



**The North Dakota  
Protection & Advocacy Project**

**Policy & Procedure Manual**

**The Committee on Protection & Advocacy  
Revised: March 24, 2008**

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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 March 2008, P&A has seven 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
  - Section 509 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §§ 794e)
- 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)

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.

## **C Agency Mission and Philosophy**

### MISSION

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

11/29/00

### 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 require any type of follow-up but does not preclude follow-up to determine effectiveness and/or outcomes.

\* 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.

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

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.

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 illness<sup>1</sup> and other disabilities can be found in:

1. Part C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (the DD Act), 42 U.S.C. 15041-15045;
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.

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

6. The Protection and Advocacy of Individual Rights (PAIR) Program of the Rehabilitation Act of 1973, 29 U.S.C. 794e.

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<sup>2</sup> 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<sup>3</sup> and the establishment of probable cause to suspect that abuse or neglect has occurred. Eligibility is determined based upon the existence of a developmental disability as defined at 42 U.S.C. Chapter 75, Section 6001(8),

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<sup>2</sup> Procedures are outlined in detail in the P&A Protective Services Procedural Manual

<sup>3</sup> "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

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 Disabilities Act of 1990 at 42 U.S.C. Section 12101 et seq.

P&A will immediately, upon receipt of a report of suspected abuse or neglect, initiate action to ensure risk management.<sup>4</sup> 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.<sup>5</sup>

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 conduct 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".<sup>6</sup> 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.

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

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<sup>4</sup> Appropriate risk management actions are outlined in the Protective Services Procedural Manual.

<sup>5</sup> See the P&A Services manual regarding the appropriate labeling and identification of files.

<sup>6</sup> See the Protective Services Procedural Manual, Level System section

relevant laws, rules and regulations; an analysis of the facts; and a conclusion determining substantiation (validation) or non-substantiation of abuse and/or neglect.<sup>7</sup>

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.<sup>8</sup> 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 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

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<sup>7</sup> See Protective Services Procedural Manual for specific report format and procedural instructions regarding the documentation of evidence and other investigatory actions.

<sup>8</sup> 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

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.<sup>9</sup>

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

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,<sup>11</sup> 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 informed of the death and plan to investigate.
6. If appropriate, records will be requested in writing from other regulatory

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<sup>9</sup> DD Act of 2000; P&A Abuse and Neglect Detection and Prevention Manual 2005

<sup>10</sup> Pursuant to 42 CFR Part 483, subpart G.

<sup>11</sup> "Facilities" is defined at 42 U.S.C. Chapter 114, Subchapter 1 Part A Section 10802(3) and NDCC 25-01.3-01(10).

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.