supervise and evaluate client satisfaction survey reports on all clients served.

Key Regulations – Agency Administration

§558.243 Administrative and Supervisory Responsibilities

- Administrator or alternate administrator must be available in person or by telephone during the agency's operating hours and in accordance with §558.243, including:
 - Section [§558.210](#) relating to Agency Operating Hours;
 - Section [§558.404](#) relating to Standards Specific to Agencies Licensed to Provide Personal Assistance Services);
 - Section [§558.523](#) relating to Personnel Requirements for a Survey; and
 - Section [§558.527](#) relating to Post-Survey Procedures.

Key Regulations – Agency Administration

§558.243 Administrative and Supervisory Responsibilities

- Must designate in writing an employee who must provide HHS surveyors entry to the agency in accordance with rule section §558.523(e) of this chapter (relating to Personnel Requirements for a Survey) if the administrator and alternate administrator are not available.

Key Regulations – Agency Administration

§558.243 Administrative and Supervisory Responsibilities

- Except for PAS agencies, an agency licensed to provide licensed home health services (LHHS), licensed and certified home health services (L&CHHS), or hospice services must directly employ or contract with an individual who meets the qualifications in section §558.244 to serve as the supervising nurse.
- The agency must designate in writing a similarly qualified alternate to serve as supervising nurse in the absence of the supervising nurse.

Key Regulations – Agency Administration

§558.243 Administrative and Supervisory Responsibilities

- Supervising nurse or alternate supervising nurse must:
 - be available to agency personnel at all times in person or by telephone;
 - participate in activities relevant to services furnished, including the development of qualifications and assignment of agency personnel;
 - ensure that a client's plan of care or care plan is executed as written; and

Key Regulations – Agency Administration

558.243 Administrative and Supervisory Responsibilities

- Ensure that an appropriate health care professional performs a reassessment of a client's needs:
 - when there is a significant health status change in the client's condition;
 - at the physician's request; or
 - after hospital discharge.
- The supervising nurse may also be the administrator of the agency if the supervising nurse meets the qualifications and conditions of an administrator described in §558.244(a) and (b) of this chapter.
- Supervise branch offices or alternate delivery sites.

Key Regulations – Agency Administration

[558.244](#) Administrator Qualifications and Conditions and Supervising Nurse Qualifications

- For Licensed Home Health Services, (LHHS); Licensed and Medicare Certified Home Health Services (L&CHHS) , or Hospice services, the administrator and the alternate administrator must:
 - Be a licensed physician, RN, licensed social worker, licensed therapist, or licensed nursing home administrator with at least one year of management or supervisory experience in a health related setting; **OR**
 - Have a high school diploma or GED with at least two years management or supervisory experience in a health related setting.

Health Related Settings

- home and community support services agency;
- hospital;
- nursing facility;
- hospice;
- an outpatient rehabilitation center;
- psychiatric facility;
- intermediate care facility for individuals with an intellectual disability or related conditions; or
- a licensed health care delivery setting providing services for individuals with functional disabilities.

Key Regulations – Agency Administration

§558.244 Administrator Qualifications and Conditions and Supervising Nurse Qualifications

- In addition, for Hospice Services, administrator and alternate administrator must also:
 - Be a hospice employee, and
 - Have any additional education and experience required by the hospice's governing body as specified in the agency's job description.

Key Regulations – Agency Administration

§558.244 Administrator Qualifications and Conditions and Supervising Nurse Qualifications

For personal assistance services (PAS) only, must meet at least one of the following:

- high school diploma or a GED with at least one year experience or training in caring for individuals with functional disabilities,
- completed two years of full-time study at an accredited college or university in a health-related field, or
- meet one of the qualifications listed at 558.244 (a)(1) (A).

Key Regulations – Agency Administration

§558.244 Administrator Qualifications and Conditions and Supervising Nurse Qualifications

- Must be able to read, write, and comprehend English;
- If designated on or **after** December 1, 2006 must meet initial educational training requirements at §558.259 related to the Initial Educational Training for Administrators;
- If designated as an administrator or alternate **before** December 1, 2006 must meet the continuing education requirements specified in §558.260 related to Continuing Education.

Key Regulations – Agency Administration

§558.244 Administrator Qualifications and Conditions and Supervising Nurse Qualifications

- A person is not eligible (for 12 months) if the person was the administrator of an agency cited with a violation that resulted in HHS taking enforcement action against the agency while the person was the administrator of the cited agency.
- 12 months begins after the date of the enforcement action. For purposes of this paragraph, enforcement actions means license revocation, suspension, emergency suspension of a license, denial of an application for a license, or the imposition of an injunction but does not include administrative or civil penalties.

Key Regulations – Agency Administration

§558.244 Administrator Qualifications and Conditions and Supervising Nurse Qualifications

- If HHS prevails in one enforcement action against the agency and also proceeds with, but does not prevail in another enforcement action based on some or all of the same violations, this paragraph does not apply.
- Must not be convicted of an offense described in Title 26, [Chapter 560](#), related to Denial or Refusal of License during the time frames described in [§558.11](#) Timeframes.

Key Regulations – Agency Administration

§558.244 Administrator Qualifications and Conditions and Supervising Nurse Qualifications

- For an agency without a home dialysis designation, a supervising nurse and alternate supervising nurse must each:
 - Be a registered nurse (RN) licensed in Texas or in accordance with the Texas Board of Nursing rules for Nurse Licensure Compact (NLC), and
 - Have at least one year experience as an RN within the last 36 months.

Key Regulations – Agency Administration

§558.244 Administrator Qualifications and Conditions and Supervising Nurse Qualifications

- For an agency with home dialysis designation, a supervising nurse and alternate supervising nurse must each
 - Be an RN licensed in Texas or in accordance with the Texas Board of Nursing rules for NLC, and
 - Have at least three years of current experience in hemodialysis, or
 - Have at least two years of experience as an RN and hold a current certification from a nationally recognized board in nephrology nursing or hemodialysis, or
 - Be a nephrologist or physician with training or demonstrated experience in the care of ESRD clients.

Key Regulations – Agency Administration

[§558.259](#) Initial Educational Training

Applies only to an administrator and alternate designated for the first time on or after December 1, 2006.

- Must complete a total of 24 clock hours of educational training in the administration of an agency before the end of the first 12 months after designation to the position.
- Prior to designation, must complete eight clock hours of educational training in the administration of an agency. The initial eight clock hours must be completed during the 12 months immediately preceding the date of designation to the position.
- Mandatory subjects listed at §558.259 (c).

Key Regulations – Agency Administration

§558.259 Initial Educational Training

- A first-time administrator and alternate must complete an additional 16 clock hours of educational training before the end of the first 12 months after designation to the position.
- Any of the additional 16 hours may be completed prior to designation if completed during the 12 months immediately preceding the date of designation to the position.
- Mandatory subjects listed in rule §558.259 (d); and may include other topics related to duties of administrator.

Key Regulations – Agency Administration

§558.259 Initial Educational Training

- The 24-hour educational training must be met through structured, formalized classes, correspondence courses, competency-based computer courses, training videos, distance learning programs, or off-site training courses. Subject matter that deals with the internal affairs of an organization does not qualify for credit.
- The training must be provided or produced by:
 - An academic institution, ***a recognized state or national organization or association***, an independent contractor who consults with agencies, or an agency.

Key Regulations – Agency Administration

§558.259 Initial Educational Training

- If an agency or independent contractor provides or produces the training, the training must be approved by HHS or ***recognized by a state or national organization or association***. The agency must maintain documentation of this approval or recognition for review by HHS surveyors.
- HHSC [HCSSA Provider Resources Webpage](#) lists providers that have had their curriculum reviewed and determined it met standards per 558.259 and 558.260.
- Joint training provided by HHS may be applied toward the 24 hours of educational training required, if the joint training meets the educational training requirements described in §558.259 (c) and (d).

Key Regulations – Agency Administration

[§558.260](#) Continuing Education

- Must complete 12 clock hours of continuing education within each 12-month period beginning with the date of designation.
- Mandatory content listed at [§558.260 \(a\)](#).
- An Administrator designated before December 1, 2006, who has not served as an administrator for 180 days or more immediately preceding the date of designation. Within the first 12 months after the date of designation, at least 8 of 12 clock hours must include topics listed in §558.259 (c). The remaining 4 hours must include topics related to the duties of an administrator and may include the topics listed §558.260 (a).

Key Regulations – Agency Administration

§558.260 Continuing Education

– Documentation of continuing education must:

- be on file at the agency; and
- contain the name of the class or workshop, the topics covered, and the hours and dates of the training.

An administrator or alternate administrator must not apply the pre-survey conference toward the continuing education requirements in this section.

Key Regulations – Agency Administration

[§558.247](#) Verification of Employability and Use of Unlicensed Persons

- Applies to unlicensed applicant for employment and an unlicensed employee, if duties would or do include face-to-face contact with a client.
 - An agency must conduct a criminal history check authorized by, and in compliance with Texas Health and Safety Code (THSC), Chapter 250 Nurse Aide Registry and Criminal History Checks of Employees and Applicants for Employment in Certain Facilities Serving the Elderly or Persons with Disabilities.

Key Regulations – Agency Administration

§558.247 Verification of Employability and Use of Unlicensed Persons

- Agency must not employ an unlicensed applicant whose criminal history check includes a conviction listed in THSC §250.006 that bars employment or a conviction the agency has determined is a contraindication to employment. (If the conviction is not listed in §250.006, the agency must document its review of the conviction and its determination of whether the conviction is a contraindication of employment).
- Before the agency hires an unlicensed applicant, or before an unlicensed employee's first face-to-face contact with a client, the agency must search the Nurse Aide Registry (NAR) and the Employee Misconduct Registry (EMR) using the HHSC website to determine if the applicant or employee is listed in either registry as unemployable.

Key Regulations – Agency Administration

§558.247 Verification of Employability and Use of Unlicensed Persons

- The agency must not employ an unlicensed applicant who is listed as unemployable in either registry
 - The agency must provide written information about the EMR to an unlicensed employee in compliance with the requirements in §93.3(c) of this title (Employment and Registry Information).
 - In addition to the initial verification of employability, the agency must search the NAR and the EMR to determine if the employee is listed as unemployable in either registry as follows:
 - For an employee most recently hired before September 1, 2009 – by August 31, 2011 and at least every 12 months thereafter.
 - For an employee most recently hired on or after September 1, 2009 – at least every 12 months.

Key Regulations – Agency Administration

§558.247 Verification of Employability and Use of Unlicensed Persons

- The agency must immediately discharge an unlicensed employee whose duties would or do include face-to-face contact with a client when the agency becomes aware:
 - That the employee is designated in the NAR or the EMR as unemployable, or
 - That the employee's criminal history check reveals conviction of a crime that bars employment or that the agency has determined is a contraindication to employment.

Key Regulations – Agency Administration

§558.247 Verification of Employability and Use of Unlicensed Persons

- Applies to an unlicensed volunteers, if the person's duties would or do include face-to-face contact with a client.
- An agency must conduct a criminal history check before an unlicensed volunteer's first face-to-face contact with a client of the agency.
- The agency must not use the services of an unlicensed volunteer for duties that include face-to-face contact with a client whose criminal history information includes a conviction that bars employment under THSC §250.006 or a conviction that the agency has determined is a contraindication to employment. (If the conviction is not listed in §250.006, the agency must document its review of the conviction and its determination of whether the conviction is a contraindication of employment).

Key Regulations – Agency Administration

§558.247 Verification of Employability and Use of Unlicensed Persons

- Before an unlicensed volunteer's first face-to-face contact with a client, the agency must conduct a search of the NAR and the EMR using the HHSC website to determine if the unlicensed volunteer is listed in either registry as unemployable.
- The agency must not use the services of an unlicensed volunteer who is listed as unemployable in either registry.
- The agency must provide written information about the EMR that complies with the requirements of §93.3(c) of this title to an unlicensed volunteer within 5 working days from the date of the person's first face-to-face contact with a client.

Key Regulations – Agency Administration

§558.247 Verification of Employability and Use of Unlicensed Persons

- In addition to the initial verification of employability, the agency must search the NAR and the EMR to determine if a volunteer is designated in either registry as unemployable, as follows:
 - For a volunteer with face-to-face contact with a client for the first time before September 1, 2009 – by August 31, 2011 and at least every 12 months thereafter, and
 - For a volunteer with face-to-face contact with a client for the first time on or after September 1, 2009 at least every 12 months.

Key Regulations – Agency Administration

§558.247 Verification of Employability and Use of Unlicensed Persons

- The agency must immediately stop using the services of an unlicensed volunteer for duties that would or do include face-to-face contact with a client when the agency becomes aware:
 - That the unlicensed volunteer is designated in the NAR or the EMR as unemployable, or
 - That the unlicensed volunteer's criminal history check reveals conviction of a crime that bars employment or that the agency has determined is a contraindication to employment.

Key Regulations – Agency Administration

§558.247 Verification of Employability and Use of Unlicensed Persons

- Upon request by HHSC, an agency must provide documentation to demonstrate compliance.
- An agency that contracts with another agency or organization for an unlicensed person to provide home health services, hospice services, or personal assistance services under arrangement must also comply with the requirements in §558.289(c)-(d) Independent Contractors and Arranged Services.

Resources Criminal History Checks

- Link to Texas Health & Safety Code §250 & List of Convictions Barring Employment:
<http://www.statutes.legis.state.tx.us/Docs/HS/htm/HS.250.htm>
 - Obtain criminal history information from the Department of Public Safety;
 - May use a commercial private entity OR may obtain the information directly;
 - Statute does not dictate use of the DPS' secured versus unsecured website.
- Criminal record search (CRS) on TxDPS Public Website (\$3.00/search); or on the TxDPS Secure Website (\$1.00/search) with strict security policies & onsite audits by TxDPS.

<https://records.txdps.state.tx.us/DpsWebsite/Index.aspx>

Key Regulations – Provision & Coordination of Treatment Services

§558.287 Quality Assessment and Performance Improvement (QAPI)

- Must maintain a QAPI Program that is implemented by a QAPI Committee:
 - ongoing,
 - focused on client outcomes that are measurable,
 - have a written plan of implementation,
 - a system that measures significant outcomes for optimal care
 - be an annual evaluation of the total operation, including services provided under contract or arrangement.

Key Regulations – Provision & Coordination of Treatment Services

§558.287 Quality Assessment and Performance Improvement

- An agency must:
 - use the evaluation to correct identified problems and, if necessary, to revise policies,
 - document corrective action to ensure that improvements are sustained over time,
 - immediately correct identified problems that directly or potentially threaten the client care and safety,
 - maintain QAPI documents confidential and made available to HHSC staff upon request.

Key Regulations – Provision & Coordination of Treatment Services

§558.287 Quality Assessment and Performance Improvement

- QAPI Committee must:
 - review and update or revise the plan of implementation at least once within a calendar year, or more often if needed,
 - use the measures in the care planning and coordination of services and events,
 - measures must include the following as appropriate for the scope of services:
 - analysis of a representative sample of services furnished to clients contained in both active and closed records.

Key Regulations – Provision & Coordination of Treatment Services

§558.287 Quality Assessment and Performance Improvement

- QAPI Committee must a review:
 - negative client care outcomes,
 - complaints and incidents of unprofessional conduct by licensed staff and misconduct by unlicensed staff,
 - infection control activities,
 - medication administration and errors, and
 - effectiveness and safety of all services provided, including:
 - competency of the agency's clinical staff,
 - promptness of service delivery; and appropriateness of the agency's responses to client complaints and incidents.

Key Regulations – Provision & Coordination of Treatment Services

§558.287 Quality Assessment and Performance Improvement

- QAPI Committee must:
 - Make a determination that services have been performed as outlined in the individualized service plan, care plan, or plan of care; and
 - Conduct an analysis of client complaint and satisfaction survey data.
- QAPI Committee membership at a minimum must consist of:
 - the administrator;
 - the supervising nurse or therapist, or the supervisor of an agency licensed to provide personal assistance services; and
 - an individual representing the scope of services provided by the agency.

HHSC COVID-19 Emergency Rule

- **Emergency rules** for LTCR providers related to the response to **COVID-19** were effective as of April 3, 2020 and will remain in effect until the disaster declaration has been lifted or expires.
- The rule was recently revised on September 24, 2021. The revised emergency rule can be found at [TAC Chapter 558, Rule 558.960.](#)

HHSC COVID-19 Emergency Rule

- (d) An agency must screen its staff and must not allow staff to remain in the agency, enter a licensed facility, or make home visits if the employee, volunteer or contractor meets one or more of the following screening criteria:
 - (1) fever defined as a temperature of 100.4 Fahrenheit and above, or by the most current Centers for Disease Control and Prevention (CDC) guidance relating to fever or signs or symptoms of a respiratory infection;
 - (2) signs or symptoms of COVID-19, including chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, or diarrhea;
 - (3) additional signs and symptoms as outlined by CDC in Symptoms of Coronavirus at [cdc.gov](https://www.cdc.gov); or
 - (4) contact in the last 14 days, unless to provide critical assistance in a licensed facility or essential services through the HCSSA, with someone who has a confirmed diagnosis of COVID-19, is under investigation for COVID-19, or is ill with a respiratory illness, regardless of whether the person is fully vaccinated, unless the person is conducting the visit to provide essential services; or
 - testing positive for COVID-19 in the last 10 days.

HHSC COVID-19 Emergency Rule

- When does screening need to be done?
 - A staff member's screening must be performed before making a home visit. A staff member who meets a screening criterium has the potential to infect clients with COVID-19 if the staff member provides services before being screened. For this reason, staff who meet one or more screening criteria are not allowed to make home visits.
 - Client and household member screenings must be performed before essential services are provided. If the client or household member meets a screening criteria, then staff must 1) protect him/herself by wearing appropriate PPE while providing services and 2) ensure coordination of services for the client as necessary.

HHSC COVID-19 Emergency Rule

- (e) The agency must determine if a home visit requires essential services or nonessential services.
 - (1) If the visit requires non-essential services, the visit:
 - (A) must be conducted by phone or video conference, if possible; or
 - (B) must be rescheduled for a later date.

HHSC COVID-19 Emergency Rule

- **What is an essential visit?** An essential visit is one that includes a service that must be delivered to ensure the client's health and safety, such as medication administration or wound care. This determination is made on a case-by-case basis and according to the client's need for the service on the day of the scheduled visit. For example, if the service is a bath, and the client had a bath two days before, the agency might determine that a bath that day is not essential. But if the client's last bath was five days before, then the agency could determine that a bath that day is essential.
- Non-Essential Visits are visits that can be completed virtually or rescheduled because they do not negatively impact the patients health and safety.

HHSC COVID-19 Emergency Rule

- (2) If the visit requires essential services, staff must conduct the visit in person and screen the client and household members using the same criteria for staff that is described in subsection (d) of this section and proceed as described below.
 - (A) If the client or a member of the household meet one or more of the screening criteria, use appropriate personal protective equipment during the visit.
 - (B) If the client or a member of the household does not meet one or more of the screening criteria, conduct the visit as indicated for the type of service provided.
- (3) An agency must document any missed visits in the plan of care, care plan, or individualized services plan and notify the attending physician, if applicable.

HHSC COVID-19 Provider Guidance

- [HHSC Coronavirus \(COVID-19\) Provider Information](#)

Website contains previously recorded webinars for HCSSA providers, training and guidance for Infection Control/PPE, news and alerts, and other important links.

- [HHSC HCSSA COVID-19 Provider FAQ's](#)

Recently revised October 15, 2021 – Topics include administrative responsibilities, client care, screening and documentation requirements, infection control survey tools, PPE, vaccination, testing, return to work and reporting requirements for positive cases.

- [HHSC Home & Community Support Services Agencies \(HCSSA\)](#)

Website contains the emergency rule, PAS infection control probe tool, the HHSC Provider FAQ's, and other important links.

HHSC COVID-19 Provider Guidance

- HCSSA agencies are responsible for monitoring the following websites for changes to guidance and requirements:
 - [The Health and Human Services Commission](#)
 - [The Texas Department of State Health Services](#)
 - [The Centers for Disease Control and Prevention](#)
 - [The Centers for Medicare and Medicaid Services](#) (L&C)

Abuse, Neglect and Exploitation & *Investigations*

Key Regulations – Agency Administration

[§558.249](#) Self-Reported Incidents of Abuse, Neglect, and Exploitation (ANE)

- The following words & terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.
 - ANE of a client 18 and older have the same meanings assigned by the Texas Human Resources Code [§48.002](#)
 - ANE of a child have the meanings assigned by the Texas Family Code [§261.401](#)
 - Employee means an individual directly employed by an agency, a contractor, or a volunteer
 - Cause to believe means that an agency knows, suspects, or believes an allegation regarding ANE

Key Regulations – Agency Administration

§558.249 Self-Reported Incidents of Abuse, Neglect, and Exploitation (ANE)

- An agency must adopt and enforce a written policy relating to the agency's procedures for reporting alleged acts of ANE of a client by an employee of the agency.
- If an agency has cause to believe that a client served by the agency has been abused, neglected, or exploited by an agency employee, the agency must report the information immediately – meaning within 24 hours – to:
 - DPFS at 1-800-252-5400 or through the DFPS secure website at www.txabusehotline.org, and
 - HHSC via the [TULIP Incident Submission Portal](#) or by phone at 1-800-458-9858.

Suggested Agency ANE Policy

1. Include definition of “cause to believe” in your policy
2. Include applicability – this is the ONLY section of the rule where a contractor or volunteer would be considered or defined as an “employee”.
3. Use the definitions of abuse, neglect and exploitation directly from the statutes (Human Resources Code Chapter 48 for clients 18 and older, and Family Code Chapter 261 if agency serves pediatric clients)
4. Procedure for handling reports of ANE.
5. Procedure for ensuring staff understands what types of complaint constitute ANE.

Key Regulations – Agency Administration

[§558.250](#) Agency Investigations

- Written policy
 - An agency must adopt and enforce a written policy relating to the agency's procedures for investigating complaints and reports of ANE.
 - The policy must meet all of the requirements.
- Reports of ANE
 - Immediately upon witnessing the act or upon receipt of the allegation, an agency must **initiate an investigation** of known and alleged acts of ANE by agency employees, including volunteers and contractors.

Key Regulations – Agency Administration

§558.250 Agency Investigations

- An agency must complete HHSC Provider Investigation Report form [3613](#) and include all requested information.
- An agency must **send the completed HHSC Provider Investigation Report form to HHSC Complaint Intake Unit no later than the 10th day** after reporting the act to DFPS and HHSC.

Key Regulations – Agency Administration

§558.250 Agency Investigations

- An agency must investigate complaints made by a client, a client's family or guardian, or a client's health care provider regarding:
 - Treatment or care that was furnished by the agency,
 - Treatment of care that the agency failed to furnish, or
 - A lack of respect for the client's property by anyone furnishing services on behalf of the agency.

Key Regulations – Agency Administration

§558.250 Agency Investigations

- Document receipt of the complaint and **initiate a complaint investigation within 10 days** after the agency's receipt of the complaint, and **document** all components of the investigation.
- Completing agency investigations. An agency must **complete the investigation and documentation** within 30 days after the agency receives a complaint or report of ANE unless the agency has and documents reasonable cause for a delay.
- **Remember:** only 10 days initiate the investigation, and submit a completed Provider Investigation Report form 3613.

Key Regulations – Agency Administration

§558.250 Agency Investigations

- Retaliation
 - An agency may not retaliate against a person for filing a complaint, presenting a grievance, or providing in good faith information relating to home health, hospice, or personal assistance services provided by the agency.
 - An agency is not prohibited from terminating an employee for a reason other than retaliation.

Client Rights and Responsibilities
&
Applicable Statutes

Key Regulations – Provision & Coordination of Treatment Services

[§558.282](#) Client Conduct and Responsibility and Client Rights

- An agency must adopt and enforce a written policy governing client conduct and responsibility and client rights in accordance with this section. The written policy must include a grievance mechanism under which a client can participate without fear of reprisal.
- An agency must protect and promote the rights of all clients.
- An agency must comply with the provisions of the Texas Human Resources Code, Chapter 102 Rights of the Elderly, which applies to a client 60 years or older.

Human Resources Code §102. 003

Rights of the Elderly

- Definition: “Elderly individual” means an individual 60 years of age or older
- The list of rights in HR code 102 must be posted in a “conspicuous” location at your agency as well as given to the client. Automatic \$500 fine if the agency is out of compliance.
 - [Rights of the Elderly](#) was amended by 84th Legislature 2015 in (d) (i) and (t) as a result of SB 219 (a “clean-up bill” which updated language in several sections of TAC to standardize language about medical power of attorney, etc.).

Key Regulations – Provision & Coordination of Treatment Services

§558.282 Client Conduct and Responsibility and Client Rights

- At the time of admission, an agency must provide a client who receives with a written statement that informs the client that a complaint against the agency may be directed to HHS (address & toll-free phone number listed in rule).
 - The statement may also inform the client that a complaint against the agency may be directed to the administrator of the agency.
 - The statement about complaints directed to the administrator also must include the time frame in which the agency will review and resolve the complaint.

Key Regulations – Provision & Coordination of Treatment Services

§558.282 Client Conduct and Responsibility and Client Rights

- In advance of furnishing care to a client or during the initial evaluation before the initiation of treatment, an agency must provide the client or their legal representative with a written notice of all policies governing client conduct and responsibility and client rights.

Key Regulations – Provision & Coordination of Treatment Services

§558.282 Client Conduct and Responsibility and Client Rights

- A client has the following rights:
 - 1) A client has the right to be informed in advance about the care to be furnished, the plan of care, expected outcomes, barriers to treatment, and any changes in the care to be furnished. The agency must ensure that written informed consent specifying the type of care and services that may be provided by the agency has been obtained for every client, either from the client or their legal representative. The client or the legal representative must sign or mark the consent form.

Key Regulations – Provision & Coordination of Treatment Services

§558.282 Client Conduct and Responsibility and Client Rights

- A client has the right to participate in planning the care or treatment and in planning a change in the care or treatment.
- An agency must advise or consult with the client or legal representative in advance of any change in the care or treatment.
- A client has the right to refuse care and services.
- A client has the right to be informed, before care is initiated, of the extent to which payment may be expected from the client, a third-party payer, and any other source of funding known to the agency.

Key Regulations – Provision & Coordination of Treatment Services

§558.282 Client Conduct and Responsibility and Client Rights

- A client has the right to have assistance in understanding and exercising the client's rights. The agency must maintain documentation showing that it has complied with the requirements of this paragraph and that the client demonstrates understanding of the client's rights.
- A client has the right to exercise rights as a client of the agency.
- A client has the right to have the client's person and property treated with consideration, respect, and full recognition of the client's individuality and personal needs.

Key Regulations – Provision & Coordination of Treatment Services

§558.282 Client Conduct and Responsibility and Client Rights

- A client has the right to be free from abuse, neglect, and exploitation by an agency employee, volunteer or contractor.
- A client has the right to confidential treatment of the client's personal and medical records.
- A client has the right to voice grievances regarding treatment or care that is or fails to be furnished, or regarding the lack of respect for property by anyone who is furnishing services on behalf of the agency and must not be subjected to discrimination or reprisal for doing so.

Key Regulations – Provision & Coordination of Treatment Services

§558.282 Client Conduct and Responsibility and Client Rights

- In the case of a client adjudged incompetent, the rights of the client are exercised by the person appointed by law to act on the client's behalf.
- In the case of a client who has not been adjudged incompetent, any legal representative may exercise the client's rights to the extent permitted by law.

Emergency Preparedness Plan

Emergency Preparedness Plan

- Must have a written plan developed in coordination with key management staff
- Describes your approach to a disaster that could affect the need for your services or your ability to provide services
- Based on risk assessment
 - Perform and keep a copy of the risk assessment that is part of your overall plan / policy
- It is a living document that must change and become more refined through experience

Emergency Preparedness Plan

- Key Components:
 - designate, by title, an employee, and at least one alternate employee to act as the agency's disaster coordinator;
 - include a continuity of operations business plan
 - how the agency will monitor disaster-related news and information
 - how release of client information will be handled
 - detail the actions and responsibilities of all agency staff in each phase of an emergency.

Emergency Preparedness Plan

- Phases of an emergency
 - Mitigation
 - Preparedness
 - Response
 - Recovery

Emergency Preparedness Plan

- Mitigation

- include a continuity of operations business plan that addresses emergency financial needs, essential functions for client services, critical personnel, and how to return to normal operations as quickly as possible;

Emergency Preparedness Plan

- Preparedness
 - Triage Procedures (classification of clients)
 - Services provided by the agency
 - Need for continuity of service
 - Availability of someone to assume responsibility for the client
 - Identify who may need evacuation assistance from local or state jurisdictions
 - Provide the client with the amount of assistance the client requests to complete the process for evacuation assistance

Emergency Preparedness Plan

- Preparedness (cont)-
 - Client education
 - Agency staff training
 - Internal review of the plan at least annually
 - Test the plan annually

Emergency Preparedness Plan

- **Response and Recovery Phase**
 - Staff actions & responsibilities when warning not provided
 - Who will initiate each phase
 - How do you communicate with
 - Staff
 - Client's or the person responsible for the client's plan
 - Local, state and federal emergency management agencies
 - Other entities
 - What mode of communication used if no power or phone?

COVID-19 Emergency Preparedness

- Surveyors are reviewing emergency preparedness policies and plans for all phases of the COVID-19 PHE. Including when agency implemented the plan and actions taken for mitigation, preparedness, response and recovery.
 - The [HHS General Provider Checklist](#) can be used to guide agencies through the emergency preparedness aspects of COVID-19. This checklist is intended to supplement, not override, provisions from regulatory agencies that oversee health care organizations. Organizations may develop policies, but those policies must have a basis in current science and facts, and they should never compromise a client's or employee's health.

Advanced Directives

&

Legal Issues

Key Regulations – Provision & Coordination of Treatment Services

§558.283 Advanced Directives

- An agency must maintain a written policy regarding implementation of advance directives. The policy must be in compliance with the Advance Directives Act, Health and Safety Code, Chapter 166.
- The policy must include a clear and precise statement of any procedure the agency is unwilling or unable to provide or withhold in accordance with any advance directive.
- The agency must provide written notice to a client of the written policy. This notice must be provided at the earlier of:
 - The time the client is admitted to receive services from the agency; or at the time the agency begins providing care to the client.

Key Regulations – Provision & Coordination of Treatment Services

§558.283 Advanced Directives

- If at the time notice must be provided, the client is incompetent or otherwise incapacitated and unable to receive the notice, the agency must provide the required written notice, in the following order of preference, to:
 - The client's legal guardian;
 - A person responsible for the health care decisions of the client;
 - The client's spouse;
 - The client's adult child;
 - The client's parent; or
 - The person admitting the client

Key Regulations – Provision & Coordination of Treatment Services

§558.283 Advanced Directives

- if an agency is unable to locate an individual listed above the agency is not required to provide the notice.
- If a client who was incompetent or otherwise incapacitated and unable to receive the notice at the time notice was to be provided later becomes able to receive the notice, the agency must provide the written notice at the time the client becomes able to receive the notice.
- HHS assesses an administrative penalty of \$500 without an opportunity to correct against an agency that violates this section.

Advance Directives

- Enables competent individuals to design and document their health care decision plan in advance in case of future disability or terminal illness.
- An advance directive can be of two types, instructional and proxy, which allow competent individuals to make their healthcare choices in advance or specify their wishes to their provider's or family's in case of future disability in carrying out end-of-life decision.
- This can give the patient an “individual autonomy” so as to receive end-of-life care consistent with their preference.

Surveys and Investigations

Key Regulations-Surveys and Investigation

§558.501 Survey and Investigation Frequency

- Surveys at a minimum: after an agency submits a written request for an initial survey in accordance with §558.521; and within 18 months after conducting an initial survey and at least every 36 months thereafter.
- Survey or investigation is to determine an agency's compliance with: Chapter 558 or the statute in the provision of LHHS, L&CHHS, Hospice, or PAS; and federal requirements for L&CHHS or Hospice.
- May conduct a survey for the renewal of a license or the issuance of a branch office or alternate delivery site license.

Key Regulation-Surveys and Investigation

[§558.503](#) Exemption from a Survey

- If agency maintains accreditation status for the applicable services from Joint Commission (JC), **Accreditation Commission for Health Care (ACHC)** or Community Health Accreditation Program (CHAP).

[§558.505](#) Notice of a Survey

- HHS does not announce or give prior notice to agency.

[§558.507](#) Agency Cooperation with a Survey

- Must provide access to all agency records maintained by or on behalf of the agency.
- If a record is stored at a location other than the survey site, agency must provide the record within eight working hours.
- Must provide copies of agency records upon request.

Key Regulations-Surveys and Investigation

558.507 Agency Cooperation with a Survey

- During a survey, agency staff must not:
 - make a false statement that a person knows or should know is false of a material fact about a matter under investigation;
 - willfully interfere with the work of the surveyor;
 - willfully interfere with a surveyor in preserving evidence of a violation; or
 - refuse to allow a surveyor to inspect a book, record, or file required to be maintained by or on behalf of an agency.
- Must provide a surveyor with a reasonable workspace and a safe workspace, free from hazards, at which to conduct a survey (any licensed location).

Key Regulations-Surveys and Investigation

§558.507 Agency Cooperation with a Survey

- If there is a disagreement between the agency and a surveyor, the HHS program manager or designee in the designated survey office determines what is reasonable and safe. After consulting with the program manager or designee and obtaining the program manager's agreement, the surveyor will notify the agency administrator or designee if the requirement in §558.507 (f) of this section is not met.
- Within **two working hours** of this notice the agency **must**: provide surveyor with a different workspace; or correct the unmet requirement in such a way as to allow the surveyor to reasonably and safely conduct the survey.

Key Regulations-Surveys and Investigation

§558.507 Agency Cooperation with a Survey

- If an agency willfully refuses to comply with this rule, thereby interfering with the work of the surveyor, the surveyor will terminate the survey and recommend enforcement action as described below.
- HHS may assess an administrative penalty without an opportunity to correct for a violation of provisions in this rule, or may take other enforcement action to deny, revoke, or suspend a license, if an agency does not cooperate with a survey.
- [§558.509](#) Survey of a Branch Office, ADS, and Services
 - a survey covers all locations.
 - a survey covers all provided services of the agency.

Key Regulations-Surveys and Investigation

[§558.523](#) Personnel Requirements for a Survey

- Initial survey: administrator or alternate must be **present** in person at entrance conference, available in person or by phone during survey, and **present** in person at the exit conference.
- Survey other than initial: administrator or alternate must be available in person or by phone during the entrance conference and the survey, and must be **present** in person at the exit conference.
- Supervising nurse or alternate must be available in person or by phone during the survey.
- If the office is closed during regular business hours, the administrator, alternate or designee must provide the entry into the agency within two hours of arrival.

Key Regulations-Surveys and Investigation

§558.525 Survey Procedures

- Entrance conference to explain purpose of the survey and provide opportunity to ask questions
 - During survey, a surveyor:
 - Conducts at least 3 home visits
 - Reviews any agency records that surveyor believes are necessary
 - Evaluates agency's compliance with each standard

Key Regulations-Surveys and Investigation

[§558.527](#) Post-Survey Procedures

- Surveyor holds exit conference to inform agency of preliminary findings.
- Agency may make audio or video recording (but must make 2 simultaneously; surveyor keeps one).
- Agency may submit additional written documentation after the exit only if agency describes content to the surveyor during the exit.
 - Agency must submit to the designated survey office 2 working days after the end of the exit conference.
 - If the agency properly submits additional documentation, the surveyor may add it to the record of the survey.

Key Regulations-Surveys and Investigation

§558.527 Post-Survey Procedures

- If HHSC identifies additional violations or deficiencies after the exit, HHSC holds an additional face-to-face exit conference with the agency regarding the additional violations or deficiencies.
- HHSC provides official notification of the survey findings to the agency within 10 working days after the exit conference.

Key Regulations-Surveys and Investigation

§558.527 Post-Survey Procedures

- The official written notification of the survey findings includes a statement of violations, condition-level deficiencies, or both, cited by HHSC against the agency as a result of the survey, and instructions for submitting an acceptable plan of correction, and for requesting IDR.
- If the official written notification of the survey findings declares that an agency is in violation of the statute or this chapter, an agency must follow HHSC instructions included with the statement of violations for submitting an acceptable plan of correction.

Key Regulations-Surveys and Investigation

§558.527 Post-Survey Procedures

- An acceptable plan of correction includes the corrective measures and time frame for correction.
- A Severity Level B violation that results in serious harm to or death of a client (or constitutes a serious threat to the health or safety of a client) must be corrected within 2 days.
- A Severity Level B violation that substantially limits the agency's capacity to provide care must be corrected within 7 days.
- A Severity Level A violation that had minor or no health or safety significance must be corrected within 20 days.
- A violation that is not designated as Severity Level A or B must be corrected within 60 days.

Key Regulations-Surveys and Investigation

§558.527 Post-Survey Procedures

- Agency must submit an acceptable plan of correction for each violation or deficiency no later than 10 days after its receipt of the written notification (even if the agency disagrees with the survey findings).
- If HHS finds the plan of correction unacceptable, HHS gives agency written notice.
- Agency has one additional opportunity to submit an acceptable plan (no later than 30 days after notice of an unacceptable plan).
- An acceptable plan of correction does not preclude HHS from taking enforcement action against the agency.

Key Regulations-Surveys and Investigation

§558.527 Post-Survey Procedures

- If an agency disagrees with the survey findings citing a violation or condition-level deficiency, the agency may request informal dispute resolution (IDR).
- IDR is an informal process that allows an agency to refute a violation or condition-level deficiency cited during a survey does not grant an agency's request for IDR if:
 - cited the violation of deficiency at the agency's immediately preceding survey; and
 - cited the violation again, with no new findings.

Key Regulations-Surveys and Investigation

§558.527 Post-Survey Procedures

- To request IDR, an agency must mail or fax:
 - complete and accurate IDR request form to the address or fax number listed on the form, which must be postmarked or faxed within 10 days after the date of receipt of the official written notification of the survey findings;
 - rebuttal letter and supporting documentation to the address or fax number listed on the IDR request form and ensure receipt by the HHSC Survey and Certification Enforcement Unit within seven days after the postmark or fax date of the IDR request form; and
 - a copy of the IDR request form, rebuttal letter, and supporting documentation to the designated survey office within the same time frames each is submitted to the HHS Survey and Certification Enforcement Unit.

Informal Dispute Resolution

Why are IDRs Important?

- Administrative penalties are being assessed more than ever.
- Submitting an IDR may mitigate or eliminate the assessment of administrative penalties depending on the outcome.
- Each deficiency is assessed as non-compliance with the chapter (ch.558) and could be used to deny future licensure renewals or contracts for services.
- If administrative penalties are assessed, your agency will be reported to a national data base as having an “enforcement” action.

Key Regulations-Surveys and Investigation

§558.527 Post-Survey Procedures

- An agency may not submit information after the deadlines unless HHS requests additional information.
- The agency's response to HHS request for information must be received within three working days after the request is made.
- An agency waives its right to an IDR if the agency fails to submit the required information to the HHS Survey and Certification Enforcement Unit within the required time frames.
- An agency must present sufficient information to the HHS Survey and Certification Enforcement Unit to support the agency's desired IDR outcome.

Key Regulations-Surveys and Investigation

§558.527 Post-Survey Procedures

- The rebuttal letter and supporting documentation must include:
 - identification of the disputed deficiencies or violations;
 - the reason the deficiencies or violations are disputed;
 - the desired outcome for each disputed deficiency or violation; and
 - copies of client records, policies and procedures, and other documentation and information that directly demonstrate that the condition-level deficiency or violation should not have been cited.
- A written decision is issued after the completion of HHS review is final.

What Contributes to “Challenging Surveys”?

- Lack of understanding of regulatory language
- Lack of knowledge about applicability of certain regulations
- Lack of knowledge of agency policies
- Lack of understanding of survey process
- Documentation issues
- Surveyor conduct issues
- Fear

Review of Survey Process

- Access to surveyor on-site survey
- Rights given to agency
- Reasonable and safe work space
- Administrator/Supervisory Nurse Role
- Preliminary findings at exit
- Written deficiencies
- Plans of Correction
- Follow-up
 - Feedback to HHS
 - POC is implemented
 - Monitoring
 - Training & Education

Key Regulations-Surveys and Investigation

§558.601 Enforcement Actions

- License suspension
- Immediate license suspension
- License revocation
- Immediate license revocation
- Administrative penalties
- Denial of license application

Key Regulations-Surveys and Investigation

[§558.602](#) Administrative Penalties

Criteria for assessing penalties

- Seriousness of violation
- History of previous violations
- Whether affected agency identified the violation as part of its quality assurance process and made a substantial good faith effort to correct in a timely manner
- The amount necessary to deter future violations
- Efforts made to correct the violation, and
- Any other matters that justice may require

Key Regulations-Surveys and Investigation

§558.602 Administrative Penalties

- Rule includes detailed table of the Severity Level A and Level B violations
- Severity Level A violations
 - Penalty range is \$100 - \$250 per violation
- Level A violation has or has had minor or no client health or safety significance
- HHSC assesses a penalty for Level A only if the violation is of a continuing nature or was not corrected in accordance with an accepted plan of correction

Key Regulations-Surveys and Investigation

§558.602 Administrative Penalties

- Severity Level B violations
 - Penalty range is \$500 - \$1000 per violation
- Level B violation (and penalty) is a violation that:
 - Results in serious harm to or death of a client (\$1000);
 - Constitutes an actual serious threat to the health or safety of a client (\$500 – \$1000); or
 - Substantially limits the agency's capacity to provide care (\$500 – \$750)
- For Level B, HHSC may assess an administrative penalty without providing agency with an opportunity to correct the violation

Key Regulations-Surveys and Investigation

§558.602 Administrative Penalties

- If HHS assesses an administrative penalty, HHS provides a written notice of violation letter to agency with the proposed penalties.
- An agency may accept the determination no later than 20 days after the date on which the agency receives the notice of violation letter with proposed penalties , or may make a written request for a formal administrative hearing.

COVID-19 Infection Control Surveys

- HHSC is currently conducting focused infection control surveys. The impetus for a focused infection control survey can be a complaint, a reported case of COVID-19, or as part of contact tracing in connection with a reported case.
- These surveys are focused on infection control and include review of policies and procedures, PPE use/inventory, patient and staff training/education, infection control reports and logs, chart reviews on reported positive cases (patients/staff), screening documentation and back up staffing plan.

COVID-19 Infection Control Survey Tools

- [CDC's Infection Control Assessment Tools](#) can be used for all agency categories to the extent applicable to its services and clientele. The CDC developed these tools to assist health departments in assessing infection prevention practices and to guide quality improvement activities. The tools also can be used to conduct internal quality improvement audits for HCSSA agencies.
- On March 20, 2020, CMS released the [Prioritization of Survey Activities Memo \(Ref# QSO-20-20-All\)](#), which details survey priorities during COVID-19. Infection Control Surveys are included in survey priorities during the COVID-19 pandemic. Attached to this memo is an infection control tool for Acute and Continuing Care which can be used by home health and hospice agencies.

Infection Control Survey – PAS only agencies

- Do audit surveys focused on infection control apply to PAS-only agencies? Yes, in accordance with 26 TAC §558.285, all agencies must adopt and enforce infection control policies. Since a personal assistance services (PAS) agency does not provide clinical services, their policies will differ from those of a home health or hospice agency.
- HHSC has developed an [Infection Control Probe Tool for PAS-only agencies](#) to review the effectiveness of their infection control policies. Long Term Care Regulation survey staff will use these prompts to conduct infection control focused surveys. HHSC encourages all PAS agencies to use the tool to determine whether their infection control policies and procedures prevent and control the spread of communicable diseases such as COVID-19.
- Use of the tool is not required but is an important part of an agency's Quality Assessment and Performance Improvement (QAPI) process.

State Regulatory Resources

- State Laws and Regulations are available at:
 - <https://hhs.texas.gov/laws-regulations/>
 - Includes:
 - » HCSSA Licensing Standards
 - » Rules in progress
 - » State Statutes
 - » Texas Administrative Code (TAC)
- Texas Health and Human Services
 - Provider (PL) and Information (IL) Letters:
 - <https://apps.hhs.texas.gov/providers/hcssa/>

Federal Regulatory Resources

- Federal Laws and Regulations are available at:
 - <https://www.federalregister.gov/public-inspection/current>
 - <https://www.cms.gov/>
 - <https://www.osha.gov/law-regs.html>
- Centers for Medicare & Medicaid Services
 - Policy & Memos to States and Regions: Survey & Certification Clarification (S&CC) Letters:
 - <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SURveyCertificationGenInfo/Policy-and-Memos-to-States-and-Regions.html>

Federal Regulatory Resources

- CMS Continued:
 - State Operations Manual (SOM): Appendix B – Interpretive Guidelines
 - https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_b_hha.pdf

Questions?

