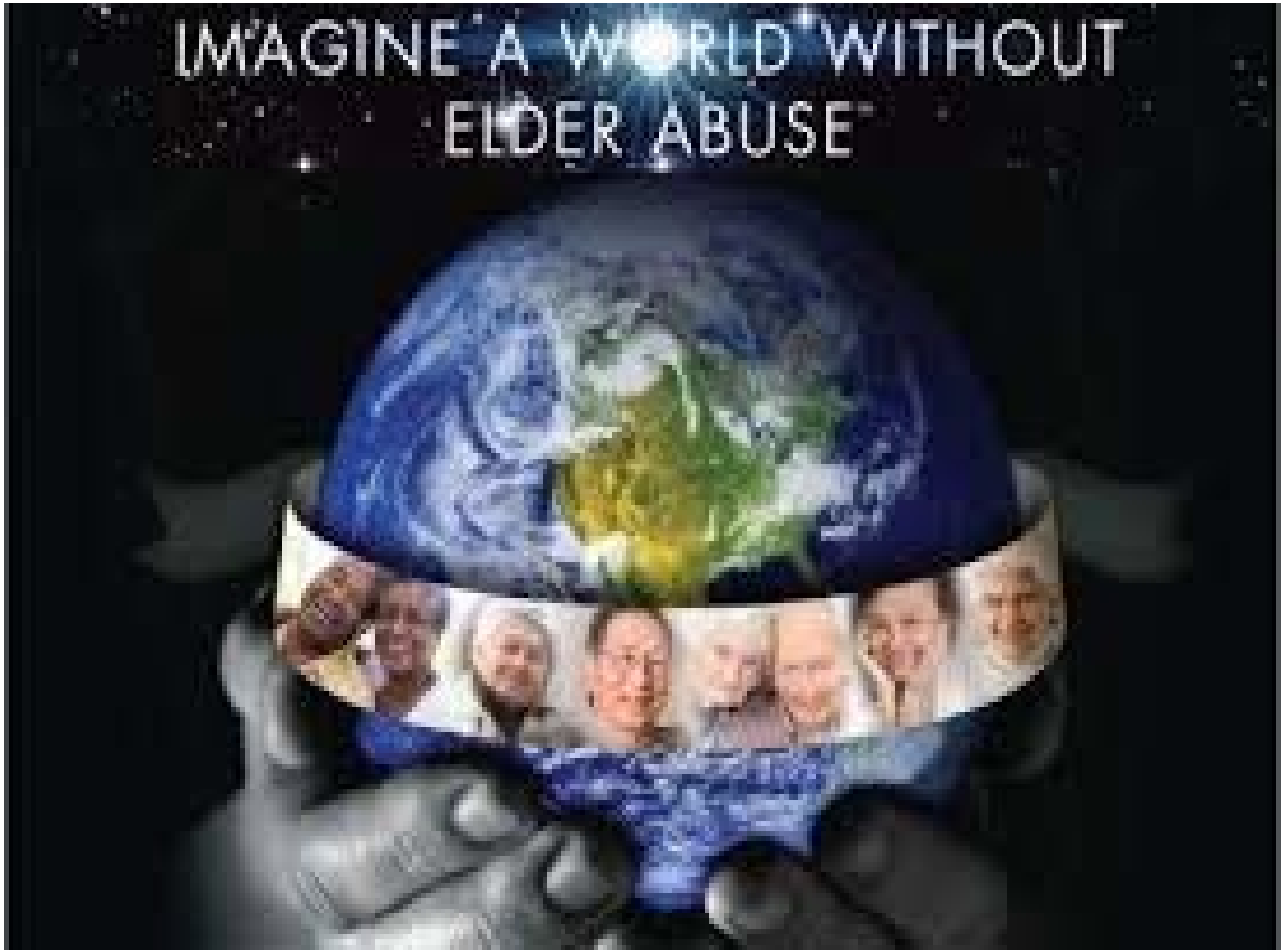
TEXAS
Health and Human Services

Abuse, Neglect, and Exploitation (ANE) in Long-Term Care

Texas Health and Human Services

Quality Monitoring Program


IMAGINE A WORLD WITHOUT
ELDER ABUSE

TEXAS Health and Human Services

The Statistics of Elder Abuse

TEXAS Health and Human Services

What is ANE?

- Abuse is the WILLFUL infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish:
  - Physical
  - Emotional
  - Sexual
- Neglect or abandonment
- Exploitation


Do you know the signs of Elder Abuse?

TEXAS Health and Human Services

Signs and Symptoms

- It may be difficult to recognize signs and symptoms of abuse, as they can often times appear to be symptoms of dementia or signs of the individual's frailty, mental deterioration, or disease process.

  - Physical abuse:
    - Unexplained injuries
    - Broken bones
    - Medication issues
    - Refusal of visitors by the caregiver

TEXAS Health and Human Services

Signs and Symptoms

- Signs and symptoms (cont.)
  - Emotional abuse:
    - Control by the caregiver
    - Odd behavior
  - Sexual abuse:
    - Bruises
    - Sexually transmitted diseases
    - Bleeding

TEXAS Health and Human Services

Signs and Symptoms

- Signs and symptoms (cont.)
  - Neglect:
    - Weight loss
    - Bed sores
    - Long fingernails/soiled fingernails (with feces)
    - Unsanitary living conditions
    - Unsuitable/dirty clothing
    - Unsafe living conditions
    - Matted hair
  - Exploitation
    - Significant withdrawals
    - Sudden changes in financial condition
    - Missing items

TEXAS Health and Human Services

Types of Nursing Home Abuse and Neglect

TEXAS Health and Human Services

Examples of ANE

- Performing a two-person transfer with only one person, knowing that two people are required to be present.
- "I have seen my roommate left lying in the bed for more than one hour with her behind exposed. I feel sorry for my roommate. They treat her so bad. She can't talk or walk".
- "A male nurse grabbed me, slung me on the floor, and threw me into the bed. He was in a bad mood because we were short-staffed, and he had to work two floors".
- You observe a nursing assistant knowingly postponing a resident's incontinent care to take a break.

TEXAS Health and Human Services

Examples of ANE

- A resident spits at a caregiver as she feeds the resident breakfast. In retaliation, the caregiver spits at the resident's face and yells, "Don't you ever spit at me again!"

- A resident refuses to get out of bed when encouraged with a gentle approach by a nurse to attend an activity session. The nurse then forcefully pulls the resident from a reclining to an upright position in his bed, pushes him out of his room, as the resident screams and cries to be left alone.

- After soiling her clothes and bedding, a resident is taken into the shower by a nursing assistant. The resident suffers from dementia and struggles with the assistant. The assistant sprays ice cold water directly into the face of the resident.

TEXAS Health and Human Services

Examples of ANE

- A wheelchair bound resident is taken to the bathroom and told by the nursing assistant to call when she is ready to return to her room. The resident rings the call bell and no one answers. Frustrated, the resident tries to get into her wheelchair by herself and falls and fractures her hip.

- A resident repeatedly uses a call bell attempting to get attention. After several trips to the resident's room, the nursing assistant unplugs the call bell so the resident can no longer use it

- You know that a resident has bleeding gums, loose teeth and has had difficulty eating. The resident's dentures were stolen and the resident has not been taken to a dentist.

TEXAS Health and Human Services

Examples of ANE

- A resident tells you that she needs to go to the bathroom as you walk past her. You are on your way to help another resident, so you tell her to hold on. When you walk past her again, she says she needs to go to the bathroom. You are still busy and tell her to hold on and you will help her when you are done. When you finally come back, she has already urinated in her brief. The call bell rings and instead of helping her (because she no longer needs to go to the bathroom) you tell her to hold on while you assist the other resident. She is now sitting in her wheelchair in a soiled brief.

- 2 employees arguing and yelling in the hallway outside of a residents room. The argument is not about the resident that is in the room, however, the resident in the room becomes distressed by all of the shouting. When the residents son comes in later that day, the resident describes the situation. The son complains, stating that his mom has suffered emotional abuse due to the 2 employees arguing.

TEXAS Health and Human Services

Examples of ANE

- "The DON called me and said my mother had woken up with a bump, a red bump, on her forehead. When I got to the facility that morning, I found her horribly bruised on her face and [the backs of her] forearms. She looked as if someone had gone seven rounds with her, except she has advanced Parkinson's. The only movement she can make is to raise her arms like this [indicating she could raise them defensively in front of her face]. The facility said she must have gotten them [the bruises and contusions] falling against her bedrails, but she can't move independently in bed. . . . So then they said they didn't know how it happened".

Examples of ANE

- You change the brief and clothes of a resident who has had an incontinent episode, however, you leave the draw sheet and bedding in place, even though it is also soiled.

- You are assisting Mr. Jones with his lunch when he tells you that he is done eating (even though he only took 2 bites of his food). You tell Mr. Jones that he needs to eat more food, to which he replies loudly "I told you I was done". You get frustrated with Mr. Jones because you have other residents to assist. You raise your voice, shake your finger at him and say "Do not yell at me Mr. Jones, now you are going to eat some more of your lunch".

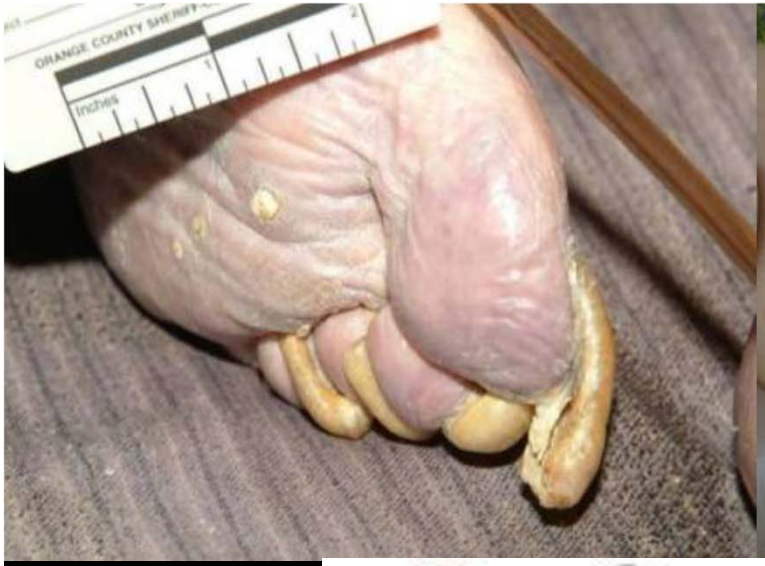
TEXAS Health and Human Services

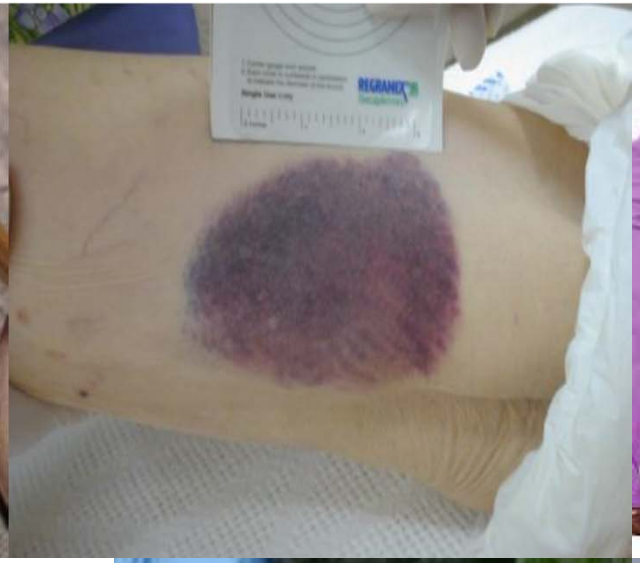
Examples of ANE

- Mr. Sonora was a 90-year-old widower with dementia who, despite his memory and cognitive problems, was able to manage living on his own. His wife died a few years earlier and he had no family living in the region, but his out-of-state relatives telephoned him regularly to make sure he was doing okay. The relatives became concerned about his well-being after a married couple approached Samuel and offered to help him around the house and perform minor home repairs. Initially Mr. Sonora welcomed their assistance and the relatives were happy he was getting help but soon the couple had taken over supervising his care, controlling his money, and restricting his access to his family. The couple had written checks for tens of thousands of dollars from Mr. Sonora's bank account for "maintenance work" but there was no evidence of any work being performed at his residence.

TEXAS Health and Human Services

Examples of ANE





TEXAS Health and Human Services

Recognizing Elder Abuse

TEXAS Health and Human Services

Who is most vulnerable?

- Many characteristics may cause one resident to be at a higher risk for abuse, than another:
  - Gender
  - Age
  - Functional capacity
  - Mental capacity

TEXAS Health and Human Services

Risk Factors

- Facility Risk Factors:
  - Abuse Prevention Policy
  - Staff education and training
  - Staff screening
  - Staff stresses/burnout
  - Staff ratio/turnover
  - Deficiencies/Complaints
  - Culture and Management
  - Physical Environment

TEXAS Health and Human Services

Risk Factors

- Resident Risk Factors
  - Unmet Needs
- Relationship Risk Factors
  - Resident-visitor frequency
  - Resident-staff interaction

TEXAS Health and Human Services

A World Free from Elder Abuse

TEXAS Health and Human Services

Consequences of ANE on the Elderly

- Physical Effects
  - persistent physical pain and soreness
  - nutrition and hydration issues
  - sleep disturbances
  - Elders who experienced abuse, even modest abuse, had a 300% higher risk of death when compared to those who had not been abused
- Psychological Effects
  - increased risks for developing fear/anxiety reactions,
  - learned helplessness, and
  - post traumatic stress syndrome
- The total direct medical costs associated with violent injuries to older adults (all cases of ANE in the U.S.) are estimated to add over $5.3 billion to the nation's annual health expenditures

TEXAS Health and Human Services

Preventing ANE

- Watching for warning signs that might signal abuse (bruising, soreness, agitation, fear, refusal to speak). If you suspect abuse, report it.
- Making sure that the older adult is eating properly and taking required medications. A weakened older adult may not be able to think clearly about the care being given.
- Listening to the resident.
- Intervening when you suspect elder abuse.
- Educating others about how to recognize and report elder abuse.
- Adopt stress reduction practices.
- If you’re having problems with substance abuse, get help.

Texas Administrative Code and ANE

- Title 40 Social Services and Assistance, Part 1 Department of Aging and Disability Services, Chapter 19 Nursing Facility Requirements for Licensure and Medicaid Certification, Subchapter G Resident Behavior and Facility Practice, Rule §19.602 Incidents of Abuse and Neglect are to the Texas Department of Aging and Disability Services (DADS) and Law Enforcement Agencies by Facilities:
  - (a) A facility owner or employee who has cause to believe that the physical or mental health or welfare of a resident has been or may be adversely affected by abuse, neglect, or exploitation caused by another person must report the abuse, neglect, or exploitation.

Texas Administrative Code and ANE

- Rule §19.602 Incidents of Abuse and Neglect Reportable to the Texas Department of Aging and Disability Services (DADS) and Law Enforcement Agencies by Facilities (cont.):
  - (b) Reports described in subsection (a) of this section must be made to DADS at 1-800-458-9858 and written reports must be sent to: DADS Consumer Rights and Services, P.O. Box 14930, Austin, Texas 78714-9030.
    - (1) The person reporting must make the telephone report immediately on learning of the alleged abuse, neglect, exploitation, conduct, or conditions. The person must send a written report to DADS Consumer Rights and Services within five days after the telephone report.
    - (2) The facility must conduct an investigation of the reported act(s). The facility must send a written report of the investigation to DADS no later than the fifth working day after the oral report.

Texas Administrative Code and ANE

- Rule §19.602 Incidents of Abuse and Neglect Reportable to the Texas Department of Aging and Disability Services (DADS) and Law Enforcement Agencies by Facilities (cont.):
  - (c) As a condition of employment an employee of a facility must sign a statement that states:
    - (1) the employee may be criminally liable for failure to report abuses; and

Texas Administrative Code and ANE

- Rule §19.602 Incidents of Abuse and Neglect Reportable to the Texas Department of Aging and Disability Services (DADS) and Law Enforcement Agencies by Facilities (cont.):
  - (2) under the Texas Health and Safety Code, Title 4, §260A.14, the employee has a cause of action against a facility, its owner(s) or employee(s) if he is suspended, terminated, disciplined, or discriminated or retaliated against as a result of:
    - (A) reporting to the employee's supervisor, the administrator, DADS, or a law enforcement agency a violation of law, including a violation of laws or regulations regarding nursing facilities; or
    - (B) for initiating or cooperating in any investigation or proceeding of a governmental entity relating to care, services, or conditions at the nursing facility.
  - (d) The statements described in subsection (c) of this section must be available for inspection by DADS.

Texas Administrative Code and ANE

- Rule §19.602 Incidents of Abuse and Neglect Reportable to the Texas Department of Aging and Disability Services (DADS) and Law Enforcement Agencies by Facilities (cont.):
  - (e) A local or state law enforcement agency must be notified of reports described in subsection (a) of this section that allege that:
    - (1) a resident's health or safety is in imminent danger;
    - (2) a resident has recently died because of conduct alleged in the report of abuse or neglect or other complaint;
    - (3) a resident has been hospitalized or treated in an emergency room because of conduct alleged in the report of abuse or neglect or other complaint;
    - (4) a resident has been a victim of any act or attempted act described in the Penal Code, §§21.02, 21.11, 22.011, or 22.021; or
    - (5) a resident has suffered bodily injury, as that term is defined in the Penal Code, §1.07, because of conduct alleged in the report of abuse or neglect or other complaint

Texas Health and Safety Code and ANE

- Health And Safety Code: Title 4. Health Facilities, Subtitle B. Licensing Of Health Facilities, Chapter 260A. Reports Of Abuse, Neglect, And Exploitation Of Residents Of Certain Facilities, Sec. 260A.006. NOTICE.
  - (a) Each facility shall prominently and conspicuously post a sign for display in a public area of the facility that is readily available to residents, employees, and visitors.
  - (b) The sign must include the statement: CASES OF SUSPECTED ABUSE, NEGLECT, OR EXPLOITATION SHALL BE REPORTED TO THE TEXAS DEPARTMENT OF AGING AND DISABILITY SERVICES BY CALLING 1-800-458-9858.
  - (c) A facility shall provide the telephone hotline number to an immediate family member of a resident of the facility upon the resident's admission into the facility.

Federal Regulations and ANE

- The Centers for Medicare and Medicaid Services (CMS) has 4 deficiencies related to ANE. They are:
  - F223
    - (§483.12): The resident has the right to be free from abuse, neglect, misappropriation of resident property, and exploitation as defined in this subpart. This includes but is not limited to freedom from corporal punishment, involuntary seclusion and any physical or chemical restraint not required to treat the resident's medical symptoms.
  - F224
    - (§483.12(a) The facility must

      (1) Not use verbal, mental, sexual, or physical abuse, corporal punishment, or involuntary seclusion

Federal Regulations and ANE

- Deficiencies for ANE cont.
  - F225
    - §483.12(a) The facility must---
      - (3) Not employ or otherwise engage individuals who –
        - (i) Have been found guilty of abuse, neglect, exploitation, misappropriation of property, or mistreatment by court of law;
        - (ii) Have had a finding entered into the State nurse aide registry concerning abuse, neglect, exploitation, mistreatment of residents or misappropriation of their property; or
        - (iii) Have a disciplinary action in effect against his or her professional license by a state licensure body as a result of finding of abuse, neglect, exploitation, mistreatment of residents or misappropriation of residents property

Federal Regulations and ANE

- Deficiencies for ANE cont.
  - F225
    - (4) Report to the State nurse aide registry or licensing authorities knowledge it has of actions by a court of law against an employee, which would indicate unfitness for service as a nurse aide or other facility staff.
    - §483.12(b) The facility must develop and implement written policies and procedures that:
      - (5) Ensure reporting of crimes occurring in federally-funded long-term care facilities in accordance with section 1150B of the Social Security Act. The policies and procedures must include but are not limited to the following elements.
        - (i) Annually notifying covered individuals, as defined at sections 1150B(a)(3) of the Act, of that individual's obligation to comply with the following reporting requirements.

Federal Regulations and ANE

- Deficiencies for ANE cont.
  - F225:
    - (A) Each covered individual shall report to the State Agency and one or more law enforcement entities for the political subdivision in which the facility is located any reasonable suspicion of a crime against any individual who is a resident of, or is receiving care from the facility.
    - (B) Each covered individual shall report not later than 2 hours after forming the suspicion, if the events that cause the suspicion result in serious bodily injury, or not later than 24 hours if the events that cause the suspicion do not result in serious bodily injury.
      - (ii) Posting a conspicuous notice of employee rights, as defined at section 1150B(d)(3) of the Act.
      - (iii) Prohibiting and preventing retaliation, as defined at section 1150B(d)(2) of the Act.

Federal Regulations and ANE

- Deficiencies for ANE cont.
  - F225 [§**483.12(b**(5)(i)-(iii) will be implemented beginning November 28, 2017 (Phase 2)]
    - 483.12 (c) In response to allegations of abuse, neglect, exploitation, or mistreatment the facility must:
      - (1) Ensure that all alleged violations involving abuse, neglect, exploitation or mistreatment, including injuries of unknown source and misappropriation of a resident property, are reported immediately, but not later than 2 hours after the allegation is made, if the events that caused the allegation involve abuse or resulted in serious bodily injury, or not later than 24 hours if the events that cause the allegation do not involve abuse and do not result in serious bodily injury, to the administrator of the facility and to other officials (including to the State Survey Agency and adult protective services where state law provides for jurisdiction in long-term care facilities in accordance with State law through established procedures.

Federal Regulations and ANE

- Deficiencies for ANE cont.
  - F225:
    - (2) Have evidence that all alleged violations are thoroughly investigated.
    - (3) Prevent further potential abuse, neglect, exploitation, or mistreatment while the investigation is in progress.
    - (4) Report the results of all investigations. To the administrator or his or her designated representative and to other officials in accordance with State law, including to the State Survey Agency, within 5 working days of the incident, and if the alleged violation is verified appropriate corrective action must be taken.

Federal Regulations and ANE

- The Centers for Medicare and Medicaid Services (CMS) has 4 deficiencies related to ANE. They are:
  - F226
    - §483.95(c) Abuse, neglect, and exploitation
      In addition to the freedom from abuse, neglect, and exploitation requirements in §483.12, facilities must also provide training to their staff that at a minimum educates staff on –
      §483.95(c)(1) Activities that constitute abuse, neglect, exploitation, and misappropriation of residents property as set forth at §483.12.
      §483.95(c)(2) Procedures for reporting incidents of abuse, neglect, exploitation, or the misappropriation of resident property
      §483.95(c)(3) Dementia Management and resident abuse prevention.

TEXAS Health and Human Services

Federal Regulations and ANE

- The Centers for Medicare and Medicaid Services (CMS) has 4 deficiencies related to ANE. They are:
  - F226
    - (§483.12(b) The facility must develop and implement written policies and procedures that:
      - (1) Prohibit and prevent abuse, neglect, and exploitation of residents and misappropriation of resident property,
      - (2) Establish policies and procedures to investigate any such allegations, and
      - (3) Include training as required at Paragraph §483.95,
      - (4) Establish coordination with the QAPI program required under §483.75, [§483.12(b)(4) will be implemented beginning November 28, 2019 (Phase 3)]

TEXAS Health and Human Services

Reporting ANE

It is the responsibility of everyone to stop any instances of ANE and then report it to the proper authorities

TEXAS Health and Human Services

Reporting ANE

- If you suspect that there are instances of ANE occurring inside of your facility, you are required by law and your licensure/certification to report it.
  - The number to call to make reports to the Department of Aging and Disability Services (DADS) or its successor agency 1-800-458-9858.
- A person making the report is immune from civil or criminal liability, and the name of the person making the report is kept confidential.
- Any person who suspects abuse and does not report it can be held liable for a Class-A misdemeanor.
- A professional cannot delegate this duty to another person to make the report.
- As the care provider, you must notify DADS or its successor agency if someone in your care has been or may be physically or mentally abused, neglected or exploited

Reporting ANE by the Nurse

- The Nursing Practice Act, Texas Occupations Code, Sections 301.401 - 301.419, requires nurses, state agencies, liability insurers, and other entities to report to the Texas Board of Nursing (BON) any nurse who engages in conduct subject to reporting, pursuant to Section 301.401(1) that:
  - (A) violates this chapter or a board rule and contributed to the death or serious injury of a patient;
  - (B) causes a person to suspect that the nurse's practice is impaired by chemical dependency or drug or
  - alcohol abuse;
  - (C) constitutes abuse, exploitation, fraud, or a violation of professional boundaries; or
  - (D) indicates that the nurse lacks knowledge, skill, judgment, or conscientiousness to such an extent that the nurse's continued practice of nursing could reasonably be expected to pose a risk of harm to a patient or another person, regardless of whether the conduct consists of a single incident or a pattern of behavior.

TEXAS Health and Human Services

Consequences of ANE on the Staff

- In Texas, it is a Class A misdemeanor if you believe that there is ANE happening and you fail to report it to the proper authorities.
- If the defendant maintains a state license related to the care of others, like nursing or nursing aide, then a defendant's license or certificate could potentially be revoked.
- Some elder abuse charges are categorized as assaultive charges
- Most elder abuse offenses are felony level offenses.
- Referral to the Employee Misconduct Registry and Nurse Aide Registry
- You are unemployable as a nurse aide

Consequences of ANE on the Staff

- Elder abuse charges based on omissions or negligent/reckless conduct tend to fall in the lower end of felony charges (or higher end of gross misdemeanors), ranging from one to three years in prison.
- Elder abuse charges based on intentional or knowing conduct tend to fall in the mid-range level of felony offenses, ranging from two to twenty years.
- The extent of injury can also affect the punishment range. Minor injuries result in a lower punishment range.
- More serious injuries usually result in higher level elder abuse charges.

TEXAS Health and Human Services

Long-Term Care Ombudsman

- Established as part of the 1978 Older Americans Act.
- Advocates for quality of life for residents in nursing facilities
- Identify, investigate, and resolve complaints made by, or on behalf of, residents and to provide services to help in protecting health, safety, welfare and rights.
- The Office of the Long-term Care Ombudsman can be contacted at 1-800-252-2412.

TEXAS Health and Human Services

Raising Awareness of Elderly Abuse

TEXAS Health and Human Services

Test your knowledge

- What are the instances of abuse &/or neglect in the scenario?
- What are some of the likely causes of the CNA's behavior?
- What could you as the CNA have done differently?
- What should the co-worker have done, if anything?

TEXAS Health and Human Services

References

- National Center on Elder Abuse: Nursing Home Abuse Risk Prevention Profile and Checklist. National Association of State Units on Aging. http://www.ncea.aoa.gov/Resources/Publication/docs/NursingHomeRisk.pdf
- Elder Abuse in Residential Long-Term Care Settings: What is Known and What Information Is Needed? http://www.ncbi.nlmn.nih.gov/books/NBK98786/
- DFPS: Reporting Abuse, Neglect, or Exploitation. https://www.dfps.state.tx.us/documents/Contact_Us/documents/swiflyer.pdf
- Texas Board of Nursing: Individual's/Patient's Complaint Formhttp://www.bon.state.tx.us/pdfs/cmplt.pdf

TEXAS Health and Human Services

References

- State Operations Manual Appendix PP - Guidance to Surveyors for Long Term Care Facilities Rev. 168, 03-08-17): http://cms.hhs.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_pp_guidelines_ltcf.pdf

- CDC. Elder Abuse Consequences. http://www.cdc.gov/violenceprevention/elderabuse/consequences.html