1B. Mitigating Non-Compliance: What to Expect During an LHH Surveyor Investigation

Presented by:

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Mitigating Non-Compliance

What to Expect During an LHH Survey or Investigation

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Learning Objectives

Upon completion, the participant will be able to:

• locate the state licensing standards for home and community support services agencies, including home health regulations
• discuss the importance of reviewing frequently cited violations as part of survey preparation
• list the eight areas of noncompliance cited by state surveyors and investigators in fiscal year 2022 for home health agencies
Governing Statute (Law)

Texas Health and Safety Code Chapter 142

- HEALTH AND SAFETY CODE CHAPTER 142. HOME AND COMMUNITY SUPPORT SERVICES (texas.gov)
  https://statutes.capitol.texas.gov/Docs/HS/htm/HS.142.htm
- Texas Constitution and Statutes – Home

Texas Home Health Regulations

Survey Preparedness: Threats to Non-Compliance

✓ Previous Annual reports
✓ Home health agency’s citations
✓ Home health agency’s plans of correction
✓ Self-identified noncompliance with rules or policies

Survey Preparedness: Sources of Evidence

• **Interviews**: Administrator/alternator, supervising nurse/alternate, supervising therapist, employees, contractors, clients, others

• **Record Review**: Policies, client record, personnel records, QAPI

• **Observation**: Skilled and unskilled care, client and staff education, verification process
Eight Areas of Non-Compliance for Licensed Home Health Agencies

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Quality Assessment and Performance Improvement (QAPI)

QAPI Program
The agency failed to have, implement, and review a quality assessment and performance improvement program consistent with state requirements. No. 1 in FY 2021.

QAPI Meetings
The agency failed to make sure its quality assessment and performance improvement committee met at least twice a year to address problems and concerns in service delivery. No. 7 in FY 2021.
Self-Assessment of Risks

QAPI Mitigation Strategies

- Correct individuals on the QAPI Committee
- Data gathering sources
- Measurable client outcomes
- Planned meetings at least twice a year, more often as needed
- Representative samples of all services provided
- Client complaints and grievances/client satisfaction
Self-Reported Incidents of Abuse, Neglect & Exploitation

The agency failed to immediately report within 24 hours, knowledge of an alleged act of abuse, neglect, or exploitation of a client by an agency employee, contractor, or volunteer to the Department of Family and Protective Services and to HHSC. (Ranked No. 3 in FY 2021)

Incident Reporting Mitigation Strategies

• Communication of complaints and incidents
• Identification of abuse, neglect and exploitation
• Staff training and client education
• Tracking reporting and investigation timeframes
Verify Employability/Use Unlicensed Personnel

The agency failed, after the initial verification of employability, to search the nurse aide and employee misconduct registries at least every 12 months for an unlicensed employee with face-to-face client contact who was most recently hired on or after September 1, 2009. (Ranked No. 4 in FY 2021)

The agency employed an unlicensed person with face-to-face client contact before it searched the nurse aide and employee misconduct registries or employed an unlicensed person who was listed in either registry as unemployable. (Not ranked in FY 2021)

Employability Mitigation Strategies

✓ Policies and practices for vetting, background checks and training of staff
✓ Scheduling subsequent checks of the nurse aide registry and employee misconduct registry
✓ Communication that each employee, volunteer, or contractor understands expectations including verification
✓ Complete and accurate personnel records
Continuing Education for Agency Administrator

• The agency's administrator or alternate administrator failed to complete 12 hours of continuing education in the required topics within each 12 months in that job as required for the position of the administrator or alternate administrator of an agency. (Ranked No. 6 in FY 2021)

Continuing Education for Administrator Mitigation Strategies

• Strategic planning for continuing education
• Choose topics that enrich the administrator’s performance and agency goals
• Topics that correlate to the agency’s clientele
• Calendar choices in advance
Agency Cooperation with a Survey

• The agency failed to consent to **entry** and **survey** by an HHSC (Health and Human Services Commission) surveyor to verify compliance with the statute or this chapter. (Ranked No. 9 in FY 2021)

Consent to Entry and Survey Mitigation Strategies

• Designate a person in charge
• Ensure entry can be granted within two hours
• Ensure the designee can:
  - Grant entry
  - Provide access to policies, records
  - Provide an accurate and up to date client list
Staffing Policies

• The agency failed to enforce staffing policies that governed all staff used by the agency, including employees, volunteers and contractors. (Ranked No. 8 in FY 2021)

Staffing Policies Mitigation Strategies

• Ensure and document that employees and contractors have and are following policies

• Examine sources of evidence:
  o Personnel records
  o Documentation requirements
  o Evaluations showing compliance and corrections
  o Review systematic, continuous training program
  o Review job descriptions and defined roles/tasks to be performed
Individualized Service Plans for Personal Assistance Services

• For home health agencies providing personal assistance services with multiple categories and separate entities

• The agency failed to make sure the files of clients receiving personal assistance services included a properly developed individualized service plan that had all the required elements. (Not ranked in FY 2021)

Individualized Service Plan Mitigation Strategies

• Ensure staff know the:
  o Required elements of the plan
  o Content of the plan for each assigned client
  o Know when changes are made to the plan

• Ensure supervision of planned personal assistance services

• Review sample plans to audit compliance
Infection Control

The agency failed to have written policies to control infections and communicable diseases to ensure staff met certain Occupational Safety and Health Administration requirements. (Not ranked in FY 2021)

Infection Control Compliance Mitigation Strategies

• Ensure OSHA Bloodborne Pathogen training
• Understand requirements for exposure monitoring and compliance
• Bloodborne Pathogens - Standards | Occupational Safety and Health Administration (osha.gov)
Consequences of Non-Compliance

- license suspension
- immediate license suspension
- license revocation
- immediate license revocation
- denial of license application
- administrative penalties

<table>
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<th>Administrative Penalties</th>
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<tr>
<td>Severity Level B Violation</td>
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<td>$500-$1,000 per violation</td>
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Sources


Questions?

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Top 10 Violations Cited During Inspections for FY 2021 Home Health Agencies

1. Quality Assessment/Performance Improvement - Level B: 26 TAC §558.287(a)(1) - The agency failed to have, implement, and review a quality assessment and performance improvement program consistent with state requirements. (Ranked No. 2 in FY 2020)

2. Management Responsibility: Supervising Nurse - Level B: 26 TAC §558.243(c)(2)(A)(iii) - The supervising nurse or the alternate supervising nurse did not make sure that care was provided according to a client’s needs as written in the plan of care or care plan. (Ranked No. 4 in FY 2020)

3. Self-Reported Incidents of Abuse, Neglect and Exploitation - Level B: 26 TAC §558.249(c) - The agency failed to immediately report within 24 hours, knowledge of an alleged act of abuse, neglect or exploitation of a client by an agency employee, contractor or volunteer, to the Texas Department of Family and Protective Services and to HHSC. ( Ranked No. 1 in FY 2020)

4. Verify Employability/Use Unlicensed Personnel - Level B: 26 TAC §558.247(a)(5)(B) - The agency failed, after the initial verification of employability, to search the nurse aide and employee misconduct registries at least every 12 months for an unlicensed employee with face-to-face client contact who was most recently hired on or after September 1, 2009. (Ranked No. 6 in FY 2020)

5. Management Responsibility: Administrator - Level B: 26 TAC §558.243(b)(1)(A) - The administrator failed to manage the daily operations of the agency. (Ranked No. 3 in FY 2020)

6. Continuing Education in Agency Administrator - Level B: 26 TAC §558.260(a) - The agency’s administrator or alternate administrator failed to complete 12 hours of continuing education in the required topics within each 12 months in that job as required for the position of the administrator or alternate administrator of an agency. (Ranked No. 9 in FY 20)

7. Quality Assessment/Performance Improvement - Level B: 26 TAC §558.287(c) - The agency failed to make sure its quality assessment and performance improvement committee met at least twice a year to address identified problems and concerns in service delivery. (Not ranked in FY 2020)

8. Staffing Policies - Level B: 26 TAC §558.245(a) - The agency failed to enforce staffing policies that governed all staff used by the agency, including employees, volunteers and contractors. (Ranked No. 10 in FY 2020)

9. Agency Cooperation with a Survey: 26 TAC §558.507(a) - The agency failed to consent to entry and survey by an HHSC (Health and Human Services Commission) surveyor to verify compliance with the statue or this chapter. (Not ranked in FY 2020)
10. **Compliance: 26 TAC §558.222** - The agency failed to comply with state laws and rules to maintain licensure. (Not ranked in FY 2020)
practitioners involved in the initiation of the plan of care. (Not ranked in FY 2021)

9. [TIED] 12 hours in-service every 12 months: 42 CFR 484.80(d), TAG 0774 – The agency failed to ensure that home health aides received at least 12 hours of in-service training during each 12-month period. (Not ranked in FY 2021)

9. [TIED] Conformance with Physician Orders: 42 CFR 484.60(b), TAG 0578 - The agency failed standard conformance with physician orders. (Not ranked in FY 2021)

Top 10 Violations Cited During Inspections for FY 2022: HHA

1. Quality Assessment/Performance Improvement - Level B: 26 TAC §558.287(a)(1) - The agency failed to have, implement, and review a quality assessment and performance improvement program consistent with state requirements. (Ranked No. 1 in FY 2021)

2. Self-Reported Incidents of Abuse, Neglect and Exploitation - Level B: 26 TAC §558.249(c)(1)-(2) - The agency failed to immediately report within 24 hours, knowledge of an alleged act of abuse, neglect, or exploitation of a client by an agency employee, contractor, or volunteer to the Department of Family and Protective Services and to HHSC. (Ranked No. 3 in FY 2021)

3. Verify Employability/Use Unlicensed Personnel - Level B: 26 TAC §558.247(a)(5)(B) - The agency failed, after the initial verification of employability, to search the nurse aide and employee misconduct registries at least every 12 months for an unlicensed employee with face-to-face client contact who was most recently hired on or after September 1, 2009. (Ranked No. 4 in FY 2021)

4. Continuing Education in Agency Administrator - Level B: 26 TAC §558.260(a) - The agency's administrator or alternate administrator failed to complete 12 hours of continuing education in the required topics within each 12 months in that job as required for the position of the administrator or alternate administrator of an agency. (Ranked No. 6 in FY 2021)

5. Personal Assistance Services - Level A: 26 TAC §558.404(f)(2) – The agency failed to make sure the files of clients receiving personal assistance services included a properly developed individualized service plan that had all the required elements. (Not ranked in FY 2021)
6. Quality Assessment/Performance Improvement - Level B: 26 TAC §558.287(c) - The agency failed to make sure its quality assessment and performance improvement committee met at least twice a year to address identified problems and concerns in service delivery. (Ranked No. 7 in FY 2021)

7. Agency Cooperation with a Survey: 26 TAC §558.507(a) – The agency failed to consent to entry and survey by an HHSC (Health and Human Services Commission) surveyor to verify compliance with the statute or this chapter. (Ranked No. 9 in FY 2021)

8. [TIED] Staffing Policies - Level B: 26 TAC §558.245(a) - The agency failed to enforce staffing policies that governed all staff used by the agency, including employees, volunteers and contractors. (Ranked No. 8 in FY 2021)

8. [TIED] Verify Employability/Use Unlicensed Personnel - Level B: 26 TAC §558.247(a)(3) - The agency employed an unlicensed person with face-to-face client contact before it searched the nurse aide and employee misconduct registries or employed an unlicensed person who was listed in either registry as unemployable. (Not ranked in FY 2021)

10. Infection Control - Level B: 26 TAC §558.285(1)(B) – The agency failed to have written policies to control infections and communicable diseases to ensure staff met certain Occupational Safety and Health Administration requirements. (Not ranked in FY 2021)

Top 10 Deficiencies Cited During Inspections for FY 2022: Hospice

1. Plan of Care: 42 CFR 418.56(b), TAG 0543 - The hospice failed to ensure all hospice care and services furnished to patients and their families must follow an individualized written plan of care established by the hospice interdisciplinary group in collaboration with the attending physician (if any), the patient or representative, and the primary caregiver in accordance with the patient's needs if any of them so desire. (Ranked No. 1 in FY 2021)

2. [TIED] Governing Body and Administrator: 42 CFR 418.100(b), TAG 0651 - The hospice failed to ensure a governing body (or designated persons so functioning) assumes full legal authority and responsibility for the management of the hospice, the provision of all hospice services, its fiscal operations, and continuous quality assessment and performance improvement. A qualified administrator appointed by and reporting to the governing body is responsible for the day-to-day operation of the hospice. The administrator must be a hospice employee and possess education and experience required by the hospice's governing body. (Not Ranked in FY2021)