The North Dakota Protection & Advocacy Project

Policy & Procedure Manual

The Committee on Protection & Advocacy
Revised: July 8, 2013
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**P&A Policies & Procedures**

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SECTION I: PROGRAMS AND SERVICES

A. Agency Description

To help ensure that individuals with disabilities receive appropriate care & treatment, each State has a system, designated by the Governor, to protect & advocate for the rights of people with disabilities. The Protection & Advocacy Project (P&A) is the federally mandated, statewide, protection and advocacy system serving individuals with disabilities in North Dakota. The central purpose of the protection and advocacy system throughout the United States is to respond to allegations of abuse, neglect and violations of rights of persons with disabilities or discrimination based on their disability. As of July 2011, P&A has eight federal programs:

- Protection & Advocacy for Developmental Disabilities
  - Developmental Disabilities Assistance and Bill of Rights Act, as amended (42 U.S.C. §§ 15041-15045)

- Protection & Advocacy for Individuals with Mental Illness
  - Protection and Advocacy for Individuals with Mental Illness Act, as amended (42 U.S.C. §§ 10801 – 10851)

- Protection & Advocacy for Individual Rights

- Protection & Advocacy for Assistive Technology
  - Technology-Related Assistance for Individuals with Disabilities Act, as amended (29 U.S.C. §§ 3012)

- Protection & Advocacy for Beneficiaries of Social Security
  - Section 1150 of the Social Security Act, added by the Ticket to Work and Work Incentives Improvement Act, as amended (42 U.S.C. §§ 1320b-21)

- Protection & Advocacy for Traumatic Brain Injury
  - Section 1253 of the Public Health Service Act, added by the Children’s Health Act, as amended (42 U.S.C. §§ 300d-53)

- Protection & Advocacy for Voting Access
  - Title II, Subtitle D of the Help America Vote Act of 2002 (42 U.S.C. §§ 15461)

- Client Assistance Program
As mandated by State law (N.D.C.C. § 25-01.3) P&A is an independent State agency governed by the Committee on Protection & Advocacy. The Committee on P&A has promulgated State rules at N.D.A.C. § 65.5-01.

B History of P&A Programs

1 Protection & Advocacy for Developmental Disabilities

After becoming aware of the inhumane conditions at Willowbrook, a New York State institution for persons with developmental disabilities, Congress enacted the Developmental Disabilities Assistance and Bill of Rights Act of 1975 (the “DD Act”) to protect this vulnerable population. In the DD Act, Congress recognized that a federally-directed system of legal advocacy was necessary to “ensure the humane care, treatment, habilitation and protection of mentally retarded and other persons with developmental disabilities.”

2 Protection & Advocacy for Individuals with Mental Illness

Following Congressional investigations substantiating reports of abuse & neglect in state psychiatric hospitals, the Protection & Advocacy for Individuals with Mental Illness Act of 1986 (the “PAIMI Act”) was passed. The PAIMI Act’s intent was to extend protection similar to those provided under the DD Act to individuals with mental illness residing in facilities.

An important provision for the P&A system was included in the Children’s Health Act of 2000. It expanded the PAIMI Program to cover individuals with mental illness who reside in the community.

3 Protection & Advocacy for Individual Rights

The Protection & Advocacy for Individual Rights (PAIR) Program was established under the Rehabilitation Act in 1978, as amended in 1992. The program was not fully funded by Congress until 1994. It was designed to serve individuals with disabilities who are not eligible for P&A services under the DD or PAIMI programs.

4 Protection & Advocacy for Assistive Technology

The Protection & Advocacy for Assistive Technology (AT) Program was established in 1994 when the Technology Related Assistance for Individuals with Disabilities Act (the "Tech Act") was expanded by
Congress. As a result, the Tech Act includes funding to the *P&A systems* to assist individuals with disabilities in accessing AT devices & services.

5  **Protection & Advocacy for Beneficiaries of Social Security**

The Protection & Advocacy for Beneficiaries of Social Security (PABSS) Program was established & authorized by the Ticket to Work and Work Incentive Improvement Act (TWWIIA) of 1999. The Act authorizes the Social Security Administration (SSA) to fund *P&A systems* to provide work incentive assistance to SSDI and SSI beneficiaries seeking vocational rehabilitation, employment & other support services or seeking to secure or regain employment. The intent of the Act was the provision of health care, employment preparation & placement services to individuals with disabilities. The legislation also established a return to work “ticket” program to allow individuals with disabilities to seek the services necessary to obtain & regain employment, thus reducing their dependency on cash benefits programs.

6  **Protection & Advocacy for Traumatic Brain Injury**

This program was authorized by the Traumatic Brain Injury Act of 1996 and its reauthorization as part of the Children’s Health Act of 2000. Through the funding provided, *P&A systems* are better able to serve individuals with traumatic brain injury and their families.

7  **Protection & Advocacy for Voting Access**

This program was enacted to help ensure that every qualified person with a disability has the opportunity to vote. The Help American Vote Act, which was signed into law on October 29, 2002, overhauled federal elections in the United States by establishing minimum voting standards that each state territory must follow. The Act also authorized the provision of funds to the *P&A system* to ensure full participation in the electoral process for individuals with disabilities.

8  **Client Assistance Program**

Client Assistance Programs (CAP’s) were created in Section 112 of the Rehabilitation Act of 1973 to help persons with disabilities obtain rehabilitation services. The stimulus that led Congress to establish CAP’s came from individuals with disabilities who learned from experience that bureaucratic mazes often prevented people from understanding, receiving and using the services that could help them achieve
employment and independent living. Initially created as pilot projects, in 1984 Congress mandated that every state and territory have a CAP to assist clients and applicants of the state's vocational rehabilitation system. Effective July 2011, the CAP in ND is administered by P&A under contract with the ND Department of Human Services/Division of Vocational Rehabilitation.

C Agency Mission and Philosophy

MISSION
Uniting to champion the equality and inclusion of people with disabilities where we live, learn, work & play.

PHILOSOPHY
P&A is concerned with asserting the human, civic & legal rights of people with disabilities, especially those who cannot articulate and act to protect deprivations. P&A operates in a manner which is consistent with the belief that people with disabilities have the same legal & constitutional rights & guarantees as every other American citizen. P&A subscribes to a “self-actualization” view which stresses that every person be given the greatest possible opportunity to shape his or her personal destiny. P&A subscribes to belief in the least restrictive conditions necessary to achieve the purposes of treatment, leaving the person as much personal freedom as possible.

In line with the above mentioned philosophies, P&A will act for the exclusive benefit of the person with a disability & will advance the interests of that person, & not those of the parent, guardian, or other third-party representative. P&A, thereby, accepts a bond of loyalty & trust with the person & assumes an obligation of representing, as if they were its own, the interests of the individual with the disability.

P&A will provide services in a manner that offers information to the person with the disability about available options; allows the person with the disability to determine which option is preferred; & then promotes that preferred option within the scope of, & compatible with, the person’s legal rights.

P&A makes the assumption that the person with the disability, when properly advised & assisted, is capable of making decisions. Furthermore, when a decision or meaningful choice cannot be or is not expressed by a client, or when consent is not available from or provided by a client or legally authorized substitute, the role of P&A is to act with care to safeguard & advance the interests & rights of the person with the disability.
P&A believes that people with disabilities should be empowered to advocate on their own behalf to the extent possible. Services provided by P&A shall promote consumer control in decision making & focus on the empowerment of people with disabilities in order to foster independence, productivity, & integration into the community.

6/10/94

D Agency Priorities

As encouraged by federal funding sources, and following input activities by consumers, family members and the public, each year P&A chooses some of the most important issues affecting people with disabilities and makes them priorities. Nearly all P&A services (including information & referral, client assistance & representation, education & training, and systems advocacy) are then focused on these priority issues. P&A may accept non-priority cases for advocacy assistance, advocacy representation, or legal representation when the presenting issue is considered to be egregious and all other criteria have been met. Very limited resources will be available for non-priority cases. P&A’s grievance procedure is available to individuals whose request for advocacy services has been turned down because the issue is not within existing priorities or for other reasons.

E P&A Services

It is the desire of the Committee on Protection and Advocacy that P&A provide quality and timely advocacy services to all qualified individuals who request them. The Committee recognizes, however, that P&A’s resources may not allow for each eligible person to receive the level of advocacy services that he or she may desire. Therefore, advocacy services, beyond information and referral, will be provided by P&A based on specific case criteria that include established annual priorities.

Information* - The provision of knowledge, communicated by verbal, written or other means, that relates to disability issues, legal rights, and social or human services. Information is provided to anyone upon request. This may include generic information about P&A, resources external to P&A, and written documents or resources (including loaning of videotapes or books). The provision of information is usually of short duration, typically ranging from a few minutes to an hour, and does not

* Note: Information or referrals (I&R) given by P&A staff about legal rights or process does not constitute legal advice or counsel. Examples that are NOT I&R include directory assistance (giving a phone number, address, etc.) and I&R within the agency.
require any type of follow-up but does not preclude follow-up to determine effectiveness and/or outcomes.

**Referral** - Directing individuals to resources external to P&A for resolution of their concern or questions related to disability issues, legal rights, and social or human services. Referral services can be provided to anyone contacting P&A. Referrals do not involve follow-up beyond the initial contact other than to determine effectiveness and/or outcomes.

**Advocacy Assistance** – Advocacy Assistance is the provision of one or more limited interventions (including short-term assistance, technical assistance with self-advocacy, informal facilitation and discussion, & supervised referrals) to assist eligible individuals with disabilities in resolving a disability-related problem that falls within the scope of P&A’s priorities. The individual must have an identified goal to which they are legally entitled. Advocacy assistance does NOT include representation of the individual. Attendance at formal meetings and phone calls/letter-writing on behalf of the person are limited to assistance to complete a supervised referral. Advocacy assistance is generally not more than five (5) contacts, or five (5) hours of service, and is limited to six (6) months in duration.

**Advocacy Representation** – Representation by a P&A Disabilities Advocate of eligible individuals who have experienced, or who are experiencing, a disability-related rights violation that falls within the scope of P&A’s priorities. Interventions may include representation at meetings, negotiation, mediation, and pursuing administrative remedies.

**Protective Services** – Actions to assist individuals with disabilities who are unable to manage their own resources or to protect themselves from abuse, neglect, exploitation or other hazards. The provision of protective services is a separate role from that of advocacy. It is addressed in a separate agency policy titled *Protective Services*, as well as NDCC 25-01.3.

**Legal Representation** – Legal representation by P&A (directly or through contract) of eligible individuals who have experienced, or who are experiencing, a disability-related rights violation that falls within the scope of P&A’s priorities.
This table summarizes the criteria required for each level of the P&A’s advocacy services for individuals with disabilities.

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<thead>
<tr>
<th></th>
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<th>Advocacy Assistance</th>
<th>Advocacy Representation</th>
<th>Legal Representation</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>Issue connected to disabilities, civil or legal rights, social or human services</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>2</td>
<td>Issue is central to person’s disability</td>
<td></td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>3</td>
<td>Individual meets federal advocacy program eligibility</td>
<td></td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>4</td>
<td>Problem falls within ND P&amp;A priority OR is otherwise AT–related OR PABSS eligible OR TBI eligible</td>
<td></td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>5</td>
<td>Definable objective for intervention/representation</td>
<td></td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>6</td>
<td>Identified rights violation</td>
<td></td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>7</td>
<td>No duplication of advocacy services (with the exception of PABSS)</td>
<td></td>
<td></td>
<td>X</td>
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<tr>
<td>8</td>
<td>Sufficient P&amp;A resources</td>
<td></td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>9</td>
<td>Likelihood of successful resolution</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Successful resolution would result in more than minimal gain for the individual OR failure to resolve would have substantial or negative impact on the individual OR successful resolution is likely to favorably impact significant numbers of people with disabilities</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Accepted for representation by the Project Legal Team</td>
<td></td>
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</table>

P&A staff will provide prompt responses to all requests for advocacy services. Requests for assistance will be met through the provision of the least intrusive method available that will help resolve the problem. Advocacy assistance, advocacy representation and legal representation provided by P&A will be effective and timely.

Clients of P&A will be kept informed, in a manner consistent with the client’s preferred means of communication, of the status of ongoing advocacy activities.
on his or her behalf. Education in self-advocacy will be an integral part of advocacy efforts with each client.

Clients of P&A (or their parents/representatives as appropriate) receiving advocacy assistance, advocacy representation or legal representation, may be asked to participate in a consumer satisfaction survey. The client is under no obligation to participate in the survey.

All applicants, clients, and former clients (or their parents/representatives as appropriate) will be provided with information on their right to file a grievance with P&A related to an action or inaction by P&A. Information on the process for filing a grievance shall be provided in a manner consistent with the client’s mode of communication.

Specific P&A protocol for responding to referrals and providing advocacy services is included in the P&A Services manual.

F  Federal Program Eligibility

All programs require that the individual reside in the State of North Dakota. Federal program eligibility does not, in itself, entitle an individual to services from P&A.

1. Protection & Advocacy for Developmental Disabilities

To be eligible under the DD Program, in accordance with the definition in the federal Developmental Disabilities Assistance & Bill of Rights Act, the individual must meet the definition of “developmental disability”:

A. a severe chronic disability of an individual 5 years of age or older that is attributed to a mental or physical impairment or combination of mental & physical impairments;
B. is manifested before the individual attains age 22;
C. is likely to continue indefinitely;
D. results in substantial functional limitations in three (3) or more of the following areas of major life activity:
   (1) self care – a long term condition which requires significant assistance to look after personal needs such as food, hygiene, & appearance. Significant assistance may be defined as assistance at least one-half of the time for an activity or a need for some assistance in more than one-half of all activities normally required for self-care.
(2) **receptive & expressive language** – a long term condition which prevents effective communication with another person without the aid of a third person or with a mechanical device or a long term condition which prevents articulation of thoughts.

(3) **learning** – a long term condition which seriously interferes with cognitive, visual, or aural communication, or use of hands, etc., to the extent that special intervention or special programs are required to aid in learning.

(4) **mobility** – a long term condition which impairs the ability to use fine and/or gross motor skills to the extent that assistance of another person and/or a mechanical device is needed in order to move from place to place.

(5) **self-direction** – a long term condition which requires assistance in being able to make independent decisions concerning social & individual activities and/or handling personal finances and/or protecting self-interest.

(6) **capacity for independent living** – a long term condition that limits the performance of normal societal roles or which makes it unsafe to live alone to such an extent that assistance, supervision, or presence of a second person is required more than half the time.

(7) **economic self-sufficiency** – a long term condition which prevents working in regular employment or which limits productive capacity to such an extent that it is insufficient for self-support.

E. reflects the individual’s need for a combination & sequence of special interdisciplinary or generic services, supports, or other assistance that is of lifelong or extended duration & is individually planned & coordinated, except that such term, when applied to infants & young children means individuals from birth to age five (5), inclusive, who have substantial developmental delay or acquired conditions with a high probability of resulting in developmental disabilities if services are not provided.

2. **Protection & Advocacy for Individuals with Mental Illness**

To be eligible under the PAIMI Program, an individual must have a diagnosis of mental illness AND EITHER criteria A or criteria B.
 Individuals meeting criteria A have a higher priority than those meeting criteria B.

A. (1) The person is an inpatient or resident in a facility rendering care or treatment, even if the whereabouts of the person are unknown; OR
(2) The person is in the process of being admitted to a facility rendering care or treatment, including people being transported to such a facility; OR
(3) The person is involuntarily confined in a municipal detention facility for reasons other than serving a sentence resulting from conviction for a criminal offense; OR
(4) The person presents a problem with respect to matters which occur within ninety (90) days of discharge from a facility providing care or treatment.

B. the person lives in a community setting, including their own home.

3. **Protection & Advocacy for Individual Rights**

To be eligible under the PAIR Program, an individual must not be eligible for the Developmental Disabilities (DD) Advocacy Program, the Protection & Advocacy Program for Individuals with Mental Illness (PAIMI), or the Client Assistance Program (CAP – which is in the N.D. Dept. of Human Services/Vocational Rehabilitation Division). The individual must also meet one or more of the following criteria:

A. has a severe, chronic disability which substantially limits one or more major life activity such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, and learning; OR
B. has a record of such an impairment; OR
C. is regarded as having such an impairment (in accordance with the ADA and the Rehabilitation Act).

4. **Protection & Advocacy for Assistive Technology**

An eligible individual for the AT Program must be a person who presents:

A. with a verifiable disability; AND
B. a problem with access to disability-related AT devices or services.
5. **Protection & Advocacy for Beneficiaries of Social Security**

To be eligible for services under the PABSS Program, the person must:

A. be currently receiving SSI and/or SSDI cash payments from the Social Security Administration; **AND**

B. have a concern regarding employment or employment support services; **OR**

C. have a concern that if not addressed, will negatively impact the individual’s ability to obtain, maintain, or regain employment.

6. **Protection & Advocacy for Traumatic Brain Injury**

To be eligible for services under the TBI Program, the person must:

A. have an acquired brain injury that is not degenerative or congenital (existing before birth), resulting in significant emotional, behavioral, or cognitive impairments; **AND**

B. have a record of such an impairment.

7. **Protection & Advocacy for Voting Access**

To be eligible for services under the PAVA Program, the person must:

A. have a verifiable disability; **AND**

B. present an issue regarding unassisted access to voting or the voting system.

8. **Client Assistance Program**

To be eligible for services under the CAP, the person must:

A. Be a client or applicant of programs under the Rehabilitation Act including Vocational Rehabilitation, Centers for Independent Living and Tribal 121 Vocational Rehabilitation programs.

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Detailed information for implementation of these policies & procedures are found in the binder titled **P&A Services: Forms, Instructions & Protocol**
G  **Protective Services**

All people with disabilities have the right to be free from abuse, neglect and exploitation. The Committee on Protection & Advocacy believes the response to all such reports shall be a priority of P&A. Federal and state law provide broad statutory authority for P&A to investigate incidents of alleged abuse and neglect of people with disabilities if there is probable cause to believe the incidents occurred. P&A shall take action, as necessary, to resolve such reports and secure any needed protective services for the individual(s). If the individual refuses protective services, and if that individual has no legally appointed guardian and is able to consent, and the nature of the report does not present probable cause that other unidentified people with disabilities may be at risk, P&A will recognize the right of the individual to live as they choose.

P&A’s authority to conduct investigation and monitoring activities and to access individuals’ and facilities’ records is broad and clear. This authority is established in both federal and state law. Specific authority to investigate reports of abuse and neglect of people with developmental disabilities and mental illness¹ and other disabilities can be found in:


2. The Protection and Advocacy for Individuals with Mental Illness Act of 1986 (the PAIMI Act), 42 U.S.C. 10801 et seq.;

3. NDCC 25-01.3. The Committee on Protection and Advocacy;

4. NDAC 65.5-01-04-02. Authority of the project –Investigation;

5. NDAC 65.5-01-03-01. Access to records -Representation - Investigation of reports of abuse, neglect, or exploitation and complaints.

¹ Authority cited in 1-5 relate specifically to people with developmental disabilities or mental illness.

A specific procedure will be followed by P&A when a report is received, or when information establishing probable cause that abuse or neglect has occurred (or is occurring) is brought to the attention of P&A. That procedure\(^2\) includes:

1. Determining eligibility (P&A jurisdiction).
2. Obtaining initial information about the allegation.
3. Assessing risk management and establishing assurances that appropriate steps have been taken to address those concerns.
4. Conducting investigative activities including:
   a. Collecting evidence
   b. Researching laws, rules and regulations
   c. Analyzing facts, and
   d. Establishing conclusions
5. Completing appropriate documentation.

P&A shall receive reports from any source including anonymous reporters and information obtained through the media. Reports may be written, verbal or conveyed through an alternative form of communication. P&A shall ensure that any alternative communication needs identified by a reporter are appropriately accommodated.

Eligibility for services is determined based on the existence of a disability\(^3\) and the establishment of probable cause to suspect that abuse or neglect has occurred. Eligibility is determined based upon the existence of a

\(^2\) Procedures are outlined in detail in the P&A Protective Services Procedural Manual

\(^3\) "Relevant P&A access cases on this issue indicate that the service providers may not require, as a condition to granting access to records or facilities, that P&A make a definitive showing that particular individuals who are the subject of an investigation have a disability"; P&A System Access Manual, 2004
developmental disability as defined at 42 U.S.C. Chapter 75, Section 6001(8),
the existence of a mental illness as defined at 42 U.S.C Part A, Section
10802(4), or the existence of a disability as defined in the Americans with

P&A will immediately, upon receipt of a report of suspected abuse or neglect,
initiate action to ensure risk management. Simultaneously, the report shall
be assessed for probable cause. Probable cause to believe that an individual
with disabilities has been subject to abuse or neglect, or is at significant risk of
being subjected to abuse or neglect, exists when P&A determines that it is
objectively reasonable for a person to entertain that belief.

Once the determination of probable cause is made, an investigation will be
initiated. The sequence of steps and the components of an effective
investigation are outlined in the Protective Services Procedural Manual. Upon
the determination of probable cause, a file will be opened, under the
appropriate program and designation.

P&A’s investigation and report of findings will be completed within 30 working
days of the establishment of probable cause. Extensions of this timeline will be
warranted when specific conditions exist (e.g. the report constitutes criminal
activity and law enforcement begins an investigation; there is an inability to
direct interviews of significant witnesses; etc.). The need and justification
for an extension shall be reviewed with the Unit Director or the Executive
Director and documented within the protective services file.

P&A’s documentation of reports of alleged abuse or neglect will fall into one of
two broad categories. The first category will be for internal purposes only.
Two types of documents will be included in this category. The first type of
document will be a service note or notes to address reports that result in a “no
probable cause” determination or in agency action or corrective action under
the “Level System”. Documentation will include, to the extent known, the
names of the reporter and individual with the disability, date(s) and
description(s) of the alleged incident(s), as well as the rationale for a
determination of “no probable cause”, agency action, or corrective action.

4 Appropriate risk management actions are outlined in the Protective Services Procedural
Manual.
5 See the P&A Services manual regarding the appropriate labeling and identification of files.
6 See the Protective Services Procedural Manual, Level System section
The second document will be the investigative report. This document will provide a detail of the investigative efforts, including interview summaries, record reviews and all other activities. This report will also identify the relevant laws, rules and regulations; an analysis of the facts; and a conclusion determining substantiation (validation) or non-substantiation of abuse and/or neglect.\(^7\)

The second category will describe two different types of reports generated to consumers and/or other stakeholders. The first type of report is a formal “letter of findings”. This correspondence communicates the conclusion of the P&A investigation to individuals with disabilities, legal decision makers, service providers and other licensing or certifying agencies. These letters are confidential and are a part of the client’s file, opened under the name(s) of the alleged victim(s). In these cases, the client and/or legal decision maker, the service provider and the licensing agency will receive a copy of the letter of findings, identifying the specific individual(s). Certifying and/or accrediting agencies will receive a redacted copy, identifying the provider and the location of services.

The second type of report in this category will be a public report, written based on a case or series of cases that raise a systemic issue.\(^8\) This report may take a form similar to a letter of findings, summarizing the conclusion of the P&A investigation or monitoring effort. Another format may be a more detailed analysis of the issues or concerns, a clear summary of the findings of fact and an analysis of the broader systemic implications. This type of a report is intended for distribution to a wide public audience and is intended to have impact on public policy reform.

**H Seclusion, Restraint and Death Investigations**

All deaths and incidents of attempted suicide or serious injury of people in residential settings that are reported to or become known to P&A will be viewed as evidence of potential abuse and neglect. Based on the statistical relationship between the use of seclusion and restraint and serious injury or death, P&A will focus investigative efforts on the use of incidents of seclusion

\(^7\) See Protective Services Procedural Manual for specific report format and procedural instructions regarding the documentation of evidence and other investigatory actions.

\(^8\) The P&A regulations permit the issuance of public reports so long as the confidentiality of the individual service recipients is maintained (or their permission to release their identity is obtained); P&A Abuse and Neglect Detection and Prevention Manual 2005
and restraint. It is critical in protecting people in residential settings that all such incidents that are validated incidents of abuse or neglect are identified and appropriate action taken. Based on this model and the responsibility of P&A to protect individuals with disabilities from abuse and neglect, P&A will conduct probable cause determinations of all such incidents.

P&A is authorized to have access to all records of any individual with a developmental disability, or a PAIR-eligible client who has died, within 24 hours of a request and without first seeking or obtaining the consent of any other person.9

All deaths, serious injuries, and suicide attempts in Psychiatric Residential Treatment Facilities are to be reported directly to state P&A’s.10

P&A staff may receive information of the death or the seclusion or restraint of a person receiving services in a residential setting. Upon receiving such information, the following process will be initiated:

1. P&A will conduct necessary follow up to determine if the reported death or seclusion/restraint did, in fact, occur.

2. The same day that staff of the P&A confirms the validity of the reported death or seclusion/restraint in a residential facility,11 a Unit Director will be informed.

3. A Unit Director will staff the case with the advocate to determine probable cause.

4. If a determination of probable cause cannot be made with the available information, the Unit Director or designee will send a written request to the provider for medical records regarding the death or the seclusion/restraint.

5. Upon determination of probable cause, the investigation will be assigned to a staff person. The Executive Director and Director of Legal Services will be

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10 Pursuant to 42 CFR Part 483, subpart G.
11 “Facilities” is defined at 42 U.S.C. Chapter 114, Subchapter 1 Part A Section 10802(3) and NDCC 25-01.3-01(10).
informed of the death and plan to investigate.

6. If appropriate, records will be requested in writing from other regulatory agencies that may be responsible to investigate deaths or incidents of seclusion/restraint.

7. If probable cause is not determined, the facts will be presented to the P&A legal team for review before a final decision is made.

8. Within 5 working days of the determination of probable cause by P&A that an investigation is warranted, an investigation plan will be developed and implemented. This plan will be consistent with investigation procedures outlined in the Protective Services Procedural Manual.

9. P&A may establish appropriate contracts for review and consultation regarding the findings of an investigation. These contracts will be developed to ensure that facts are reviewed by persons with appropriate expertise to make determinations of substantiated abuse and/or neglect. Specific contracts will be contingent on the review and approval of the Executive Director.

10. The final report on all death investigations will be reviewed by the P&A legal team.

The DD and PAIMI acts allow, but do not require, P&A’s to release medical records of a deceased individual to a parent, guardian, spouse, or adult child. This must be in compliance with state law regarding confidentiality. Even if the federal and state law authorize the release of records, if there was any indication from prior communication with the deceased individual or his/her legal decision maker that the individual did not want records released to a family member, P&A will not authorize the release of those records.

It is important to recognize the high cost in attorney time, the litigation expense, and the “chilling effect” that law suits could have in a wrongful death damage action. Any decision regarding P&A involvement in a wrongful death damage action will be made by the legal team and consistent with the protocol for determining legal representation found in relevant P&A policy.
SECTION II: PERSONNEL

A Personnel Policies

As a State agency, P&A adheres to the personnel laws and policies of the State of North Dakota as established in Century Code and in Office of Management & Budget (OMB) Administrative Code and policies. These provide authority for personnel procedures such as recruitment, hiring, job description questionnaire (JDQ) development, pay schedules, salary increases, fringe benefits, discipline, and termination.

P&A also complies with relevant federal laws including, but not limited to, the Rehabilitation Act, the Americans with Disabilities Act, and the Fair Labor Standards Act.

Personnel records relating to salary and job performance are considered open records and must be released. No documents that address an employee's character or performance may be placed in the file unless the employee has had the opportunity to read the material. The employee must acknowledge reading the material by signing the actual copy to be filed, with the understanding that the signature merely signifies that he or she has read the material to be filed and does not necessarily indicate agreement with its content. If the employee refuses to sign the material, the Executive Director or designated representative will sign and date a statement in the presence of the employee and a witness that the employee was shown the material and refused to sign the copy.

The following information is considered confidential:

1. Social Security numbers

2. Health Insurance - Any record of a public employee's medical treatment (i.e., physical exams, medical leaves, worker compensation claims, drug and alcohol testing) or use of an employee assistance program is not to become part of an employee's personnel record. The ADA, Family and Medical Leave Act, and ND Human Rights Act all have provisions to this effect, requiring employers to keep medical records in separate, locked files with limited access to supervisors and managers.

3. Retirement forms

4. Life Insurance forms
5. Flex Comp Plan forms
6. Deferred Compensation forms
7. Other Optional Benefits forms

P&A also considers the following records exempt from disclosure:

1. Personal information (address, phone number, driver’s license number, date of birth, dependent information and emergency contact).
2. Financial account numbers.

Risk management records of claims against the employee.

B Orientation & Training

P&A will provide new employees with orientation to their job and the agency. Ongoing continuing education will be considered on an individual basis and determined by the employee’s supervisor. The agency’s current financial status, as well as costs/benefits, shall be an appropriate consideration in the decision of whether to sponsor continuing education. Requests for employee participation in education and training activities shall be documented on a “request to expend funds” form and submitted to the employee’s supervisor who shall make a recommendation on the request to the Executive Director.

Employees attending conferences or workshops on agency time and/or expense shall file a written report to their supervisor and Executive Director within thirty (30) days of the conference or workshop. All materials received as a conference or workshop participant are the property of P&A and shall be submitted with the report to the administrative office.

C Probationary Period for New Employees

The minimum length of the probationary period for all new P&A staff is six months, but it may be up to one year if it is needed to satisfactorily determine performance. An employee must be told the length of the probationary period prior to the time the employee begins work. During this time, unless directed otherwise by his/her supervisor, the employee shall review outgoing correspondence, filing of complaints, outlines for presentations, and the like, with his/her supervisor. This will assist the new employee with learning
agency protocol and the supervisor with providing direction and evaluating employee performance.

At the end of the probationary period, and upon completion of a performance appraisal by the new employee’s supervisor, the employee may be: 1) put on permanent employment status; 2) put on an extended probationary period for continued evaluation of the employee’s ability to adequately perform the responsibilities of the job; 3) terminated from employment. The decision will be made by the Executive Director with input from the new employee’s supervisor.

D Professional Conduct

Employees of P&A shall at all times conduct themselves in a professional manner. All communications (verbal, written, & otherwise) will be expressed in a respectful manner. Personal attacks, personal threats, voices raised in anger towards clients, providers or others will not be tolerated. Any employee whose actions are deemed to be unprofessional shall be subject to immediate disciplinary action. Such disciplinary action may include termination of employment with P&A if the Executive Director believes the conduct was severe enough in nature to warrant such action.

Employees are expected to dress in an appropriate, professional manner when meeting with clients, families, providers, and when representing P&A before the public.

E Work Place Violence

The agency will not tolerate any type of workplace violence committed by or against its employees. Employees are prohibited from making threats or engaging in violent activities. This list of behaviors, while not inclusive, provides examples of prohibited conduct:

1. causing physical injury to another person;
2. making threatening remarks;
3. aggressive or hostile behavior that creates a reasonable fear of injury in another person or subjects another individual to emotional distress;
4. intentionally damaging agency property or property of another employee;
5. possessing or displaying a firearm or dangerous weapon of any type while on agency property or while on agency business. The terms “firearm” and “dangerous weapon” are defined in NDCC 62.1-01-01 which can be found at http://www.legis.nd.gov/cencode/t621c01.pdf; or

6. committing acts motivated by or related to sexual harassment or domestic violence.

Reporting Procedures
Any employee who observes or is subject to work place violence should immediately seek needed medical attention and report the conduct to their supervisor, or the Executive Director. If appropriate, notify law enforcement.

Employees who feel at risk of becoming victims of violence because of the nature of their job or because they are subject to harassment, violence, or threats from a nonemployee may contact the Executive Director for assistance.

All reports can be made anonymously, and all reported incidents will be investigated. Parties involved in a situation will be counseled and the results of investigations will be discussed with them. The agency will actively intervene at any indication of a possible hostile or violent situation.

Dangerous and Emergency Situations
Employees who confront or encounter an armed or dangerous person should not attempt to challenge or disarm the individual. Employees should remain calm, make constant eye contact, and talk to the individual. Cooperate and follow the instructions the armed or dangerous person gives.

Because of the nature of P&A’s work, employees may be at risk of aggression from others. Therapeutic intervention training (including verbal de-escalation techniques) will be made available to all new employees within the first six months of employment and periodically thereafter.

Enforcement
Any employee who exhibits violence in in the work place shall be subject to immediate disciplinary action. Such disciplinary action may include unpaid suspension or termination of employment with P&A, if the Executive Director believes the conduct was severe enough in nature to warrant such action.

If nonemployees engage in violent acts on the agency premises, the agency will report them to the proper authorities.
F  Work Place Harassment

No employee shall be subjected to workplace harassment based on race, color, religion, gender, sexuality, age, national origin, or disability. Conduct that unreasonably interferes with an individual's work performance, creates an intimidating, hostile, or offensive work environment, or adversely affects an employee's employment opportunities constitutes unlawful harassment. Unlawful harassment can be verbal, non-verbal, or physical conduct or communication that shows hostility or aversion towards an employee or their relatives, friends, or associates because of race, color, religion, sex, age, genetics, national origin, disability or other protected status. Examples may include, but are not limited to: epithets, slurs, jokes, negative stereotyping, written or graphic materials, pin-ups, posters, calendars, photographs, cartoons.

In addition, employees have the right to be free of harassment within the workplace from nonemployees such as clients, their family members, or other individuals who provide services. If this happens, the employee must immediately report the incident and action taken to their supervisor and document the incident.

Any employee of P&A may file a written complaint with the Executive Director alleging with reasonable specificity the basis for the allegation of harassment. The Executive Director, or his/her designee, shall conduct such investigation as, in the determination of the Executive Director, is reasonably necessary to investigate the allegation. The employee alleging harassment may report to another administrative staff if the Executive Director is involved in the allegation. The administrative staff receiving the report shall refer the matter to the Chair of the Committee on Protection & Advocacy.

Allegations of harassment, if substantiated, will result in disciplinary action of the person charged which shall include the possibility of discharge. Retaliatory action taken against an employee who files a complaint of harassment is prohibited.

G  Sexual Harassment

No employee of P&A shall be subjected to sexual harassment as an incident of employment. Sexual harassment may include a range of behaviors and may involve individuals of the same or different gender. These behaviors may include but are not limited to:
1. Unwanted sexual advances or requests for sexual favors.

2. Sexual jokes and innuendo.

3. Verbal abuse of a sexual nature

4. Leering, massaging, or touching.

5. Comments about a person's body, sexual prowess, or sexual deficiencies.

6. Displaying or showing inappropriate sexually suggestive or offensive pictures or objects anywhere in the workplace.

7. Degrading e-mail.

Sexual harassment occurs when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of the individual's employment.

2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.

3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Any employee of P&A may file a written complaint with the Executive Director alleging with reasonable specificity the basis for the allegation of sexual harassment. The Executive Director, or his/her designee, shall conduct such investigation as, in the determination of the Executive Director, is reasonably necessary to investigate the allegation. The employee alleging sexual harassment may report to another administrative staff, if the Executive Director is involved in the allegation. The administrative staff receiving the report shall refer the matter to the Chair of the Committee on Protection & Advocacy.

Allegations of sexual harassment, if substantiated, will result in disciplinary action of the person charged which shall include the possibility of discharge. Retaliatory action taken against an employee who files a complaint of sexual harassment is prohibited.
H Drug Free Work Place

It is unlawful to manufacture, distribute, dispense, possess or use a controlled substance in the workplace. A violation of this policy may subject an employee to disciplinary action up to and including dismissal.

Any employee who transfers, sells, manufactures, or uses a controlled substance on the job, in the workplace, or where the agency’s work is performed, will be subject to disciplinary action up to and including dismissal.

An employee must notify the Executive Director within five days after being convicted for violating any Federal or State criminal drug statute in the workplace. The Executive Director will notify contracting Federal agencies within ten days after receiving notice from the employee.

I Employee Assistance Program

As allowed by policies of the Office of Management & Budget (OMB), P&A offers assistance, through contract services, to employees and their immediate family members who are experiencing problems with physical, emotional or mental illness, financial difficulties, marital or family distress, the disease of alcoholism or drug dependency, and other personal concerns. Seeking assistance through the program will not affect employment status or jeopardize promotional opportunities. The contract service provider will handle the referral in a strictly confidential manner.

An employee or immediate family member experiencing problems is encouraged to voluntarily seek information about counseling or treatment on a confidential basis by contacting the contracted service provider. One need only identify him or herself as an employee or immediate family member of an employee of P&A to obtain an appointment. Knowledge of the individual’s participation in the program will be kept confidential by the contracted service provider.

A supervisor may refer an employee to the program after: 1) identification of deteriorating or unsatisfactory job performance  2) a constructive interview with the employee; and 3) appropriate documentation of the interview with the employee. If a supervisor refers an employee to the program because of job performance, documentation will reflect only the fact that a referral was made and not the nature of the personal problem or status of the employee’s involvement with the program.
J  Performance Appraisals

Work performance appraisals will be conducted with each employee in order to evaluate whether the individual is meeting expected levels of job performance, enhance the professional development of the employee and to meet the organizational goals and objectives of the agency. The appraisal shall be based upon the assigned responsibilities to the position and the expected level of performance. The results of performance appraisals may be used as a basis for salary increases contingent upon State personnel policies and the availability of agency resources.

For new employees, performance appraisals will be conducted at six months and twelve months following the date of hire. Thereafter, all employees will receive a performance appraisal annually, generally at the anniversary of their hire date, or more frequently as the discretion of the employee’s supervisor.

The performance appraisal shall be completed by the employee’s supervisor with input from the employee. The supervisory shall review and discuss the final written report with the employee. Completed performance appraisals will be submitted to the Executive Director for review and placed in the employee’s personnel file, with a copy being provided to the employee.

If performance problems are identified, the supervisor will develop a written plan specifying action to be taken to address the problems and timelines for achieving the expected results and timelines for review of progress. The written plan, and documentation of review, shall be submitted to the Executive Director and placed in the employee’s personnel file. A copy shall be provided to the employee.

The Executive Director’s performance appraisal shall be completed on an annual basis by the Committee on Protection and Advocacy. The process and format shall be set by the Chair.

K  Employee Grievance Procedure

Employees may grieve employer actions of demotion, dismissal, suspension without pay, forced relocation, reduction-in-force, reprisal, or discrimination in employment through the agency employee grievance procedure. Employees may use a reasonable amount of time during regular working hours to process a grievance, without risking loss of pay.
A waiver of the agency grievance procedure is allowed by mutual agreement of the employee and the Executive Director. Each party must sign the waiver within fifteen working days of the employer action. Upon obtaining the waiver, the employee may appeal directly to Human Resource Management Services in accordance with NDAC § 4-07-20.1-08.

The employee must begin the agency grievance procedure within fifteen working days from the date of notice of the employer’s action, except in the case of reprisal. In the case of reprisal, the employee shall begin the agency grievance procedure within fifteen working days from the date of the reprisal action.

The process is initiated by a written grievance mailed or delivered to the Executive Director. The grievance must contain a statement describing the employer action being grieved, a detailed explanation of the basis for the grievance, and the desired remedy or outcome. If applicable, the employee may provide supporting documentation and/or names of person with supporting information.

The Executive Director may designate another individual to investigate and/or review the employee grievance. The Executive Director’s designee will recommend a decision to the Executive Director; however, the Executive Director will make P&A’s decision in each case. A written response to the issues raised in the grievance will be provided within fifteen working days of the delivery of the grievance.

The deadline for the response may be extended by mutual consent of the Executive Director and the employee. If this deadline is missed without the consent of the employee, the employee may submit their grievance to Human Resource Management Services.

L Conflict of Interest

A conflict of interest is defined as the conflict between the duties assigned to the employee and the self-interest of the employee. Employees who knowingly participate in or influence situations in which a conflict of interest is present may be subject to disciplinary action.

Employment outside of P&A

If a P&A employee wishes to engage in work outside of P&A, the approval of the Executive Director must be sought, in writing, prior to the commencement of the work. Any employment or activity that could potentially constitute a
conflict of interest with the work of P&A, or violate the philosophy and/or rules of P&A’s programs, will not be approved.

**Boards and Committees**
Employees are encouraged to serve on committees and to work cooperatively with other organizations & individuals in order to collectively bring about a positive effect on the rights & interests of persons with disabilities. Employees shall not accept appointment to, nor serve on committees or boards, which could present a conflict of interest for the employee or P&A. This would include, for example, membership on a board of a service-providing agency. Employees shall obtain approval from their supervisor prior to accepting appointment or membership to a committee or board.

**Conflicts in Client Representation**
In representing clients or making program decisions, employees must be free from conflict of interest. If an employee or their supervisor recognizes that a conflict exists, any necessary measures will be taken to ensure conflict-free representation and decision-making, including assigning the client or other work to another agency employee.

**Contracts**
No employee will participate in any aspect of a contract when a conflict of interest is involved. Such a conflict would arise when: the employee, any member of the employee's immediate family, the employee's partner or associate, or the organization which employs or is about to employ any of the previous, has a financial or other interest in the firm bidding on or awarded the contract.

Employees are required to report in writing to the Director any financial or personal interest in any work-related transaction. The Director will determine if a conflict of interest exists.

Immediate family is defined as the employee’s spouse, parent, dependent children, or member of one’s household.

**Acceptance of Gifts**
Acceptance of gifts or favors from clients is highly discouraged. Gifts having a value over $50.00 from anyone having dealings with P&A are NOT allowed. Gifts may not be accepted if offered with the intent to directly or indirectly influence P&A or any of its employees or when the gift will give the impression of such influence.
Purchase of equipment
Employees or members of their immediate family are allowed to purchase surplus or outdated equipment only after it has been processed through Surplus Property.

Hatch Act
Department employees are subject to the provisions of the Hatch Act. The Hatch Act is a federal statute that prohibits any employee, whose principal employment is in connection with an activity which is financed in whole or in part by federal funds, from taking an active part in partisan politics. City commission and park boards are examples of nonpartisan politics.

1. An employee may run for public office in nonpartisan elections, campaign for and hold office in political clubs or organizations, actively campaign for candidates for public office in partisan and nonpartisan elections, and contribute money to political organizations and attend political fundraising functions.

2. An employee may not be a candidate for public office in a partisan election, use official authority or influence to interfere with or affect the results of an election or nomination, or directly or indirectly coerce contributions from subordinates in support of a political party or candidate.

3. Prior to seeking elective or appointive public office the employee must contact the Director and explain the duties of the public office. Because the duties and responsibilities of the employee's job may be in conflict with the duties and obligations of the public office, it is necessary that they be reviewed and considered before the employee seeks the office. Each situation shall be reviewed on an individual basis.

4. No employee or other person performing services for the agency in connection with a project shall have, directly or indirectly, a financial or other personal interest, other than employment or retention by the agency, in any contract or subcontract in connection with such project.

Notification
Employees or other persons performing services for the agency who are aware of a possible conflict of interest caused, directly or indirectly, by a financial or other personal interest shall report the possible conflict of interest to the Director.
**M  Lobbying**

Generally, the role of P&A staff in legislative matters is to educate policymakers, at the State and federal level, about the potential impact of bills on people with disabilities and their families. P&A also has a role in educating individuals with disabilities, family members, advocacy organizations, and others about topical legislative issues and to encourage their participation in the law-making process. While these basic activities are not considered lobbying, P&A will not use federal funds in carrying out these actions.

State law defines a lobbyist as “any person who, in any manner whatsoever, directly or indirectly, performs any of the following activities: a) attempts to secure the passage, amendment, or defeat of any legislation by the legislative assembly or the approval or veto of any legislation by the governor of the state; b) attempts to influence decisions made by the legislative management or by an interim committee of the legislative management.” [NDCC § 54-05.1-02] State law goes on to say, in part, that this chapter does not apply to any person who is “…an employee, officer, board member, volunteer, or agent of the state or its political subdivisions whether elected or appointed and whether or not compensated, who is acting in that person’s official capacity.”

**N  Employee Work Schedules**

The Committee on P&A believes that in order to maintain productivity of its employees, & to minimize staff burnout, employees need to have a balance between the demands of their work & their personal lives. Employees of P&A are therefore encouraged to complete job responsibilities within the forty-hour work week. Recognizing that there are circumstances which require employees to work additional hours, compensatory time off will be afforded to staff that are unable to use flexible scheduling.

When it is essential for employees to perform job functions outside of core work hours, they are encouraged to use flexible scheduling whenever possible. This includes on-call hours, as defined in the agency’s Emergency Services Compensatory Time policy. Flexible scheduling must be used within the same work week.

When overtime hours cannot be accommodated through flexible scheduling, the following rules shall apply:

1. The Executive Director, other Directors, Attorneys, and Coordinators will be afforded compensatory time off at an hour for hour rate for overtime;
2. Advocates and Support Staff (Administrative & Office Assistants) will be afforded compensatory time off at a rate of time-and-one-half for overtime.

For non-emergency work, prior approval to work overtime must be obtained from the employee’s supervisor. For emergency situations, employees are to exercise professional judgment in responding to such issues outside of core work hours (e.g. when on-call).

Employees are encouraged to use compensatory time off during the month in which it is accrued. No more than forty (40) hours of compensatory time off can be accrued at any one time.

It is the responsibility of each employee to submit documentation of flexible scheduling used and compensatory time earned/taken as required by the agency. The documentation shall include hours actually worked when on-call per the agency’s Emergency Services Compensatory Time policy. On-call hours worked should be documented in the same manner as compensatory time or flexible scheduling.

Definitions

1. compensatory time – credit given for work performed in excess of forty (40) hours/week.

2. core work hours – 8:00 a.m. to 5:00 p.m. Monday through Friday, excluding State holidays.

3. emergency – a situation which could have a severe or substantially detrimental impact upon an individual with a disability & which requires immediate intervention to protect the health and/or safety of the individual.

4. flexible scheduling – work hours scheduled to accommodate job responsibilities performed outside of core work hours & still maintain a forty-hour work week.

5. overtime – actual hours worked in excess of forty (40) hours per work week.
6. work week – forty (40) hours worked in a week regardless of the hours of the day or days of the week the work was performed; begins Sunday at 12:01 a.m. and concludes at midnight on Saturday.

O Emergency Services Compensatory Time

Employees of P&A shall earn compensatory time at the rate of eight (8) hours per one (1) week of on-call time when responding to emergency service requests. P&A employees will additionally earn four (4) hours of compensatory time for providing on-call emergency services for each day which falls on a State holiday.

Employees may only trade on-call emergency duty. Employees are not allowed to provide on-call emergency duty more times than they would normally be scheduled to perform this function each year.

All on-call compensatory time earned by an employee must be completely depleted before the employee is scheduled to perform on-call duty again.

In order to receive credit for on-call compensatory time & on-call compensatory holiday time, employees must document the applicable hours on their monthly time sheets. Any compensatory time accrued under this policy shall be counted in the forty (40) hour maximum allowable under the agency’s Employee Work Schedules policy.

P Family and Medical Leave

Employees are eligible for family and medical leave under the State and Federal Family and Medical Leave Acts (FMLA) if they have been employed with the State of North Dakota for at least 12 months and have worked at least 1,250 hours during the previous 12-month period. The 12 months of employment with the State need not be consecutive.

If eligible, employees must be provided up to twelve weeks of unpaid leave, except as noted in (6) below, during a 12-month period for the following reasons:

1. The birth or care of the employee’s newborn within the first 12 months after the birth.

2. The placement or care of a newly adopted or foster child within the first
12 months after placement.

3. Care for the employee’s spouse, son, daughter, or parent, but not parent-in-law, who has a serious health condition.

4. A serious health condition that makes the employee unable to work or perform any one of the essential functions of the employee’s job. “Serious health condition” means an illness, injury, impairment or physical or mental condition that involves either an overnight stay in a medical care facility or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the job or prevents the qualified family member from participating in school or other daily activities. Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than three consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment or incapacity due to pregnancy or a chronic condition. Other conditions may meet the definition of continuing treatment. (29 CFR § 825.113)

5. A qualifying exigency arising from the fact that the employee’s spouse, child, or parent is a covered military member on active duty or has been notified of active duty in support of a contingency operation. “Qualifying exigency” includes short-notice deployment, military events and related activities, childcare and school activities, financial and legal arrangements, counseling, rest and recuperation, post-deployment activities, and additional activities that may arise out of active duty or call to active duty status and upon which the employer and employee agree. Leave for a qualifying exigency applies when the covered military member is a member of the reserve components or a retired member of the regular armed forces or reserve. A member of the regular armed forces is not eligible to take leave because of a qualifying exigency.

6. Care for a military service member with a serious injury or illness. Note: An employee who is the spouse, parent, child, or next of kin of a current member of the armed forces (including National Guard or Reserves) who was injured in the line of duty or while on active duty may be eligible for a combined total of 26 weeks of leave for any qualifying reason during the 12-month period.

The leave entitlement period will be determined by the rolling 12-month period measured backward from the date an employee uses any leave under this section. Any FMLA leave used during this 12 month period will be deducted from the total allowable under this section. For reason (f)
above, leave begins counting on the date an employee first takes leave to care for the military service member.

P&A requires an employee to first use any accrued compensatory time, then accrued paid and donated leave before authorized unpaid family and medical leave.

- For an employee’s own serious health condition, the employee must first use any accrued sick leave, then any accrued compensatory time, annual leave, and donated leave, in this order, before unpaid authorized family and medical leave.

- For any reason other than an employee’s own serious health condition, employees must first use any family sick leave and then use any accrued compensatory time, annual leave and donated leave, in this order.

Employees who have exhausted the applicable types of paid leave will be provided unpaid leave to fulfill the authorized period of family and medical leave.

If a holiday falls within a week in which the employee needs a full week of leave, the holiday will count against the family and medical leave entitlement. If the employee needs less than a full week of leave and a paid holiday occurs during the leave period, the holiday cannot be counted against the 12 week entitlement unless the employee would be otherwise scheduled and expected to work if not on leave.

Employees who are provided with unpaid leave during any authorized family and medical leave period will continue to have health plan premiums paid by P&A during the leave period. Employees in an unpaid leave status will not accrue annual or sick leave during the period of unpaid leave.

Request for Leave
An employee requesting leave must complete SFN 58548, Employee Request for Family Medical Leave, and submit it to the supervisor at least 30 days in advance of when the leave is to begin if the leave is foreseeable or as soon as is practicable for unforeseen leave. An employee requesting leave for a qualifying exigency must complete Form WH-384, Certification of Qualifying Exigency for Military Family Leave (www.dol.gov/esa/whd/forms/WH-384.pdf). An employee requesting leave to care for a military service member with a serious injury or illness must complete Form WH-385, Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave (www.dol.gov/esa/whd/forms/WH-385.pdf). The supervisor must then forward
the request form to the Executive Director for approval.

**Notices**
The Executive Director must provide the employee, within five business days of the request for leave or of becoming aware of the leave, if feasible, with a copy of the Form WH-381, Notice of Eligibility and Rights & Responsibilities (www.dol.gov/esa/whd/forms/WH-381.pdf), which will detail specific entitlements and responsibilities of the employee and explain any consequences of failure to meet those obligations. The Executive Director will decide whether a condition qualifies as a serious health condition. Upon approval of requested information, the Executive Director will provide the employee with Form WH-382, Designation Notice (www.dol.gov/esa/whd/forms/WH-382.pdf), and attach a list of the essential functions of the employee’s position if a fitness for duty to return to work is required.

**Medical and Other Certification**
The Executive Director must, within five business days of a request for family and medical leave, notify the employee of the requirement of a medical certification from a health care provider. This is required to verify that the family and medical leave request is necessary for the employee’s own serious health condition, to care for a family member’s serious health condition, or to care for a covered service member with a serious injury or illness.

The employee must provide the medical certification within 15 calendar days of P&A’s request unless it is not practicable under the particular circumstances in spite of the employee’s good faith efforts. The certification is required on either of the U.S. Department of Labor’s forms: WH-380-E, Certification of Health Care Provider for Employee’s Serious Health Condition (www.dol.gov/esa/whd/forms/WH-380-E.pdf), or WH-380-F, Certification of Health Care Provider for Family Member’s Serious Health Condition (www.dol.gov/esa/whd/forms/WH-380-F.pdf), as applicable. If an incomplete or insufficient certification is returned, the Executive Director will give the employee seven calendar days to correct any deficiency by notifying the employee in writing what additional information is necessary. If the deficiencies are not corrected, the division director may deny the FMLA leave. The Executive Director must notify the employee at the time the certification is requested of the consequences of the employee’s failure to provide adequate certification.

P&A may contact the health care provider, after written employee authorization, to clarify or authenticate the medical certification (whether initial
or recertification) after the employee has been given an opportunity to cure any deficiencies. Contact will be made by the Executive Director or a designated member of the management team who is not the employee’s direct supervisor.

Failure to provide the requested certification in a timely manner or cooperate or release relevant information may result in denial of the leave until it is provided. If an employee refuses to provide a certification, the leave request may be denied and the employee may be disciplined.

An employee may also be required to submit to additional examinations by a physician selected and paid for by P&A. If the minimum duration of the employee’s incapacity specified on a certification furnished by the health care provider is more than 30 days, P&A will not request recertification until the minimum duration has passed unless:

1. The employee requests a leave extension;

2. Circumstances described by the previous certification have changed significantly (e.g. duration of the illness, the nature of the illness, complications); or

3. P&A receives information that casts doubt upon the continuing validity of the certification.

Any recertification requested by P&A shall be at the employee’s expense. P&A may not require second or third opinions on recertification.

P&A may require certification that an employee’s family member is on active military duty by requesting the covered military member’s active duty orders the first time the employee requests exigency leave.

**Leave Extension**

An employee who requests an extension of family medical leave due to the continuation, recurrence or onset of his/her own serious health condition or of the serious health condition of the employee’s spouse, child, or parent, must, within two business days, submit a written request for an extension to the Executive Director. This written request must be made as soon as the employee realizes that she/he will not be able to return at the expiration of the leave period.
Intermittent Leave
When medically necessary, employees may take family and medical leave intermittently or on a reduced work schedule basis for their own serious health condition, the serious health condition of a family member, or to care for a covered service member with a serious injury or illness. Leave must be taken in no less than half-hour increments. Employees are required to cooperate with P&A to arrange reduced work schedules or intermittent leave to minimize disruption of business operations.

Qualifying exigency leave may be taken intermittently or on a reduced leave schedule.

Leave for the birth of a healthy child or placement by adoption or foster care of a healthy child may be taken intermittently or on a reduced leave schedule if the Executive Director agrees.

Return from Leave
If an employee wishes to return to work prior to the expiration of a family medical leave of absence, a notification must be given to the employee’s supervisor within two business days prior to the employee’s planned return. However, the supervisor, with the concurrence of the employee, may allow the employee to return to work immediately.

An employee who takes leave for their own serious health condition may be required to provide a fitness for duty certification signed by the health care provider; such notice must be included in the Designation Notice (http://www.dol.gov/whd/forms/WH-382.pdf). If an employee fails to submit the required fitness for duty certification, the employee’s restoration to his or her position may be delayed or denied.

Upon return from leave, an employee who is not designated as a “key employee” will be restored to their original position or an equivalent position with equivalent pay, benefits, and any other employment rights that existed at commencement of the leave or that may have accrued during the leave period. Whether a position is an “equivalent position” is the decision of the Executive Director.

An employee designated as a “key employee” may not be provided restoration rights upon return from leave. Individuals designated as “key employees” under FMLA will be notified of such designation at or before the time FMLA leave commences. If the restoration of a key employee causes “substantial and
grievous economic injury” to the employing agency, reinstatement upon returning from leave may not occur.

An employee who fails to return at the end of the leave will be considered to have voluntarily resigned unless additional leave as a reasonable accommodation under the Americans with Disabilities Act is necessary. If an employee fails to return from an FMLA leave, P&A may recoup the cost of health plan premiums for any period of the FMLA leave which was taken as unpaid leave, unless the reason the employee does not return is due to:

1. The continuation, recurrence, or onset of a serious health condition of the employee or the employee’s family member which would otherwise entitle the employee to leave under FMLA; or

2. Other circumstances beyond the employee’s control such as staying home to care for a newborn with a serious health condition, the spouse is transferred to a location more than 75 miles from the employee’s work site, etc.

If P&A experiences a reduction-in-force during the employee’s absence and the employee would have lost his/her position, the employee retains any rights under P&A’s Reduction in Force policy but may not be eligible for reinstatement under the Family and Medical Leave Acts.

Married Couples Who Work for the State
If an employee and his/her spouse are both employed by the State of North Dakota, both are eligible for family and medical leave and are limited to a combined total of 12 weeks of leave in a 12-month period if the leave is taken for birth of the employee’s child or to care for the child after birth, for placement of a child with the employee for adoption or foster care or to care for the child after placement, or to care for the employee’s parent with a serious health condition.

A husband and wife may each take 12 weeks of FMLA leave if needed to care for their newborn child or an adopted or foster child with a serious health condition, even if both are employed by the same employer, provided they have not exhausted their entitlements during the applicable 12-month FMLA leave period.

The employee and spouse may be limited to a combined total of 26 weeks of leave when care for a covered service member with a serious injury or illness is taken in addition to leave for birth of the employee’s son or daughter or to care
for the healthy child after birth, for placement of a healthy son or daughter with the employee for adoption or foster care, to care for the child after placement, or to care for the employee’s parent with a serious health condition during a single 12-month period.

If a dispute arises as to the eligibility for leave under this section, the designation of paid leave as qualifying under this section, or the appropriateness of notice requirement of less than 30 days, an employee may submit additional information to the Executive Director for further consideration.

Q  **Equal Employment Opportunity**

P&A provides Equal Employment Opportunity (EEO) so that no employee or applicant for employment will be discriminated against because of race, color, religion, sex, age, national origin, physical or mental disability, political opinion or affiliation, status with regard to marriage or public assistance, or participation in lawful activity off the employer's premises during non-working hours which is not in direct conflict with the essential business-related interests of the employer.

The EEO Program applies to all employees of and applicants for positions with P&A and requires that they be treated equally. The program allows no discrimination of any kind in recruitment, placement, advertising, or solicitations for employment; training during employment or selection for training; rates of pay or other forms of compensation; promotions, transfers, demotions, layoffs, or terminations; recognition or awards; or any related function.

R  **Salary Administration**

All salary increases are subject to the availability of appropriated funds. General salary increases are provided strictly as appropriated by the Legislative Assembly.

Hiring rates will generally be at the beginning of the position’s range for new employees but may be up to the salary range midpoint depending on qualifications and difficulty with recruiting for and/or filling the position.

Salary increases are allowed under certain circumstances for the following reasons:

1. Successful completion of a probationary period;
2. Increase in responsibility/workload;

3. Promotion;

4. Performance exceeding standards as evidenced by the employee’s performance appraisal and approved by the Committee on P&A as part of a merit increase administration plan;

5. Equity; or

6. Temporary assignment to a position with a higher level of responsibility.

Reclassification increases are not allowed unless the employee's salary is less than 5 percent above the new salary range minimum.

Exceptions to the Salary Administration Rules may be granted only by Human Resource Management Services.

The salary of the Executive Director is set by the Committee on Protection & Advocacy, which shall also be the sole authority for decisions on any increases (merit, equity, or otherwise).

S Professional Membership Dues

Payment by P&A of dues to professional organizations is contingent upon the relationship of the membership to the employee’s job duties and/or the benefit to the agency. Examples:

- P&A will pay annual dues to the State Bar for agency attorneys who provide legal work for the agency and/or its clients.
- P&A will not pay dues for employees to be licensed as social workers, as this is not a requirement of any agency positions.
- P&A may pay dues for memberships to job-related organizations that benefit the agency as a whole and for which the employee is acting as a representative of the agency to such organization (e.g. Guardianship Association of N.D.). Wherever possible, such membership should be carried in the name of P&A and not of an individual to promote transferability of the benefits of the membership.

T Reduction in Force

If the reduction in force is necessary as a result of lack of funds, P&A shall establish the amount of savings required in the period in which the cost
reduction must be achieved. The Committee on P&A shall identify those duties that are to be performed by the agency in order of priority. The Executive Director shall assist the Committee on P&A with the designation of duties that are less crucial. This analysis will reveal positions that may be eliminated for the period involved along with the cost savings. This process shall continue until the necessary reduction in cost has been achieved.

The agency will use the following criteria if a reduction of the work force is necessary as a result of curtailment of work or as a result of reorganization:

1. An analysis of the acquired knowledge, demonstrated skills, & versatility of the employees compared to the work to be done and the availability of funding. Employees lacking the necessary skills & the versatility will be considered for reduction.

2. An analysis of the level of demonstrated work performance. Employees having a consistently low level of performance will be considered for reduction.

3. A review of the length of service of the employees. The Executive Director will list the number of years & months employees have been in the classified service. Those employees with the fewest years of service will be considered for reduction.

4. The Executive Director will make an analysis of the extent of required training needed to train a reassigned employee to full productivity in a different position. Employees requiring substantial retraining will be considered for reduction.

5. A consideration of the diversity of relevant related job experience of the employee.

6. A determination of the ability of the employee to work under a stressful job environment.

7. The veteran status of the employee.

8. Emergency, temporary, provisional, or probationary employees serving in the same class, in the same agency location as classified employees shall be subject to reduction in force prior to classified employees who have satisfactorily completed their probationary period.
Any employee desiring to voluntarily participate in a reduction in force may do so by advising the Executive Director. The Executive Director shall consider future staffing structure and accompanying knowledge, skills & abilities required to effectively continue essential program functions in his/her decision to accept or reject voluntary layoff offers.

P&A shall conduct reductions in force in a non-discriminatory manner & shall not use any reduction in force action as a substitute for disciplinary measures. Employees affected as a result of reduction in force action taken by P&A shall not be subjected to discrimination on the basis of race, color, religion, gender, age, national origin, political beliefs, disability, or other non-merit factors.

Classified employees who have satisfactorily completed their probationary period have the right to appeal a reduction in force only on the basis that the following factors were not considered by the agency:

- the acquired knowledge and demonstrated skills of the employees
- the demonstrated work performance of the employees
- the length of service of the employees
- the extent of training needed to be fully productive on different jobs

**U Reemployment after a Reduction in Force**

An individual who has lost employment due to a reduction-in-force within P&A shall be considered an internal applicant for all positions within P&A for which the individual applies and shall be offered reemployment with P&A if all of the following conditions are present:

1. A regular position vacancy in the same classification or a lower classification in the same series occurred and the vacancy will be filled by someone other than a current employee.

2. The individual meets the qualifications determined to be necessary for successful performance of the position and successfully completes any required examinations specified by OMB including an oral interview(s).

3. No more than one year has lapsed since the individual lost employment due to reduction-in-force.

4. The individual is not currently employed in a regular position in State service.
An individual who has lost employment due to a reduction-in-force and was denied reemployment has the right to file a grievance or appeal in accordance with N.D. Admin. Code §4-07-20.1-07 only on the basis that P&A did not follow N.D. Admin. Code §4-07-11-07 or that the denial of reemployment was conducted in a discriminatory manner.

The assessment of whether an individual meets the qualifications necessary for successful performance shall remain with P&A.

V Resignations

Employees are required to notify their supervisor in writing of their intent to resign a minimum of four weeks in advance of the final day of employment. Employees are encouraged to consider informing supervisors of their plans or intent to resign as early as possible to facilitate orderly replacement planning and training.

Supervisors shall notify P&A’s Executive Director and prepare a current final job performance evaluation.

P&A will accept resignations of employees at any time. Employees are encouraged to submit their resignation in writing. The Executive Director has the authority to modify the resignation date in an effort to manage budget dollars. Resignation dates incorporating annual leave will be evaluated, but the Executive Director has the right to approve or disapprove such requests.

W Separations – Security, Access, and P&A Property

When an employee, consultant, or contractor terminates his or her relationship with P&A, whether by a reduction in force, termination, retirement, or resignation, the Director of Policy and Operation, or a designee, must terminate all computer and communications accounts used by the worker upon separation and must take the following action:

1. All physical security access codes known by the worker must be deactivated or changed.

2. All access rights and privileges to restricted areas and information systems must be immediately revoked.

3. All agency property must be returned, including but not limited to portable computers, library books, documentation, building keys, magnetic access cards, state identification, and credit cards.
All work product and records, including electronic records, are the property of P&A and may not be retained or removed by the employee, consultant, or contractor, without permission of the Executive Director.

Fraud

P&A is committed to conducting its business legally, fairly, honestly and with integrity. All employees are expected to carry out their work and their responsibilities accordingly. P&A will not tolerate fraud, dishonest or illegal activity amongst its employees, contractors or suppliers under any circumstances. P&A is committed to investigating cases of suspected fraud and illegality and, where appropriate, taking disciplinary action or referring matters to the authorities for further investigation which may lead to prosecution.

Fraud is a deliberate act to acquire the assets or property of others by deception, trickery or dishonesty. It can often involve more than one person and in these cases there can be a conspiracy to defraud. Fraud can affect assets that are both small and large in value. It can take place in small amounts over a long period of time or can represent just one incident where considerable value is involved. For the purposes of this policy, fraud (which will include bribery/corruption) will include but will not be limited to the following intentional acts:

1. theft or misappropriation of departmental assets or the assets of any third parties that the department deals with;

2. the submission of false claims or invoices for payment or reimbursement;

3. accepting or offering a bribe, accepting gifts or other favors under circumstances that might lead to the inference that the gift or favor was intended to influence a decision;

4. blackmail or extortion;

5. accepting or offering an inducement to or from a third party; this could be considered to be a kickback;

6. the deliberate supply or certification of sub-standard quality goods or services;

7. false accounting or making false or fictitious entries concerning accounts, equipment or supplies;
8. the deliberate rigging of requests to procure or specifications to favor a particular party; or

9. payment of excessive prices or fees where they are not justified.

All employees have a responsibility for the deterrence of fraud and for ensuring that their duties and responsibilities are carried out in a manner that protects agency assets and resources.

In the event that employees become aware of or strongly suspect that fraud has or is occurring, employees must report this to the Executive Director or to a different, management level administrative staff, if the Executive Director is implicated. The administrative staff will report the concern to the Chair of the Committee on Protection and Advocacy.

All reports of suspected fraud or irregular/improper behavior will be investigated and remediated. Employees engaging in fraudulent activities are subject to disciplinary action, including termination.

**Whistleblower Protection**

An employee may, without fear of future punishment, report in writing to the Executive Director, a state's attorney, the Attorney General, or an employee organization the existence of:

1. a job-related violation of state or federal law;

2. a job-related violation of state or federal agency rules; or

3. job-related misuse of public resources.

For having made this report, an employee will not:

1. be dismissed from employment;

2. have salary increases or employment benefits withheld;

3. be transferred or reassigned;

4. be denied a promotion which the employee otherwise would have received;
5. be demoted; or

6. be discriminated against in any term or condition of employment.

Z Employee Statements Regarding Disputes and Controversy

The words “dispute” and “controversy” include litigation, arbitration, mediation, contract claims, risk management claims, and allegations likely to lead to such disputes or controversies. The term “statement” includes any communication other than that necessary to comply with an open records request.

1. While performing their duties, employees shall not make statements regarding any aspects of a matter that is subject to dispute or controversy without obtaining permission from the Executive Director, unless the employee is subject to a subpoena.

2. Any employee receiving a subpoena, or a request for information related to a dispute or controversy other than an open records request, must refer the matter to the Executive Director.

3. Employees receiving requests for information related to a dispute or controversy when away from the work place are prohibited from making statements to attorneys, investigators, or other interested persons. Employees must refuse to answer any questions unless subject to a subpoena.

4. Any employee who wishes to offer testimony as an expert witness must request permission from the Executive Director and must comply with all laws and policies regarding conflict of interest.
SECTION III: OPERATIONAL POLICIES

A Travel Reimbursement

P&A employees shall be fairly compensated for mileage, meals, lodging and incidentals incurred while conducting agency business. As the same time, agency resources must be used wisely & frugally towards the maximum benefit of each dollar. Out-of-state travel must be approved by the executive director prior to occurrence.

Reimbursement of employees’ travel expenses shall be paid in accordance with the policies of the Office of Management & Budget (OMB) and State law upon the submission of required documentation, receipts & administrative approval.

Meals
Reimbursement rates for in-State meals are set by the Legislature. Out-of-State meals are reimbursed at the GSA daily rate. Breakfast may be claimed after an overnight stay or if travel begins prior to 6:30 a.m. Lunch may be claimed if the employee is in travel status at least three (3) hours and includes travel between 11:00 a.m. and 1:30 p.m. Dinner may be claimed if the employee is in travel status at least four (4) hours and the employee returns after 7:30 p.m. If the activities include a meal or meals which are included in the registration fee, or which are provided at no cost to the employee, allowance cannot be claimed for the meal(s).

Lodging
Reimbursement rates for in-State lodging are set by the Legislature. Out-of-State lodging is reimbursed at the actual rate charged plus any applicable taxes. An original receipt is required for reimbursement of in-State or out-of-State lodging expenses. While not required, employees are encouraged to share lodging accommodations to save on agency resources.

Mileage
State vehicles will be used whenever available when an employee travels more than thirty (30) miles from his/her office. Use of personal vehicles for travel of more than thirty (30) miles requires advance approval from the Executive Director. Mileage for use of a personal vehicle for travel within a thirty (30) mile radius is reimbursed at the rate set by the Legislature. Mileage for use of a personal vehicle for approved travel beyond a thirty (30) mile radius is paid at the State reimbursement rate or the State Motor Pool rate, whichever is less. Agency employees will ride share with each other whenever possible and are encouraged to ride share with employees of other State and non-State
agencies when possible. Travel reimbursement may be denied to employees who drive personal vehicles when carpooling was an option.

**Flights**
Flight costs are incurred at standard coach fares unless first class can be adequately justified as a reasonable accommodation for the passenger's disability. Passengers will be reimbursed for one checked bag. An exception can be made by the executive director for disability or work-related reasons.

**Incidentals**
Original receipts are required for reimbursement for shuttles, taxis, and other travel expenses (e.g. parking) in excess of $2.00.

**Non-State Employees**
Members of the Committee on P&A and agency advisory councils shall be given opportunities to participate in relevant conferences, workshops, trainings, and other activities pertinent to their roles. Generally the Executive Director, or staff liaison to the various advisory councils, will provide information about upcoming activities of potential interest to the Committee and councils. The Committee and councils are encouraged to discuss if they believe the activity to be of such importance to send a representative or representatives. If they decide to do so, the P&A Administrative Assistant will help the individuals with registration and travel arrangements.

Members of the Committee on P&A, agency advisory council members, and other non-employees approved to travel on agency business shall be fairly compensated for mileage, meals, lodging and incidentals. Non-state employees will be paid the same rates of reimbursement as State employees. In order to obtain the State rate for a non-state employee, a state agency may pay the lodging facility directly for his/her lodging expense. Miscellaneous vouchers will be used to pay the travel expenses of persons who are not State employees. In these situations, the vouchers should be clearly marked “non-state employee”. At the discretion of the Executive Director, and consistent with budgetary constraints, P&A may devote resources to support the inclusion of individuals with disabilities, family members of people with disabilities, or other individuals who are not program staff, contractors, or members of the governing board or advisory council(s), in training, workshops, conferences, committees, or task forces to study or address disability-related issues. Support must be provided only for activities and events that increase knowledge of protection and advocacy issues or enhance leadership capabilities and which are consistent with P&A priorities and objectives. Covered costs may
include some or all of the following: registration fees, meals, mileage, lodging, and/or personal care expenses.

B Communications with the Media

Contact with the media, whether initiated by P&A or in response to a request, is to be made through, or with the approval of, the Executive Director. If a request is made by the media for information or an interview with an agency employee, the employee should obtain the contact information and as much information as possible about the request and then communicate this to the Executive Director.

In the absence of the Executive Director, employees should communicate the information to the Director of Policy & Operations or the Director of Legal Services. For the purposes of this policy, media includes radio & television stations, newspapers, & magazines.

C Agency Property

Agency employees may be trusted with certain agency property in order to perform their duties effectively and efficiently. Agency property includes items such as credit cards, ID card, keys, laptop personal computer, computer access, tools, and equipment. This property must be protected in order to preserve the credibility and security of the agency. Employees may use such property only on behalf of the agency and must return it when the property is no longer needed or if the employee no longer works for the agency. Agency property may not be borrowed or removed from agency premises for personal use.

Access to agency offices at times other than normal working hours is allowed when necessary to conduct agency business.

Smoking of any kind is prohibited in any state building and in any state fleet vehicle.

D Agency Technology

The Committee on Protection & Advocacy is committed to dedicating a reasonable and justifiable amount of resources to technology which will allow P&A staff to perform their jobs in the most efficient manner possible. Use of the agency’s technology resources must be in compliance with P&A, state, federal, and industry requirements. Agency and/or individual audits may be
conducted to determine compliance with this policy. Employees who misuse information systems may have their access denied or restricted. Violations or non-compliance can result in disciplinary action, up to and including termination.

**The Internet & electronic mail**

- P&A will conform to applicable state law and standards in regards to the purchase and use of Internet and e-mail services and groupware.

- P&A provides electronic information systems and applications to employees to support their achievement of agency objectives. This includes e-mail, computers, electronic communication devices, printers, facsimile machines, telephones, voice-mail, and all associated operating systems and application software. Information systems may only be used for purposes that support business goals and objectives. Casual personal use is permitted during lunch or other breaks, but only if it has a negligible impact on computer and network resources and does not impact employee productivity.

- Inappropriate use includes the transmission of sensitive information that has been exempted from open records laws, sensitive personal information to unauthorized individuals or unsecured locations, communicating in a discriminatory, defamatory, derogatory, libelous or harassing manner, infringing on intellectual property rights (including copyright, trademark and trade name), creating or transmitting chain letters, non-business related video/audio material or any information that contributes to a hostile or unproductive workplace, use for any illegal purpose, use in excess of granted authority, or creating, storing, viewing or transmitting pornography or other graphics that are offensive or would otherwise violate state policies or applicable laws.

- Files which are downloaded from the Internet must be scanned with virus detection software before installation or execution. All appropriate precautions should be taken to detect for a virus and, if necessary, to prevent its spread.

- Antivirus scans should be completed weekly on each user’s computer.

- Client identifiable information may NOT be transmitted in e-mail. Email content, “subject” description, and attachment names should not be identifiable. Email attachments containing client identifiable information should be redacted, password protected, or sent using encryption.
Software and Hardware
- P&A will conform to state law, standards, and contracts in regards to the selection, purchase, and use of software and hardware.

- Only software approved by P&A’s Director of Policy & Operations may be installed and used on P&A hardware. Installation and use of software must be in compliance with the accompanying licensor agreement.

- Only non-P&A-owned hardware (and accompanying software) approved by P&A’s Director of Policy & Operations may be connected and used with P&A owned hardware (e.g. printers, PDA’s, scanners, etc.). P&A will not provide support for non-P&A-owned hardware.

- Mobile devices such as PDA’s and smart phones (whether agency or non-agency owned) that utilize the state network to perform synchronization must use a power-on password that is at least 4 digits long. Automatic device locking shall occur after 5 minutes of inactivity. When configurable, devices shall be disabled after ten (10) successive invalid sign on attempts. If a device becomes disabled, this means the device has all of its local information erased and it must be reconfigured to connect to the State’s servers.

- All software purchased by P&A and used by P&A staff must be inventoried by the agency support staff responsible for inventory control. Software registration will be completed in the name of the agency and not in the name of the individual user.

Records
- Documents that are produced and stored on P&A hardware or discs are subject to the state records retention schedule.

- Information that is not confidential is subject to the state open records law. Client records are confidential.

Back-up
- Essential files on all computers are to be backed-up on the P&A server at least once a week.

Disk clean up and Disk de-fragmentation
• To maintain the efficient operation of the computer, disk clean up and de-fragmentation should be completed a minimum of every three months. If the computer appears to be taking more time to run certain programs or to read/write certain files, these programs should be run.

E  Cost Allocation

All personnel working for P&A are allocated work time by program or funding source. This is for budgeting purposes. While employees are to work as best they can within the allocated program percentages, P&A must assure that costs are allocated to the appropriate funding source for actual work performed by P&A personnel.

In order to fulfill this policy, each employee who works for more than one program (i.e. the employee’s time is paid by more than one funding source) must record their time by program on a daily basis using monthly time sheets. Time worked shall be documented in quarter-hour increments. The completed time sheets must be submitted to the agency’s Fiscal Manager by last working day of the month. The Fiscal Manager will assure that payroll reflects time actually worked for each program/funding source.

F  Program Income

The Protection & Advocacy Project’s major federal programs (DD, PAIMI, and PAIR,) impose certain obligations that govern program income. Federal regulations, a related OMB circular, and grant documents establish these obligations.

For the DD Advocacy Program, attorney’s fees are considered program income pursuant to … Part 92–Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and must be added to the funds committed to the program and used to further the objectives of the program. This requirement shall apply to all attorneys’ fees, including those earned by contractors and those received after the project period in which they were earned.

45 C.F.R. § 1386.24 (b). The Protection & Advocacy Project shall add DD program income to DD funds and use them to further the objectives of the DD program. See id. and 45 C.F.R. § 92.25 (g)(2).

At least since 1998, the terms and conditions of the PAIMI grant have directed P&A to use PAIMI program income “under the additional costs alternative ... to
further the objectives of the” PAIMI program. See “terms and conditions” of the Fiscal Year 2005 PAIMI Formula Grant Program from the Center for Mental Health Services (CMHS) at ¶3.

Program income under the DD or PAIMI programs receives parallel treatment. P&A shall add DD program income, e.g., attorney’s fees, to the DD account and use it in addition to other DD funds to achieve DD objectives. P&A shall add PAIMI program income, e.g., attorney’s fees, to the PAIMI account and use it in addition to other PAIMI funds to achieve PAIMI objectives.

PAIR is slightly different. PAIR is subject to U.S. Department of Education regulations that govern grants. See 34 C.F.R. § 381.4.

See 34 C.F.R. § 381.10 (a)(2) (PAIR program must have the “same general authorities, including access to records and program income, as in part C of the DDA”) (emphasis added). There is one exception to those general provisions, i.e.,

Program income is authorized for use in accordance with the addition alternative under the Client Assistance and Protection and Advocacy programs only.

See Attachment H to terms and conditions that govern the PAIR program for FY 2005. The “addition alternative” is the same process as applies to the DD and PAIMI programs. That is, P&A shall add PAIR program income, e.g., attorney’s fees, to the PAIR account and use it in addition to other PAIR funds to achieve PAIR objectives.

Below is a table that shows the authorities for these interpretations.

<table>
<thead>
<tr>
<th>Program</th>
<th>Authority</th>
<th>Summary</th>
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<tbody>
<tr>
<td>DD</td>
<td>45 C.F.R. § 1386.24 (b)</td>
<td>Attorney’s fees are program income</td>
</tr>
<tr>
<td></td>
<td>45 C.F.R. §§ 74.24 (b)(1) and 92.25 (g)(2)</td>
<td>Program income must be added to grant dollars and used for DD objectives</td>
</tr>
<tr>
<td></td>
<td>45 C.F.R. § 92.25 (b)</td>
<td>Defines “program income”</td>
</tr>
<tr>
<td></td>
<td>Terms and conditions of the FY 2005 PADD grant ¶7</td>
<td>Program income must be added to grant dollars and used for DD objectives</td>
</tr>
<tr>
<td>PAIMI</td>
<td>42 C.F.R. 51.4</td>
<td>PAIMI program applies the same regulations as DD for these purposes</td>
</tr>
<tr>
<td>Program</td>
<td>Authority</td>
<td>Summary</td>
</tr>
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<tr>
<td>PAIR</td>
<td>34 C.F.R. § 381.10 (a)(2)</td>
<td>PAIR program applies the same general authorities as DD for these purposes</td>
</tr>
<tr>
<td></td>
<td>34 C.F.R. § 74.24 (b)(1)</td>
<td>Program income can be added to grant dollars and used for PAIMI objectives</td>
</tr>
<tr>
<td></td>
<td>Attachment H to FY 2005 PAIR Grant</td>
<td>“Program income is authorized for use in accordance with the addition alternative under the ... Protection and Advocacy Programs only.”</td>
</tr>
</tbody>
</table>

Accordingly, the Committee on P&A’s policy for program income shall be:

1. DD program: DD program income, including attorneys’ fees, shall be added to DD grant dollars and used for DD objectives.

2. PAIMI program: PAIMI program income, including attorneys’ fees, shall be added to PAIMI grant dollars and used for PAIMI objectives.

3. PAIR program: PAIR program income, including attorneys’ fees, shall be added to PAIR grant dollars and used for PAIR objectives.\(^{12}\)

### G Service Contracts

**Attorneys**

Occasionally, P&A contracts with outside counsel to represent individual clients; investigate reports of abuse, neglect, or exploitation; or to investigate grievances or public inquires about P&A work. Selection of a private lawyer will be made by the Director of Legal Services, with input from the P&A Legal Team as appropriate. Considerations for selection of a private attorney shall include:

- Geographic location of the work

\(^{12}\) A 1998 or 1999 (undated) NAPAS memo advises that a protection and advocacy system must get specific permission from the grantor to use PAIR income by the addition method. The NAPAS memo advises that permission is needed each time the protection and advocacy system receives PAIR program income. I believe that permission is no longer required because the grant uses Attachment H to give blanket permission.
• Geographic location of the lawyer’s office
• The private lawyer’s ethics standards
• The private lawyer’s relevant expertise
• The private lawyer’s relevant skills
• The private lawyer’s professional reputation
• The resources available to the private lawyer to accomplish the work
• The private lawyer’s lack of potential conflicts of interests
• The private lawyer’s availability to complete the contract satisfactorily
• The private lawyer’s ability to work with the P&A client
• The private lawyer’s ability to work with individuals with disabilities
• The private lawyer’s interest in the case/assignment
• The private lawyer’s willingness to provide services at a discount
• Matters uniquely important for a specific case/assignment

Project and Meeting Facilitators
On occasion, P&A uses outside sources to serve as project or meeting facilitators. An example is the annual strategic planning session where the agency staff, governing board, and advisory council members develop priorities, goals and objectives for the coming year. P&A may contract with an impartial facilitator for the purposes of such projects or meetings. Given consideration to factors such as knowledge, experience, references, and cost, P&A may sole source such contracts in order to achieve its project or meeting goals.

Programmatic
P&A may find it necessary and/or beneficial to hire consultants to assist with programmatic issues. Examples include, but are not limited to: 1) a psychologist to review behavioral plans for a facility monitoring; 2) a specialist in Medicaid to assist with proposed Legislation. Given consideration to factors such as experience, knowledge, and cost, P&A may sole source such contracts in order to achieve its programmatic objective.

H Agency Finances

The executive director shall develop the biennial budget for the agency for review by the Committee on Protection & Advocacy and submission to the Governor. Within the spending authority passed by the State Legislature, the executive director will have the authority to receive and expend funds on behalf of P&A.
I  Purchasing

Purchase of services, supplies, and equipment shall be completed in conformance with the practices, procedures, and guidelines established by the N.D. Office of Management and Budget and Federal requirements regarding the use of federal grants.

North Dakota State agencies are required by state law, administrative rule, and policy to obtain goods and services at a competitive cost, consistent with quality, time, and performance requirements with fair and equal opportunity to all persons qualified to sell to the state, except as otherwise provided by law. Accordingly, a vast body of state rules and regulations govern our procurement of goods and services. These procedures are not intended to restrict the effectiveness of individuals involved in the procurement, but to provide for legal, complete, and consistent consideration of all aspects of the procurement process.

Prior to making any purchase on behalf of P&A, two conditions must be met:

1. The individual making the purchase must have the appropriate level of state procurement certification. Procurement certification is obtained by completing a series of courses offered through the State Procurement Office of OMB. There are three levels of procurement certification:
   a. level 1 pertains to purchases up to $2,500;
   b. level 2 pertains to purchases up to $25,000;
   c. level 3 pertains to purchases greater than $25,000.

2. The individual must have the specific delegated authority from the Director enabling purchase of the particular type of good or service to be procured.

Individuals procuring goods and services will adhere to all state procurement laws, regulations, and policies.

The executive director shall authorize a limited number of staff to have access to purchasing cards (p-cards or agency credit cards) for the transaction of agency business. The holders of p-cards must keep them in a locked secure place when not in use. All transactions made using p-cards must be in accordance with policies issued by the Office of Management & Budget. All
transactions must be thoroughly documented and backed up with receipts by the card holders. Except for general office supplies and in-state hotel room payments for staff, board, and advisory council members, advance approval from the executive director (or the executive director’s designee when absent) is required for p-card use.

**J Asset Management**

Accurate records of P&A property will be maintained in the state of North Dakota PeopleSoft Asset Management module. Property records include, at a minimum, a description of the property, the type of asset, a unique tag number, date of acquisition, cost, grant funding source, location, and custodian. Records are maintained on all property and equipment with a purchase cost of $50.00 or more. Equipment over $5,000 is capitalized.

A physical inventory of the property and equipment is performed yearly at each office location and reconciled to the property and equipment records.

The Director of Policy and Operations must be notified of any changes including lost, stolen, or broken equipment. If new equipment is needed, established procurement procedures are followed.

Property must be safeguarded to protect against loss or theft by maintaining a secure office environment. Offices must be kept locked whenever P&A staff is not on the premises. Entrances and common areas should be monitored. Digital cameras, projectors, camcorders and laptop computers not connected to the network must be kept in a secured location, when not in use.

Service agreements are purchased for copiers and other equipment, when available and cost effective. In the absence of a maintenance agreement, or where repairs exceed items or service covered by the agreement, staff must contact the Executive Director or the Director of Policy and Operations for approval to procure the appropriate service or repairs.

If property is transferred between individuals or offices, the Director of Policy and Operations, or designee, shall be notified in writing of the item tag number, description, new and old locations. Notification can be made electronically. The person receiving the equipment being transferred should inspect it and report any problems immediately to the Director of Policy and Operations.

Items that are broken, obsolete, or no longer in use will be disposed through State Surplus Property, following established state surplus procedures.
Computer hard drives must be wiped in accordance with the Department of Defense (DoD) high-level security wiping procedures prior to being sent to Surplus Property. Alternately, hard drives may be removed, data destroyed, and the hardware disposed in a manner consistent with disposal of hazardous waste. Unsalable electronics containing hard drives will be disposed as e-waste and sent by Surplus Property to a certified recycling center where they will be cleaned in accordance with the Department of Defense (DoD) high-level security wiping procedures.

K Records Management

Records maintained by P&A, including information maintained in an electronic form, are the property of P&A and employees must exercise due diligence to protect them from loss, damage, tampering, or use by unauthorized individuals.

P&A will comply with applicable State and Federal laws, policies, and professional standards in regard to the retention, destruction, confidentiality, and security of records.

All client information and records are confidential and may not be released without authorized consent or court order. Specific P&A protocol for managing client records is included in the P&A Services: Forms, Instructions, & Protocol manual.