UNITY is strength...when there is teamwork and collaboration, wonderful things can be achieved.

Admission or access to, or treatment or employment in the Project’s programs and activities shall be accessible to all people with disabilities

Protection & Advocacy Project
Administrative Offices:
400 E Broadway Suite 409
Bismarck ND 58501
(701) 328-2950 (Voice)
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To obtain this material in an alternative format, contact the administrative office.
What do you have to say about **Protective Services** or the **Level System**?

“All I want is to know that I’ll be safe.”

Consumer

“The Level System has been a very positive pilot project for Red River Human Services Foundation. The most significant change that we have seen is that we look at Incident Reports in a different manner than we did before. We review each Incident Report while referring to the Level System to determine if [it is reportable]. If we question an incident, we call Protection & Advocacy and review it together. We find this to be most helpful and the communication between Red River Human Services Foundation and Protection & Advocacy is superb.”

Lisa Johnson
Red River Human Services Foundation

“When I was first approached by P&A to participate in creating a new A/N/E investigation process, I had reservations. After many months of hard work it is nice to see that the level system has met all of our goals. Personally, it saves me time and paperwork.”

Brad Hassler, LSW
Internal Case Manager
Friendship, Inc.
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PROTECTIVE SERVICES LEVEL SYSTEM

PHILOSOPHY
The Protective Services Level System philosophy is that whenever there is “knowledge of or reasonable cause to suspect” a situation that could be abuse, neglect or exploitation (A/N/E) is or has occurred, it is to the benefit of all parties involved that the situation be reviewed to:
1. Ensure the safety of the person with the disability.
2. Ensure quality services.
3. Ensure appropriate programming and or services.

Utilizing the definitions currently found in NDCC 25-01.3, it is believed that implementing a system where the greater resources are reserved for the more serious allegations will be a more effective and responsible approach to allegations of A/N/E.

The definitions of A/N/E remain the same, but under the Level System, the response to the allegation is different. Under the Level System, for instance, only those allegations meeting the criteria under the Investigative Action Level would be investigated, and only under this Level would a determination be made as to whether the allegation is substantiated or not.

There are four Levels which an allegation may be determined to fall under:
1. No A/N/E (determined, using the reporting Determination Guidelines, that it is not a reportable incident).
2. Agency Action Level
3. Corrective Action Level
4. Investigative Action Level

It is important to remember that only those situations that are allegations of potential A/N/E are applicable to this System. In other words, if it is not an allegation of A/N/E, it should not be reviewed in this System.

The basic premise to the Level System is that the more serious the allegation, the higher the Level (Investigative Action Level being the highest Level). The keys to look for are:
1. Risk of harm to the person with the disability.
2. Repeat occurrence of a similar incident.
3. Harm to a person with a disability.

All allegations of A/N/E will be addressed, but the methodology will be different from what we are accustomed to for some allegations.

When the concept of the Level System was first being formulated, it was based on a number of concerns raised by the various parties involved. These concerns were then translated into goals for the Level System, so we could periodically determine whether the System continued to meet the purpose to which it was designed:
GOALS OF THE LEVEL SYSTEM
1. To have a system that is consumer driven and consumer responsive.
2. To resolve an incident faster resulting in greater benefit for the person with the disability.
3. To focus the involved parties on consumer safety and quality enhancement, versus “being turned in” or “being investigated.”
4. To create a more effective and efficient response to incidents (streamline the process).
5. To increase staff’s awareness of the need to, and benefit of, reporting allegations of A/N/E.
6. To eliminate barriers to reporting by reducing the number of “investigations” and “substantiations.”

LICENSED DD FACILITIES
Licensed DD Providers are required to follow a specific process in order to participate in the Level System. This process culminates in being granted “Deemed Status.”

Deemed Status
Licensed DD Providers are currently subject to PI-10-16, which requires a specific process to be followed upon identification of suspected abuse, neglect and exploitation (A/N/E). “Deemed Status” may be granted to licensed DD Providers that will enable the Provider to implement the Protective Services Level System. “Deemed Status” implies that the Provider exhibits the desire, knowledge, skills and ability to objectively assess and respond to identified incidents where A/N/E is suspected, resulting in the removal/minimization of potential harm to people with a developmental disability. “Deemed Status” is granted by the Director of the Developmental Disability Division (DDD).

The authorization to participate in the Protective Services Level System and “Deemed Status” will occur in two phases:

1. The first phase consists of approval for the Provider to participate in the Level System. The provider must submit a written request to the Director of the DDD. In making a determination for Provider participation in the Level System, the following will be considered:
   1. DD and P&A staff resources to complete the Level System training and implementation;
   2. The Provider’s history of consistently reporting and assessing suspected incidents of A/N/E per PI-10-16 (licensing agent’s policy describing the responsibilities of licensed DD providers to report and investigate alleged incidents of A/N/E involving service participants). To assess the provider’s history of reporting, a review of the Provider’s Incident Reports from the previous year will be conducted by DD and P&A staff, with facility staff. Incident Reports are defined as any documentation used by the Provider to report and/or communicate such issues which may include but are not limited
to: alleged abuse, neglect and exploitation; failure to implement individual
client programs; medication errors; critical events involving personal injury;
unknown bruising; restraint; consumer to consumer mistreatment,
etc.

3. Provider staff responsible for completing the agency’s Internal
   Investigations/assessments per PI-10-16 have received training
   from P&A in the areas of: A/N/E; Conducting Investigations; Risk
   Management; and Response Planning, within the past year.

II. Phase two begins when the Director of DDD approves the Provider for
    participation in the Protective Services Level System. At this point the following
    must occur before the request for Deemed Status can be made:

1. Provider staff who are/will be implementing the Level System
   actively participate in a training specific to the Level System.

2. The Provider must make all Incident Reports available and participate
   in a joint review of these reports with the DDD, Regional DDPM and P&A
   staff, to apply criteria and determine the appropriate Level and
   response. The duration of the joint review will be determined by DD
   and P&A staff.

   During the joint review period, the Provider will continue to report and
   assess all incidents of suspected A/N/E following PI-10-16, in addition to
   reviewing all reports for the Level System.

3. The Provider establishes and implements a team approach, including
   consumer representation, to review, address, and resolve allegations of A/N/E
   where there is identifiable harm or risk of harm to a consumer.

III. Once the Provider has satisfactorily completed the joint review period, the provider
    may submit a written request for “Deemed Status” to the Director of DDD. The
    request will be reviewed by staff of the DDD, regional DDPM and P&A Project
    staff. A recommendation will be made to the DDD Director as to whether “Deemed
    Status” should be granted.

IV. When the Provider receives written notification of approval for “Deemed Status” the
    Provider will be permitted to implement the Protective Services Level System.

Participation in the Protective Services Level System is voluntary on the part of the Provider,
and the Provider may choose to terminate involvement and be subject solely to PI-10-16 at
any time.

Ongoing participation with the Level System and the continued designation of Deemed
Status will be evaluated every two years through the DD Training and Monitoring process.
During the DD Training and Monitoring process, the agency’s demonstration of the Level System competencies will be assessed. Through this process, a determination will be made as to whether the provider will be granted a continuation of their Deemed Status designation. If recommended, DDD will issue a formal letter to the provider to identify their continuation of Deemed Status. Should concerns arise at any point in time, monitoring of an agency’s compliance will be done with the potential for termination of the Deemed Status designation. Termination and continuation of the Deemed Status designation will be done collaboratively by P&A and DDD.

Indicators that will trigger a review of Deemed Status:

- Title XIX surveys where immediate jeopardy concerns are cited;
- Patterns of investigations or allegations where the provider fails to implement corrective actions steps;
- Demonstrated pattern of not implementing PI-10-16 or PI-09-23
- Issues identified as a result of the monitoring

If the Deemed Status is revoked, a meeting will occur with the parties involved and future steps put in place to identify any potential re-instatement. Provider Board and The Council on Quality Leadership (CQL) will be informed of any changes with the Providers status within the Level System.

If services are being expanded by a DD Provider who is currently under the Level System, a request may be made to the DD Division requesting that the new services be covered by the Level System. This will be reviewed by DDD and P&A. This includes adding new services and or new sites for the services.

If the DD Provider currently provides services state-wide or in multiple locations, and the provider wants the entire agency to be under the Level System, then all pertinent personnel from the regions represented will be required to be present during the training/monitoring process.
MENTAL HEALTH TREATMENT FACILITIES
Mental Health Treatment Facilities that chose to utilize the Level System will participate with the regional Protection & Advocacy Project in training to utilize the Reporting Determination Guidelines and the Level System.
COMMUNICATION GROUND RULES

a. This is your opportunity to provide input.

b. The result is only as great as the information put forth.

c. Only YOU know your perspective, your thoughts.

d. Everyone is equal.

e. Everyone’s input is valuable.

f. Respect others opinion, and their opportunity to voice it.

g. Silence is agreement.

h. View each discussion as an opportunity to LEARN SOMETHING!

LEVELS OF CONSENSUS

1. I can say an unqualified “YES” to the decision, I am satisfied that the decision is an expression of the wisdom of the group.

2. I find the decision acceptable.

3. I can live with the decision; I’m not especially enthusiastic about it.

4. I do not fully agree with the decision and need to register my view about it. However, I do not choose to block the decision. I am willing to support the decision because I trust the wisdom of the group.

5. I do not agree with the decision and feel the need to stand in the way of this decision being accepted.

6. I feel that we have no clear sense of unity in the group. We need to do more work before consensus can be reached.
Instructions for Reporting Determination Guidelines Process

Providing protective services is a priority component for the service delivery system. Having a well-established protective services system enables the system to respond quickly to alleged incidents of abuse, neglect and/or exploitation (A/N/E). This helps to ensure the safety of the individual and enables the system to provide quality services.

One facet of protective services is reactive – to investigate an allegation of A/N/E after it has occurred. Another facet is proactive – to ensure all parties involved are knowledgeable of what may constitute A/N/E, the steps to take for Risk Management (reduce the likelihood of on-going A/N/E), and mandated reporting.

The reactive component of protective services is a **process** that necessitates communication and coordination/cooperation between the responsible parties. The steps involved in this process are important for each to know, and to follow. The steps in this beginning process are described below.

Before beginning the process, keep in mind the following:

- Accidents do happen – just because a person with a disability is receiving services does not mean all situations which may occur can be foreseen and prevented. Rule out potential neglect, but be willing to accept that accidents happen.
- People with disabilities have the right to risk – assess the individual’s ability to consent to that risk. Training/instruction may need to be provided to reduce the risk, if appropriate. Each person is entitled to take risks and to make mistakes.
- Not all incidents are appropriate for the Protective Services system. Some issues are more appropriately addressed through other avenues, such as Nursing, Personnel, Administration, Program Management, Individual(s) Team(s), Maintenance, etc.

**STEPS to the PROTECTIVE SERVICE SYSTEM PROCESS**

1. **INCIDENT OCCURS**
   Whether this is written on an official form, or a scrap of paper, or given in verbal form. Something has occurred that necessitates attention.

2. **RISK MANAGEMENT**
   Steps must be taken during/after an incident to ensure the safety of the people involved. See Risk Management page for definitions and examples of steps.

3. **REPORTING DETERMINATION GUIDELINES**
   An incident must be reviewed to determine if it is reportable under NDCC 25-01.3. These guidelines are a tool to assist facilities and Project staff in making that determination. There are two sets of Guidelines. One set is for Licensed DD facilities. The other set is for mental health treatment centers. There are some differences between the two sets, so verify you are looking at the correct set.
GUIDELINES FOR LICENSED DD FACILITIES

A. BRUISES/INJURY REVIEW
Note – All bruises/injuries will be documented and reviewed by the consumer’s Qualified Developmental Disabilities Professional (QDDP) /Team/Nursing Services, to ensure that possible causes are assessed and the safety of the consumer is assured (Title XIX, AC).

The purpose of this guideline is to eliminate the need for investigations into bruises/injuries that are clearly not appropriate for the A/N/E system. A person may have a disability or be on medications that tend to cause bruising quite easily. It is important for the team to address these type of circumstances, and ensure proper safety precautions are in place. If these conditions are met, the situation is probably not appropriate for A/N/E. HOWEVER, it must be remembered that individuals who do bruise easily or have self inflicted bruises MAY be at greater risk for abuse. Again, these situations must be carefully assessed.

Bruises/injuries that could be a result of abuse or neglect, using the reasonable person standard (reasonable person would suspect the bruise/injury is a result of possible abuse or neglect) are very appropriate for the A/N/E system.

Also appropriate for the A/N/E system would be patterns of bruises/injuries:
- For consumers – bruises/injuries appear on the same consumer.
- For a setting – bruises/injuries occurring to consumers in the same setting, such as a group home, work site, etc.

Refer to the Guideline for specific wording.

B. CONSUMER TO CONSUMER REVIEW
Note – Focus is on the facility’s responsibility to ensure a safe and therapeutic environment, versus holding a consumer accountable.

If a consumer has a behavior management plan, and staff fail to properly implement that plan, and that results in another consumer being hit, the consumer whose plan was not implemented is the focus of the incident. The incident occurred because staff failed to properly implement a plan. In other words, the staff neglected the individual who had the plan, and because of that, another consumer was harmed.

Other situations that should be examined are:
- Staff could have foreseen and prevented the incident from occurring between the two consumers; or
- It is a repeat incident within the last 12 months and the team is not addressing the issue (team/plan fails to adequately address consumers’ needs in relationship to each other; for example – a failure to provide supervision in a setting where there are two consumers and one has a history of being aggressive towards others and the other has a history of being vulnerable to aggression).
C. **MEDICAL/MEDICATION REVIEW**

Note – Risk of harm is assessed by the consumer’s physician, nurse, and/or pharmacist (preferably a medical person with knowledge of the consumer).

If a medication error occurs, and there is no harm or risk of harm to the consumer, the expectation is that the facilities Medication Administration Policy will adequately address the issue.

The **exception** to this is if the Medication Administration Record (MAR) is falsified. For example, staff sign off as having given the medication, but have not done so. The goal is to encourage staff to properly follow the Medication Administration Policy, and signing the MAR is the last step after giving a medication. Another example would be using other improper documentation (per policy), such as putting lines through their initials, rather than circling the error and providing the explanation on the back of the MAR.

Refer to the Guideline for specific wording.

D. **GENERAL REVIEW**

Note – Use ONLY when the incident under review does not fall into one of the above categories.

Within the General Review, basically look at incidents that have a negative, or a potentially negative impact on a consumer. Failing to implement a consumer’s plan may be considered neglect IF the consumer is negatively impacted, or the potential for a negative impact exists.

The other broad category in the review relates to the team’s identification of an area of identified need, which has not been addressed. Teams need to be as proactive as possible in addressing concerns.

Refer to the guideline for specific wording.

E. **VERIFY THE FOLLOWING**

Once a guideline category has been identified and the incident is determined to fall into one of the areas listed, you must complete Section “E.”

First it must be determined that the incident could have occurred as reported. This requires a brief preview into the incident, to ensure that the staff involved were working, the consumer named was present during the time of the incident, that there isn’t documentation which explains-addresses what was reported, etc.

Once it’s determined the incident could have occurred as reported, next look at the age of the consumer involved.
If the consumer involved is under the age of 18, then the incident must be reported to the regional Child Protection program. Child Protection has primary jurisdiction over incidents of suspected A/N/E if the consumer is under the age of 18.

If Child Protection determines the incident does not fall within their definitions, or upon investigation determines that the consumer/child is not abused or neglected, then the consumer/child becomes eligible for protective services from the Protection & Advocacy Project (NDCC 25-01.3-01.8(f)).

If the consumer involved is over age 18, then proceed to the next step below.

The next step in the process is to determine what definitions of A/N/E may apply. This is important. It will assist in the development of the action plan for the investigation process and help with developing recommendations to prevent recurrence of a similar type incident. Also it may be that no definition applies to the situation, in which case it is not an allegation of A/N/E.

If it is determined, after careful consideration of the guidelines, that the incident is not reportable as an allegation of A/N/E, the facility will review the incident and take appropriate action through another avenue.

Once a situation is determined to be reportable, the proper notification requirements must be commenced. At this stage, facilities that are operating under the Level System will determine which Level the incident falls under. Facilities WHO ARE NOT CURRENTLY OPERATING UNDER THE LEVEL SYSTEM/DON'T HAVE DEEMED STATUS, will proceed with PI-10-16, Investigative Action.

This concludes the process for determining if an incident is reportable for licensed DD facilities.
RISK MANAGEMENT ASSOCIATED WITH ALLEGATIONS OF ABUSE/NEGLECT/EXPLOITATION

Step 1. Solicit any additional information needed from the reporter. If appropriate make collateral contacts. Ensure contact is made with the alleged victim.
Step 2. Assess the Risk Level and necessary Responsive Actions.
Step 3. Contact P&A and/or regional DDPM/DDPA for technical assistance to determine the Risk Level and Actions to be taken.

RISK LEVELS
1. EMERGENCY – there is a current and immediate threat to the safety of the consumer
   * the alleged victim is currently being threatened
   * there is a medical emergency

2. IMMINENT DANGER - there is reason to believe there is impending risk of harm to the alleged victim; examples -
   * the alleged victim is receiving services/care from the alleged person
   * the alleged person has access to the alleged victim

3. NON-EMERGENCY - the alleged victim is not in need of emergency services; imminent danger is not present.

*RESPONSIVE ACTIONS
1. EMERGENCY INTERVENTION -
   PRIORITY is to focus on the life/safety of the alleged victim. Involve other services necessary to accomplish this: law enforcement, medical/mental health, guardian, etc.

2. IMMINENT DANGER
   PRIORITY is to focus on protection of the alleged victim (and other potential victims). Involve other services necessary to accomplish this: law enforcement, medical/mental health, guardian, case management, etc.
   ASSESS need to implement protections within the Provider’s authority; examples -
   * removal of the alleged person from direct client care
   * schedule same sex/preferred sex staff to work with the alleged victim
   * increase staff time or staff to client ratio

3. NON-EMERGENCY
   PRIORITY is to focus on remedying any abuse/neglect/exploitation and to prevent any further occurrences. Once Emergency and Imminent Danger situations have been resolved, those cases may then be re-assessed under this level. Determine responsibilities and cooperative efforts between P&A and the Provider (and any other entities) in conducting the investigation.

*In determining Responsive Actions, one must take into account the alleged victims ability to consent, their right to self-determination, and their right to refuse services.
A. **BRUISES/INJURY REVIEW**

**NOTE** – All bruises/injuries will be documented and reviewed by the consumer’s QDDP/Team/Nursing Services to ensure that possible causes are assessed and the safety of the consumer is assured (Title XIX; AC).

If one of the following apply, **GO TO E**

1. ___ Adequate safety precautions are not in place to reduce the likelihood of bruises/injuries for a consumer that has a documented history of similar bruises/injuries due to a medical condition, medications, or self-injurious tendencies.

2. ___ There is no documentation regarding how the bruise/injury occurred (i.e. – restraint implemented; consumer returns from substitute caregiver with a bruise/injury; consumer fell; etc) and a reasonable person would suspect it is a result of possible abuse or neglect.

   To assess for possible abuse/neglect:
   - Look at type of bruise (i.e. – finger/nail marks; nail scratches; teeth marks; imprint of possible weapon; bruise from a “twisting motion”; etc.).
   - Look at location of bruise (i.e. – face; neck; private parts; areas the individual could not reach; etc).

3. ___ There is a pattern of unknown bruises/injuries for this consumer, or in this setting, and it is not being addressed by the team/facility.

4. ___ Professional Judgement indicates a need for review (i.e. - repeated bruises due to restraints; unauthorized restraint implemented; etc).

B. **CONSUMER TO CONSUMER REVIEW**

**NOTE** - Focus is on the facility’s responsibility versus holding a consumer accountable.

If one of the following apply, **GO TO E**

1. ___ Incident occurred because staff failed to follow a consumer’s program, facility policy, staffing levels, etc. The consumer whose program, etc. was not followed would be the focus of the incident for reporting review and investigation.

2. ___ This is a repeat occurrence of a similar incident within 12 months and the team is not addressing the issue.

3. ___ This is a first occurrence of an incident but staff could have foreseen and prevented the incident.

4. ___ Professional Judgement indicates a need for review (i.e. - severity of the incident; response from consumers/staff; etc.).
C. MEDICAL/MEDICATION ERROR REVIEW  
NOTE - Risk of harm is assessed by the consumer’s physician, nurse, and/or pharmacist (preferably a medical person with knowledge of the consumer). 

If one of the following apply, **GO TO E**

1. ____ A medication was not administered according to doctor’s orders and the consumer was harmed or placed at risk of harm (including having to repeat medical treatment or medication).
2. ____ A medical procedure was not administered or completed according to doctor’s orders and the consumer was harmed or placed at risk of harm.
3. ____ A controlled substance is missing.
4. ____ Medication documentation is falsified (i.e. – signing the MAR before giving the med).
5. ____ Professional Judgement indicates a need for review (i.e. – pattern of errors in a setting and/or by a staff; repeated errors for a particular consumer; non- medication certified staff dispensing medications; error indicates possible systems issue, etc.).

D. GENERAL REVIEW  
NOTE – Used **ONLY** when the incident under review does not fall into one of the above categories)

If one of the following apply, **GO TO E**

1. ____ The consumer’s OSP/BMP/BIP (etc.) was not implemented correctly with the result of a negative, or potentially negative impact on the consumer.
2. ____ The issue related to the incident had been identified as a need/concern but has not been addressed within the consumer’s programs.
3. ____ Staff failed to follow agency policies, regulations, or standards, resulting in a negative impact, or potentially negative impact on the consumer.
4. ____ Staff failed to provide appropriate intervention, resulting in a negative impact or potentially negative impact on the consumer.
5. ____ Professional Judgement indicates a need for review (i.e. – multiple concerns; serious nature of the report; consumer report; common sense, etc.).

E. VERIFY THE FOLLOWING  
1. ____ The incident could have occurred as reported (must apply).
2. ____ If the consumer is under the age of 18, contact Regional Child Protection.
3. ____ The incident falls within the parameters of one or more of the statutory definitions of A/N/E according to NDCC 25-01.3 (must apply if the consumer is over the age of 18).
NDCC 25-01.3-01 DEFINITIONS OF ABUSE/NEGLECT/EXPLOITATION

1. **ABUSE** means:
   a. Willful use of offensive, abusive, or demeaning language by a caretaker that causes mental anguish of any person with a developmental disability.
   b. Knowing, reckless or intentional acts or failures to act which cause injury or death to a person with a developmental disability or mental illness or which placed that person at risk of injury or death.
   c. Rape or sexual assault of a person with a developmental disability or mental illness.
   d. Corporal punishment or striking of a person with a developmental disability or mental illness.
   e. Unauthorized use or the use of excessive force in the placement of bodily restraints on a person with a developmental disability or mental illness.
   f. Use of bodily or chemical restraints on a person with a developmental disability or mental illness which is not in compliance with federal or state laws and administrative regulations.

9. **EXPLOITATION** (when committed by a caretaker, or relative of, or any person in a fiduciary relationship to the person with the developmental disability or mental illness) means:
   a. The taking or misuse of property or resources of a person with a developmental disability or mental illness by means of undue influence, breach of fiduciary relationship, deception, harassment, criminal coercion, theft or other unlawful or improper means.
   b. The use of the services of a person with a developmental disability or mental illness without just compensation.
   c. The use of a person with a developmental disability or mental illness for the entertainment or sexual gratification of others under circumstances that cause degradation, humiliation, or mental anguish to the person with the developmental disability or mental illness.

14. **NEGLECT** means:
   a. Inability of a person with a developmental disability or mental illness to provide food, shelter, clothing, health care, or services necessary to maintain the mental and physical health of that person. (Self-neglect)
   b. Failure by any caretaker of a person with a developmental disability or mental illness to meet, either by commission or omission, any statutory obligation, court order, administrative rule or regulation, policy, procedure, or minimally accepted standard for care of persons with a developmental disability or mental illness.
   c. Negligent act or omission by any caretaker which causes injury or death to a person with a developmental disability or mental illness or which places that person at risk of injury or death.
   d. Failure by any caretaker, who is required by law or administrative rule, to establish or carry out an appropriate individual program or treatment plan for a person with a developmental disability or mental illness.
   e. Failure by any caretaker to provide adequate nutrition, clothing, or health care to a person with a developmental disability or mental illness.
   f. Failure by any caretaker to provide a safe environment for a person with a developmental disability or mental illness.
   g. Failure by any caretaker to maintain adequate numbers of appropriately trained staff at a facility providing care and services for persons with a developmental disability or mental illness.
PROTECTIVE SERVICES LEVEL SYSTEM FLOWCHART

INCIDENT REPORT REVIEW

RISK MANAGEMENT STEPS TAKEN

1) IS THIS A REPORTABLE INCIDENT FOR A/N/E? ARE THERE DEFINITION(S) OF A/N/E THAT MAY APPLY?

NO A/N/E HANDLE THROUGH OTHER SYSTEMS

2) IS HARM TO THE CONSUMER EVIDENT?

NO

INVESTIGATIVE ACTION

YES

3) WAS THE CONSUMER PLACED AT RISK OF HARM?

NO

*PROFESSIONAL JUDGEMENT

4A) WAS THIS A REPEAT OCCURRENCE OF A SIMILAR INCIDENT WITHIN THE LAST 12 MONTHS?

NO

INVESTIGATIVE ACTION

YES

CORRECTIVE ACTION

4B) WAS THIS A REPEAT OCCURRENCE OF A SIMILAR INCIDENT WITHIN THE LAST 12 MONTHS?

NO

CORRECTIVE ACTION

YES

CORRECTIVE ACTION

NO

AGENCY ACTION
## PROTECTIVE SERVICES LEVEL SYSTEM LEVELS and DUTIES

<table>
<thead>
<tr>
<th>Level</th>
<th>Criteria</th>
<th>Provider</th>
<th>P&amp;A</th>
<th>DDPA/DD Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. No A/N/E</td>
<td>a. Not reportable as determined by RDG</td>
<td>- May review with P&amp;A</td>
<td>- P&amp;A to provider</td>
<td>- Document as I/R</td>
</tr>
<tr>
<td></td>
<td>b. Handle through other systems/processes</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Agency Action</td>
<td>a. Suspected A/N/E</td>
<td>- Assess Risk Mgmt</td>
<td>- Assess Risk Mgmt</td>
<td>Regional PM</td>
</tr>
<tr>
<td></td>
<td>b. <strong>AND</strong> no harm or risk of harm to consumer is evident.</td>
<td>- Notify DDPA and P&amp;A w/in 1 working day</td>
<td>- Provide TA to provider</td>
<td>- Review documentation</td>
</tr>
<tr>
<td></td>
<td>c. <strong>AND</strong> this is not a repeat occurrence of a similar incident w/in 12 mths (first time incident)</td>
<td>- Complete written response (may be incident report)</td>
<td>- Review documentation</td>
<td>- Document as I/R</td>
</tr>
<tr>
<td></td>
<td>d.</td>
<td>- Send to DDPA and P&amp;A w/in 5 working days.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>e.</td>
<td>- Notify guardian upon completion of review.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>- See Med Error Protocol tab</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Corrective Action</td>
<td>a. Suspected A/N/E</td>
<td>- Assess Risk Mgmt</td>
<td>- Assess Risk Mgmt</td>
<td>Regional PM</td>
</tr>
<tr>
<td></td>
<td>b. <strong>AND</strong> no harm to consumer is evident (risk of harm may be present).</td>
<td>- Notify guardian, P&amp;A and DDPA or DDPM w/in 1 working day.</td>
<td>- Provide TA to provider</td>
<td>- Review documentation</td>
</tr>
<tr>
<td></td>
<td>c. <strong>AND</strong> this is a repeat occurrence of a similar incident w/in 12 mths; consumer not at risk.</td>
<td>- Complete written documentation (may be Incident Report) w/in 5 working days. Must include a time specific response plan (system and individual issues and steps to prevent recurrence.</td>
<td>- Option to request Investigative Action.</td>
<td>- Document as I/R; open as Assistance or PSI if warranted.</td>
</tr>
<tr>
<td></td>
<td>d. <strong>OR</strong> this is not a repeat occurrence of a similar incident w/in 12 mths- (first time incident) – consumer was placed at risk of harm.</td>
<td>- Send documentation to P&amp;A and DDPA w/in 5 working days.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>e. <strong>OR</strong> insufficient response to Agency Action (determined by DD or P&amp;A).</td>
<td>- Notify guardian upon completion.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Investigative Action</td>
<td>a. Suspected A/N/E</td>
<td>- Assess Risk Mgmt</td>
<td>- Assess Risk Mgmt</td>
<td>Regional</td>
</tr>
<tr>
<td></td>
<td>b. <strong>AND</strong> harm to the consumer is evident.</td>
<td>- Notify P&amp;A w/in 8 hrs.</td>
<td>- Provide TA to provider.</td>
<td>- Review report with complete documentation.</td>
</tr>
<tr>
<td></td>
<td>c. <strong>OR</strong> this is a repeat occurrence of a similar incident w/in 12 mths - consumer was placed at risk of harm.</td>
<td>- Notify DDPA (DDPM if DDPA not available) w/in 1 working day.</td>
<td>- Follow current P&amp;A Protective Svcs policy</td>
<td>- DDPM follow up with QER process or as soon as is needed, depending upon the incident.</td>
</tr>
<tr>
<td></td>
<td>d. <strong>OR</strong> insufficient response to Corrective Action (determined by DD or P&amp;A).</td>
<td>- Notify guardian.</td>
<td>- Comply with all requirements of Investigative Action protocol including notification to the State DD unit.</td>
<td>- State</td>
</tr>
<tr>
<td></td>
<td>e. <strong>OR</strong> Professional Judgement</td>
<td>- Comply with all</td>
<td>- Provide TA and follow up as requested or as needed in terms of licensure issues.</td>
<td>-</td>
</tr>
</tbody>
</table>

Allegations that would otherwise fall under the AA or CA Levels may be upgraded to Investigative Action at the discretion of the facility CEO or designee. Refer to Explanations of Terms/Concepts for terms used in criteria, notification, and TA.
MEDICATION ERROR PROTOCOL

Description

The protocol is being implemented to provide an alternative means of responding to medication errors that are reportable as alleged abuse or neglect; but DO NOT result in actual harm for a person receiving services.

Process for Addressing Reportable Medication Errors

P&A will provide investigative follow up for medication errors that meet a Reporting Determination Guideline (RDG) AND result in actual harm to a person receiving DD services.

When an incident is determined reportable, but does not present actual harm, the process for follow up will occur between the provider and the DD Program Manager (via Therap). P&A will still receive these reports under the mandatory reporting law; however, P&A will not be documenting and/or conducting a secondary investigation and issuing a letter of findings.

A flowchart has been developed for facilities on the Level system and for those not on the Level system, as well as written guides for DD Program Managers and providers.
MEDICATION ERROR REPORTING AND FOLLOW UP GUIDELINES
FOR LICENCED DD PROVIDERS

_____ Complete risk management

_____ Review the error using the Reporting Determination Guidelines (RDG’s), if it is a reportable error contact P&A

_____ Follow “Flowchart for Medication Error Review”

_____ Complete and approve the GER within one (1) working day

______ Include a description of the error

______ Include a description of IMMEDIATE RISK MANAGEMENT

______ Include a summary of the rationale for reporting (RDG used, possible definition, etc.)

______ Include notifications made to all relevant parties (guardian, etc.)

_____ Notify the DD Program Manager to ensure awareness that a GER has been generated

_____ Follow applicable procedures outlined in PI-10-16

_____ Assure additional follow up, recommendations, and planning are included in the comment section or as attached documentation onto the GER within five (5) working days of approval of the GER

_____ Notify the DDPM by S-Comm or email of completion of documented plans, agency action, corrective action or investigation action; include form ID number

_____ Within two (2) weeks of approval of the GER (the amount of time the GER will remain in “follow-up status” in Therap); revisit the GER and add a comment in response to DD Program Manager’s response (will be present in the form of a comment on the GER).
LEVEL SYSTEM FLOWCHART
For Medical/Medication Error Review

REVIEW OF INCIDENTS MEETING THE RDG’s
(Section C)

IS THIS A REPORTABLE INCIDENT FOR A/N/E under “Medical/Medication Error Review”? (If “Bruises and Injury”, “Consumer to Consumer”, or “General Review” see Flowchart Dev Dis tab P. 9
ARE THERE DEFINITION(S) OF A/N/E THAT MAY APPLY?

IS HARM TO THE CONSUMER EVIDENT?

Yes

INVESTIGATIVE ACTION with P&A FOLLOW UP

NO

WAS THE CONSUMER PLACED AT RISK OF HARM?

Yes

PROFESSIONAL JUDGEMENT

NO

WAS THIS A REPEAT OCCURRENCE OF A SIMILAR INCIDENT WITHIN THE LAST 12 MONTHS?

Yes

INVESTIGATIVE ACTION with DD FOLLOW UP

NO

WAS THIS A REPEAT OCCURRENCE OF A SIMILAR INCIDENT WITHIN THE LAST 12 MONTHS?

Yes

CORRECTIVE ACTION with DD FOLLOW UP

NO

AGENCY ACTION with DD FOLLOW UP
MEDICATION ERROR FOLLOW UP GUIDELINES
FOR DD PROGRAM MANAGERS

_____ Upon receipt of a Therap notification regarding a medication error designated at “high”, open the GER and complete an initial review to ensure there is a description of the error and IMMEDIATE RISK MANAGEMENT. Do NOT check and save that you have reviewed the GER until P&A indicates who will complete the follow up (otherwise the client will disappear from your work list)

_____ If DD follow up is indicated by P&A, add a comment to the GER acknowledging receipt and review of the med error report. Include comments as needed. Now check that you have reviewed the GER and save it. This will then go off your work list. If it is something that needs further follow-up by the provider, contact the agency QDDP directly.

_____ After receiving notification from the provider that documented plans, agency action, corrective action, or investigative action is complete, revisit the GER to ensure compliance with PI-10-16. Add a comment in response to the provider’s documentation of completed actions/plans.

_____ Notify the provider by SComm or email that your review is complete. Be sure to allow adequate time for the DD provider’s response to DDPM’s comments. Feel free to contact the QDDP throughout the GER process.
DDPM FLOWCHART
For Medical/Medication Error Review

REVIEW OF INCIDENTS MEETING THE RDG’S
(Section C)

RISK MANAGEMENT STEPS TAKEN

IS THIS A REPORTABLE INCIDENT FOR A/N/E under “Medical/Medication Error Review”?
ARE THERE DEFINITION(S) OF A/N/E THAT MAY APPLY?

YES

IS HARM TO THE CONSUMER EVIDENT?

YES

INVESTIGATIVE
ACTION with P&A
FOLLOW UP (P&A will
determine which of these
tentities will conduct the
primary investigation)

NO

DD Provider follows requirements of PI-10-16;
PLAN/RECOMMENDATIONS developed by
Provider (may consult/discuss with DDPM if needed)

DDPM quality assurance follow-up;
add a comment in response to the
provider’s identified
recommendations/plan
MEDICATION ERRORS –  
Working Definitions – DD Division and P&A

For purposes of gathering and analyzing data regarding medication errors that occur in the DD service delivery system, the following working definitions of “medication error” will be utilized:

**Falsification of records:** The Medication Administration Record was signed off indicating the medication was given, but the medication wasn’t actually given (signing of the MAR prior to administering a med is a violation of med administration protocol).

**Medication not administered according to doctor’s orders:** There is a doctor’s order on file with prescribed dosage and schedule for taking the medication, and the medication was not given as ordered.

- Includes medications missed because a person is away from a setting AND the medication is not taken with the person to be given away from the setting.

- Includes medication errors that result from a failure to complete the 3-way check – typically involves one or more of the following:

  - **Wrong medication**  
    (i.e. – the wrong pill container is grabbed and given)

  - **Wrong dose**  
    (i.e. – too much or too little of a medication given)

  - **Wrong time**  
    (medication given at a time other than that identified in doctor’s orders/on the MAR – error is outside the 1 hour window for giving the med)

  - **Wrong route**  
    (i.e. – an i.v. med is given orally)

  - **Wrong person**  
    (i.e. – another person’s medications are grabbed and given)

**Medical procedure not administered or completed according to doctor’s orders:** There is a doctor’s order on file specifying medical procedures to be done (i.e. labs drawn on a routine basis, changing of a feeding tube, etc.) and the procedure was not completed at the time/in the manner prescribed.
MEDICATION ERRORS –
Working Definitions – DD Division and PA

A controlled substance is missing: Medications that are identified as controlled substances in the “Controlled Substance Act” AND require double-locking in a provider setting are unaccounted for (medication counts were off, containers of medications were missing, etc.).

Non-medication certified staff dispensing medications: Medications were administered to a person by staff who has not received the training and certification to dispense meds.

Pattern of medication errors: Documentation indicates repeated errors for a person or in a setting within the past 12 months.
Instructions for the Reporting Determination Process

Providing Protective services is a priority component of protection and advocacy systems. Having a well-established protective services system enables the system to respond quickly to alleged incidents of abuse, neglect and/or exploitation (A/N/E). This helps to ensure the safety of the individual and enables the system to provide quality services.

One facet of protective services is reactive – to investigate an allegation of (A/N/E) after it has occurred. Another facet is proactive – to ensure all parties involved are knowledgeable of what may constitute A/N/E, steps to take for Risk Management (reduce the likelihood of on-going A/N/E), and mandated reporting.

The reactive component of protective services is a process that necessitates communication and coordination/cooperation between the responsible parties. The steps involved in this process are important for each to know, and to follow. The steps in this beginning process are described below.

Before beginning the process, keep in mind the following:

- Accidents do happen – just because a person with a disability is receiving services does not mean all situations which may occur can be foreseen and prevented. Rule out neglect, but be willing to accept accidents.
- People with disabilities have a right to risk – assess the individual’s ability to consent to that risk. Training/instruction may need to be provided to reduce the risk, if appropriate. Each person is entitled to take risks and to make mistakes.
- Not all incidents are appropriate for the Protective Service system. Some issues are more appropriately addressed through other avenues, such as Nursing, Personnel, Administration, Case Management, Individual(s) Team(s), etc.

STEPS in the PROTECTIVE SERVICE PROCESS

1. INCIDENT OCCURS
   Whether this is written on an official form, or a scrap of paper, or given in verbal form. Something has occurred that necessitates attention.

2. RISK MANAGEMENT
   Steps must be taken during/after an incident to ensure the safety of the people involved. See Risk Management page for definitions and examples of steps.

3. REPORTING DETERMINATION GUIDELINES
   An incident must be reviewed to determine if it is reportable under NDCC 25-01-3. These guidelines are a tool to assist facilities and Project staff in making that determination. There are two sets of Guidelines. One set is for mental health treatment centers. The other set is for licensed DD facilities. There are some differences between these two sets of Guidelines, so be sure you are looking at the correct set.
GUIDELINES FOR MENTAL HEALTH FACILITIES

A. BRUISES/INJURY REVIEW
NOTE – All bruises/injuries will be documented on an Incident Report and reviewed as a Quality Management concern.

The purpose of this guideline is to eliminate the need for investigations into bruises/injuries that are clearly not appropriate for the A/N/E system. A person may have a disability or be on medications that tend to cause bruising quite easily. As long as the team is addressing it, and safety precautions are in place, it is probably not appropriate for A/N/E. HOWEVER, it must be remembered that individuals who do bruise easily or have self-inflicted bruises MAY be at greater risk for abuse. Again, these situations must be carefully assessed.

Bruises/injuries that could be a result of abuse or neglect, using the reasonable person standard (reasonable person would suspect the bruise/injury is a result of possible abuse/neglect) are very appropriate for the A/N/E system.

Also appropriate for the A/N/E system would be patterns of bruises/injuries:
- for individuals – bruises/injuries appear on the same individual;
- for particular setting – bruises/injuries occurring to people in the same setting, such as one group home or one work site, etc.

Refer to the Guideline for specific wording.

B. CONSUMER to CONSUMER REVIEW
NOTE – Focus is on the facility’s responsibility to ensure a safe and therapeutic environment, versus holding a consumer accountable.

If a consumer has a behavior management plan, and staff fail to properly implement that plan, and that results in another individual being hit, the consumer whose plan was not implemented is the focus of the incident. The incident occurred because staff failed to properly implement a plan. In other words, the staff neglected the individual who had the plan and because of that, another individual was harmed.

Other situations that should be examined are:
- staff could have foreseen and prevented an incident from occurring between two individuals;
- or a repeat incident within the last 12 months and the team is not addressing the issue (team/plan fails to adequately address consumers’ needs in relationship to each other; for example – a failure to provide supervision in a setting where there are two consumers and one had a history of being aggressive towards others and the other has a history of being vulnerable to aggression).

Refer to the Guideline for specific wording.
C. MEDICAL/MEDICATION ERROR REVIEW

NOTE – Risk of harm is assessed by the consumer’s physician, nurse, and/or pharmacist (preferably a medical person with knowledge of the consumer).

If a medication error occurs, and there is no harm or risk of harm to the consumer, the expectation is that the facilities Medication Administration Policy will adequately address the issue.

The exception to this is if the Medication Administration Record (MAR) is falsified. In other words, staff sign off as having given the medication, but have not done so. There is no requirement for “harm or risk of harm” with this particular guideline. The reason is that the goal is to encourage staff to follow the medication administration procedure, and signing off on the MAR is the last step after giving a medication.

Refer to the Guideline for specific wording.

D. GENERAL REVIEW

NOTE – Used ONLY when the incident under review does not fall into one of the above categories.

Within the General Review, basically look at incidents that have a negative impact on a consumer, or the potential for a negative impact. Failing to implement a consumer’s plan may be considered neglect IF the consumer is negatively impacted, or the potential for a negative impact exists.

The other broad category in the review relates to the team’s identification of an area of identified need which has not been addressed. Teams need to be as proactive as possible in addressing concerns.

Refer to the Guideline for specific wording.

E. VERIFY the FOLLOWING

Once a guideline category has been identified and the incident is determined to fall into one of the areas listed, go to “E.”

First, it must be determined that the incident could have occurred as reported. This requires a brief preview into the incident to ensure that staff involved were working, the consumer named was present during the time of the incident, that there isn’t documentation which explains-addresses what was reported, etc. Once it’s determined the incident could have occurred as reported, next look at the age of the consumer involved.

If the consumer involved is under the age of 18, then the incident must be reported to the regional Child Protection program. Child Protection has primary jurisdiction over incidents of suspected A/N/E if the individual is under the age of 18.

If Child Protection determines the incident does not fall within their definitions, or upon investigation determines that the child is not abused or neglected, then the child becomes eligible for protective services from the Protection & Advocacy Project.
NDCC Chapter 25-01.3-01.8(f): A child with developmental disability or mental illness who is not an abused or neglected child as defined in Chapter 50-25.1 is eligible for protective services.

The next step in the process is to determine what definitions of A/N/E may apply. This is important. It will assist in the development of the action plan for the investigation process and help with developing recommendations to prevent recurrence of a similar type incident.

If it is determined, after careful consideration of the guidelines, that the incident is not reportable as an allegation of A/N/E, the facility will review the incident and take appropriate action through another avenue.

Once a situation is determined to be reportable, the proper notifications must commence. At this stage, facilities who are utilizing the Level System will determine which Level the incident falls under. Facilities who are not utilizing the Level System will proceed with their investigation.

This concludes the process for determining if an incident is reportable for mental health treatment facilities.

Mental health treatment facilities that have not completed the training for the Protective Services Level System will complete investigations for all reportable allegations according to requirements.
RISK MANAGEMENT ASSOCIATED WITH
ALLEGATIONS OF ABUSE/NEGLECT/EXPLOITATION

Step 1. Solicit any additional information needed from the reporter. If appropriate make collateral contacts. Ensure contact is made with the alleged victim.

Step 2. Assess the Risk Level and necessary Responsive Actions.

Step 3. If needed, contact P&A for technical assistance to determine Risk Level and Actions to be taken.

RISK LEVELS

1. EMERGENCY
   * the alleged victim is currently being threatened
   * there is a medical emergency

2. IMMINENT DANGER - there is reason to believe there is impending risk of harm to the alleged victim; examples -
   * the alleged victim is receiving services/care from the alleged person
   * the alleged person has access to the alleged victim

3. NON-EMERGENCY - the alleged victim is not in need of emergency services; imminent danger is not present.

RESPONSIVE ACTIONS

1. EMERGENCY INTERVENTION -
   PRIORITY is to focus on the life/safety of the alleged victim. Involve other services necessary to accomplish this: law enforcement, medical/mental health, guardian, etc.

2. IMMINENT DANGER
   PRIORITY is to focus on protection of the alleged victim (and other potential victims). Involve other services necessary to accomplish this: law enforcement, medical/mental health, guardian, case management, etc.
   ASSESS need to implement protections within the Provider’s authority; examples -
   * removal of the alleged person from direct client care
   * schedule same sex/preferred sex staff to work with the alleged victim
   * increase staff time or staff to client ratio

3. NON-EMERGENCY
   PRIORITY is to focus on remedying any abuse/neglect/exploitation and to prevent any further occurrences. Once Emergency and Imminent Danger situations have been resolved, those cases may then be re-assessed under this level. Determine responsibilities and cooperative efforts between P&A and the Provider (and any other entities) in conducting the investigation.

*In determining Responsive Actions, one must take into account the alleged victims ability to consent, their right to self-determination, and their right to refuse services.
REPORTING DETERMINATION GUIDELINES
FOR MENTAL HEALTH TREATMENT FACILITIES

A. BRUISE/INJURIES REVIEW
NOTE – All bruises/injuries will be documented on an Incident Report or other identified form and reviewed as a Quality management concern.

If one of the following apply, GO TO E

1. Adequate safety precautions are not in place to reduce the likelihood of bruises/injuries for a consumer that has a documented history of similar bruises/injuries due to a medical condition, medications, or self-injurious tendencies.
2. There is no reasonable explanation regarding how the bruise occurred (i.e. – restraint implemented; consumer fell; etc.) and a reasonable person would suspect it is a result of possible abuse or neglect.
   To assess for possible abuse/neglect:
   - Look at the type of bruise (i.e. – finger/nail marks; nail scratches; teeth marks; imprint of a possible weapon; bruising from a “twisting motion”; etc.).
   - Look at the location of the bruise (i.e. – face; neck; private parts; areas the individual could not reach; etc.).
3. There is a pattern of unknown bruises/injuries for this consumer, OR in this setting.
4. Professional Judgement indicates a need for review (i.e. – repeated bruises due to restraints; unauthorized restraint implemented; etc.).

B. CONSUMER TO CONSUMER REVIEW
NOTE – Focus is on the facility’s responsibility versus holding a consumer accountable.

If one of the following apply, GO TO E

1. Incident occurred because staff failed to follow a consumer’s program, facility policy & procedure, staffing levels, etc. The consumer whose program, etc. was not followed would be the focus of the incident for reporting review and investigation.
2. This is a repeat occurrence of a similar incident within 12 months and the team IS NOT addressing the issue.
3. This is a first occurrence of an incident, but staff could have foreseen and prevented the incident.
4. Professional Judgement indicates a need for review (i.e. – severity of the incident; response from the consumers/staff; etc.).
REPORTING DETERMINATION GUIDELINES
FOR MENTAL HEALTH TREATMENT FACILITIES

C. MEDICAL/MEDICATION REVIEW
NOTE - Risk of harm should be assessed with the consumer’s physician, nurse, and/or pharmacist (preferably a medical person with knowledge of the consumer).

If one of the following apply, GO TO E

1. A medical treatment was not administered according to doctor’s orders and the consumer was placed at risk of serious harm (including having to repeat medical treatment).
2. A medication for a potentially life-threatening condition was not administered and the consumer was harmed or placed at risk of serious harm.
3. Medication documentation is falsified (i.e. - signing the MAR before giving the medication).
4. Professional Judgement indicates a need for review (i.e. – pattern of errors in a setting and/or by a staff; repeated errors for a particular consumer; error indicates a possible systems issue; etc.).

D. GENERAL REVIEW (utilize A-C for specific areas)
NOTE – Used only when the incident under review does not fall into one of the above categories.

If one of the following apply, GO TO E

1. The issue related to the incident was identified as a need/concern and would be considered a priority treatment need by any reasonable staff, but it IS NOT addressed in the consumer’s treatment plan.
2. A similar incident was addressed with this consumer before, with this staff before, or in this setting before.
3. Staff failed to follow agency policies, regulations, standards, which resulted in a negative impact or potentially negative impact on the consumer.
4. Staff failed to provide appropriate intervention, resulting in a negative impact or potentially negative impact on the consumer.
5. Professional Judgement indicates a need for review (i.e. – multiple concerns; serious nature of the report; consumer report; common sense; etc.).

E. VERIFY THE FOLLOWING
1. The incident could have occurred as reported (must apply).
2. If the consumer is under 18 report to Regional Child Protection.
3. The incident falls within the parameters of one or more of the statutory definitions of A/N/E according to NDCC 25-01.3 (if #2 does not apply).
1. “ABUSE” means:
   a. Willful use of offensive, abusive, or demeaning language by a caretaker that causes mental anguish of any person with a developmental disability.
   b. Knowing, reckless or intentional acts or failures to act which cause injury or death to a person with a developmental disability or mental illness or which placed that person at risk of injury or death.
   c. Rape or sexual assault of a person with a developmental disability or mental illness.
   d. Corporal punishment or striking of a person with a developmental disability or mental illness.
   e. Unauthorized use or the use of excessive force in the placement of bodily restraints on a person with a developmental disability or mental illness.
   f. Use of bodily or chemical restraints on a person with a developmental disability or mental illness which is not in compliance with federal or state laws and administrative regulations.

9. “EXPLOITATION” (when committed by a caretaker, or relative of, or any person in a fiduciary relationship to the person with the developmental disability or mental illness) means:
   a. The taking or misuse of property or resources of a person with a developmental disability or mental illness by means of undue influence, breach of fiduciary relationship, deception, harassment, criminal coercion, theft or other unlawful or improper means.
   b. The use of the services of a person with a developmental disability or mental illness without just compensation.
   c. The use of a person with a developmental disability or mental illness for the entertainment or sexual gratification of others under circumstances that cause degradation, humiliation, or mental anguish to the person with the developmental disability or mental illness.

14. “NEGLECT” means:
   a. Inability of a person with a developmental disability or mental illness to provide food, shelter, clothing, health care, or services necessary to maintain the mental and physical health of that person. (Self-neglect)
   b. Failure by any caretaker of a person with a developmental disability or mental illness to meet, either by commission or omission, any statutory obligation, court order, administrative rule or regulation, policy, procedure, or minimally accepted standard for care of persons with a developmental disability or mental illness.
   c. Negligent act or omission by any caretaker which causes injury or death to a person with a developmental disability or mental illness or which places that person at risk of injury or death.
   d. Failure by any caretaker, who is required by law or administrative rule, to establish or carry out an appropriate individual program or treatment plan for a person with a developmental disability or mental illness.
   e. Failure by any caretaker to provide adequate nutrition, clothing, or health care to a person with a developmental disability or mental illness.
   f. Failure by any caretaker to provide a safe environment for a person with a developmental disability or mental illness.
   g. Failure by any caretaker to maintain adequate numbers of appropriately trained staff at a facility providing care and services for persons with a developmental disability or mental illness.
PROTECTIVE SERVICES LEVEL SYSTEM FLOWCHART

INCIDENT REPORT REVIEW

RISK MANAGEMENT STEPS TAKEN

1) IS THIS A REPORTABLE INCIDENT FOR A/N/E? ARE THERE DEFINITION(S) OF A/N/E THAT MAY APPLY?

2) IS HARM TO THE CONSUMER EVIDENT?

NO A/N/E HANDLE THROUGH OTHER SYSTEMS

INVESTIGATIVE ACTION

3) WAS THE CONSUMER PLACED AT RISK OF HARM?

*PROFESSIONAL JUDGEMENT

4A) WAS THIS A REPEAT OCCURRENCE OF A SIMILAR INCIDENT WITHIN THE LAST 12 MONTHS?

INVESTIGATIVE ACTION

CORRECTIVE ACTION

CORRECTIVE ACTION

AGENCY ACTION

4B) WAS THIS A REPEAT OCCURRENCE OF A SIMILAR INCIDENT WITHIN THE LAST 12 MONTHS?
## PROTECTIVE SERVICES LEVEL SYSTEM LEVELS and DUTIES

<table>
<thead>
<tr>
<th>Level</th>
<th>Criteria</th>
<th>Provider</th>
<th>P&amp;A</th>
</tr>
</thead>
</table>
| 1. No A/N/E  
| a. Not reportable as determined by RDG | - May review with P&A  
- Handle through other systems/processes | - Document as I/R |
| 2. Agency Action  
| a. Suspected A/N/E  
| b. **AND** no harm or risk of harm to consumer is evident.  
| c. **AND** this is not a repeat occurrence of a similar incident w/in 12 mths (first time incident) | - Assess Risk Mgmt  
- Notify P&A w/in 1 working day  
- Complete written response (may be Incident Report)  
- Send to P&A  
- Notify guardian upon completion of review. | - Assess Risk Mgmt  
- Provide TA to provider  
- Review Documentation  
- Document as I/R |
| 3. Corrective Action  
| a. Suspected A/N/E.  
| b. **AND** no harm to consumer is evident (risk of harm may be present).  
| c. **AND** this is a repeat occurrence of a similar incident w/in 12 mths; Consumer not at risk.  
| d. **OR** this is not a repeat occurrence of a similar incident w/in 12 mths- (first time incident) – consumer was placed at risk of harm.  
| e. **OR** insufficient response to Agency Action (determined by P&A). | - Assess Risk Mgmt  
- Notify guardian/P&A w/in 1 working day  
- Complete written documentation (may be Incident Report). Must include a time specific response plan (system and individual issues) and steps to prevent recurrence.  
- Send documentation to P&A  
- Notify guardian upon completion. | - Assess Risk Mgmt.  
- Provide TA to provider.  
- Review documentation.  
- Option to request Investigative Action.  
- Document as I/R; open as Assistance or PSI (if warranted). |
| 4. Investigative Action  
| a. Suspected A/N/E  
| b. **AND** harm to the consumer is evident.  
| c. **OR** this is a repeat occurrence of a similar incident w/in 12 mths - consumer was placed at risk of harm.  
| d. **OR** insufficient response to Corrective Action (determined by P&A).  
| e. **OR** Professional Judgement | - Assess Risk Mgmt.  
- Notify guardian, P&A w/in 1 working day  
- Complete documentation.  
- Send documentation to P&A  
- Notify guardian upon completion. | - Assess Risk Mgmt.  
- Follow current P&A Protective Svs policy.  
- Document as PSI. |

Allegations that would otherwise fall under the AA or CA Levels may be upgraded to Investigative Action at the discretion of the facility CEO or designee. Refer to Explanations of Terms/Concepts for terms used in criteria, notification, and TA.
PROTECTIVE SERVICES
CHILD ABUSE AND NEGLECT LAWS/PROCEDURES

If a licensed DD facility or mental health treatment center provides residential, day program services, or family support services, to a minor (under the age of 18), the facility and staff are subject to laws and procedures that pertain to children.

There are two child protection procedures:
1. Institutional Child Abuse or Neglect
2. Non-institutional Child Abuse or Neglect

1. INSTITUTIONAL CHILD ABUSE OR NEGLECT definition:
   Situations of known or suspected child abuse or neglect where the person responsible for the child’s welfare is an employee of a residential child care facility, a treatment or care center for individuals with intellectual disabilities, a public or private residential educational facility, a maternity home, or any residential facility owned or managed by the state or a political subdivision of the state.

Two defining characteristics to determine if it is “institutional” are:
1. It is a residential program; or
2. If it is a treatment or care center specifically designed for people with mental retardation.

WHO YOU REPORT TO FOR INSTITUTIONAL CHILD ABUSE OR NEGLECT:
The Regional Representative/Supervisor for Child Protection Services at the Regional Human Service Center (see NDCC 50-25.1-04).

WHAT NEEDS TO BE REPORTED:

1. **Physical Maltreatment**: when the person responsible for the child’s care in an institution inflicts or allows any bodily injury to be inflicted upon a child, for example:
   - Hits with a belt or other objects, pushes, trips, chokes, throws a child resulting in marks or welts;
   - Sits on a child or inappropriately, or unnecessarily, restrains or applies restraints, on a child which results in bruises, welts, or other injuries; and
   - Ties a child to a chair or bed with rope or tape, which results in a physical injury to the child.

2. **Cuts, Scratches, Punctures**: Examples: when a staff member…
   - Purposely scratches a child with his/her fingernails or other objects;
   - Jabs a child with a sharp instrument.

3. **Broken Bones and Skull Fractures**: Examples: when a staff member…
   - Pulls a child out of bed;
   - Hits a child’s head against a wall which results in a skull fracture or broken bone;
   - Hits a child with a bat or other hard object which may break a child’s bone or cause internal injuries.

4. **Burns**: Examples: when a staff member…
   - Places a child in a hot tub of water;
   - Purposely burns a child with a cigarette, iron, grill or other hot object;
   - Places a child on or over a stove flame,
   - Any of the above, which results in any degree of burn.
5. **Human Bite Marks**: Example: when a staff member…
   - Bites a child to teach the child not to bite others.

6. **Internal Injuries**: Examples: when a staff member…
   - Purposely gives or sells a child alcohol or drugs which may result in sickness or injury;
   - Gives a child prescription or psychotropic medication without the written approval of a licensed physician.

7. **General Abuse**: Examples: when…
   - When a staff member engages in disciplinary actions against a child which are unwarranted;
   - A child is placed in isolation without being provided with ongoing monitoring;
   - A child is not permitted to see his/her family as a means of punishment;
   - A child does not receive a meal because he/she was acting up;
   - A child does not receive bedding because he/she was acting up.

8. **Harmful Restraint/Control**: This occurs when inappropriate restraint, isolation or medication is used, which could harm or endanger a child. Cases which involve minor injuries resulting from physical restraint, but for which there has been no allegation of abuse or neglect, may be further assessed, if there exists a documented pattern of incidents involving the same staff members and/or the same child, or if there is any indication in the report that the injury resulted from negligence or misconduct on the part of the facility, such as indications that staff members are not adequately trained or supervised and/or are escalating situations or failing to use other means to de-escalate situations before resorting to physical intervention.

9. **Sexual Abuse**: This occurs when persons responsible for the child’s care at an institution commit, or allow to be committed, an act of sexual abuse against a child. Examples: When a staff member…
   - Rapes a child;
   - Engages the child in sexual intercourse, anal intercourse, fellatio, cunnilingus or manipulates a child’s genitals, buttocks, breasts;
   - Exposes his/her genitals to the child or allows a child to view another person’s genitals for the purposes of exhibitionism;
   - Forces, encourages or willfully and/or knowingly allows a child to engage in sexual activity with animals; and
   - Entices, permits, encourages, compels, employs, or allows the child to act, model, view, or in any other way participate in, or be photographed for, the production, presentation, dissemination, or advertisement of any material or performance that is obscene or involves exploitation.

10. **Neglect of a Child in Institutional Care**: This occurs when there is any omission of care to a child by a person responsible for their care or failure on the part of persons responsible for their care to exercise prudent care so as to jeopardize the well-being of a child in such a way that could lead to physical or emotional injury or damage.

11. **Inadequate or Improper Supervision**: Examples: when…
    - A child(ren) is left alone without adult supervision appropriate for the child’s age, mental or physical condition and/or other special needs of the child. This means that the child is unable to care for his/her own or another’s basic needs or is unable to exercise good judgement in responding to any kind of physical or emotional crisis;
    - A group of aggressive adolescent children are left alone by a child care worker who goes to talk to someone on the phone and a child is injured by another child;
- A staff member leaves his assigned area and a child is sexually assaulted by another child;
- A child care worker falls asleep or is drunk while on duty and as a result, no one is available to respond to a child’s needs or to protect the child; and
- A child is placed in an isolation room and staff do not monitor him/her and, as a result, the child hangs himself/herself.

12. **Danger to Life, Health, Mental, or Social Adjustment**: Examples: when…
- A child is exposed to danger to his life, health, mental or social adjustment by staff failing to provide, or to provide access to, food clothing, shelter, education, medical/surgical care or supervision;
- Two children are fighting and the staff member responsible purposely fails to intervene;
- A child is not provided with his/her prescribed medication; and
- A child is allowed to self-mutilate.

13. **Psychological Maltreatment**: Psychological maltreatment in institutional care should be considered when a person responsible for the child’s care, either by acts of omission or commission, subjects a child to a negative atmosphere in which the child consistently feels unloved, unwanted, insecure, unworthy or otherwise lacks a positive relationship which is deemed essential for a person’s physical, intellectual and emotional well-being. Examples: when a staff member…

- Chronically ridicules and/or degrades the child or his/her family, criticizes, threatens, ignores, or has an obvious preference for one child over another; and
- Uses treatment or punishment which is cruel, such as tying up, taping the mouth, locking the child out of the living unit.

14. **The Death of a Child in an Institution**: any death of any nature will be reported.
INSTITUTIONAL vs NON-INSTITUTIONAL (FAMILIAL) ABUSE/NEGLECT

Factors taken into consideration in the determination of institutional child abuse and neglect, versus factors considered in a family situation are:

- The scope of culpability is greater in residential placements than in the family context.
- The State’s responsibilities for meeting standards and tests of adequacy concerning child-rearing practices exceed those of parents.
- Mitigating circumstances, intent and severity are not relevant criteria for determining institutional child abuse or neglect in residential settings. Determinations rest solely upon the occurrence of an incident and the foreseeability of its outcome.
- Residential facilities are not commonly subject to public scrutiny.
- Parental discretion in child rearing is inherently broader than state discretion.

2. NON-INSTITUTIONAL CHILD ABUSE or NEGLECT definition: a situation of suspected abuse or neglect that occurs in a school setting (includes school personnel as the alleged party), or in any setting where a family member or paid caregiver is the alleged party.

WHO YOU REPORT TO FOR NON-INSTITUTIONAL CHILD ABUSE OR NEGLECT:
- County Social Services Child Protection.
- If the child involved has a disability, then it must also be reported to the regional Protection & Advocacy Project.

WHAT NEEDS TO BE REPORTED:

1. Physical Neglect
   - Lack of supervision –
     - Children under 8 years of age should be supervised at all times; should not supervise other children.
     - Children who are 9 should not be left unsupervised for periods greater than 2 hours during the daytime; should not supervise other children.
     - Children 10 & 11 may be left alone for longer periods of time, however, caution is advised in leaving any child unsupervised during sleeping hours; should not supervise other children.
     - Children 12 and older may be permitted to act as baby sitters.
     - Children 12 – 14 should not be left unattended at overnight.
     - Maturity must be considered
   - Abandonment – children must be left with a responsible substitute caretaker.
   - Physical Environment – conditions of the home that are harmful or potentially harmful to the children (i.e. broken glass, spoiled food, feces, lead paint, drugs/alcohol accessible to the child, inadequate sewage disposal, inadequate/unsafe heat).
Nutrition – child is not provided adequate nutrition and nourishment and/or failure to thrive is present.

Clothing/Hygiene – clothes not adequate for the weather, child’s lack of cleanliness has caused the child to be offensive to others, child and/or their clothing is infested with lice, fleas and goes untreated after family has been informed.

Medical Neglect – parents fail to seek medical and/or dental treatment for a health problem or condition, which if left untreated could become severe enough to represent a health danger to the child.

2. Physical Abuse

- Exists when a caretaker uses physical force on a child such that injury to the child occurs or the child is placed at significant risk of injury:
  - Bruises
  - Welts
  - Cuts
  - Abrasions
  - Fractures
  - Burns/scalds
  - Contusions
  - Loss of teeth
  - Missing hair
  - Bloodied nose
  - Sprains
  - Brain or neurological damage
  - Death
  - Subdural hemorrhage
  - Internal injuries
  - Poisoning
  - Gunshot wounds

Indicators of physical abuse should be considered in the following situations:
- Physical punishment of an infant
- Shaking infant or preschooler
- Striking children with an object: belts, sticks, etc.
- Striking children on or about the head and face
- Striking children with a closed hand
- Throwing children in such a manner that there is risk of injury
- Forced feeding
- Throwing objects that create a risk of injury
- Biting a child
- Forcing a child to ingest a noxious substance
- Using potentially harmful substances such as red or black pepper in the mouth as a method of discipline.

3. Psychological Maltreatment

- A concerted attack by an adult on a child’s development of self and social competence, a pattern of physically destructive behavior, that also violates a norm of appropriateness:
  - Rejecting (refuses to acknowledge the child’s worth)
  - Isolating (cuts the child off from normal social experiences)
  - Terrorizing (verbally assaults the child, creates climate of fear)
  - Ignoring (deprives of stimulation and responsiveness)
  - Corrupting (stimulates the child to engage in destructive anti-social behavior)

Indicators of psychological maltreatment should be considered in the following situations:
- Refusal of services by a caretaker to a child who is psychologically impaired (risk of suicide, misuse of chemicals)
- Emotional or behavioral problems which can be correlated to the caretaker’s behavior
- Children exposed to domestic violence
- Children being placed in the middle of custody and visitation disputes
- Children who are living in environments where one or both of the caretakers are actively chemically dependent

4. **Sexual Abuse**

   - Caretaker involves a child in a sexual act or other activity for the purpose of arousing or satisfying sexual or aggressive desires.
   - Sexual contact – touching of intimate parts for arousal/desires
   - Sexual exploitation – adult exposing themselves to a child or causing a child to expose themselves to an adult or another child for the purpose of arousal/desires
   - Causing a child to be involved in a sexual act
   - Denial of privacy to a child for the purpose of arousing or satisfying desires
   - Causing or allowing a child to view sexual acts or sexually explicit material

   - Sexual activity between children should be considered abusive in most situations if an age difference of greater than 5 years exists, if coercion exists, or if one child is pre-pubescent and the other is post-pubescent. If the act appears to be more sophisticated than age appropriate, consideration should be given to checking out possible victimization of at least one of these children by a third party
   - Child pornography

**PROCEDURES for CHILD A/N/E**

For allegations of A/N/E and/or concerns involving **NON-INSTITUTIONAL** entities, implement Risk Management to the extent allowed, and report immediately to the County Child Protection unit.

For allegations of A/N/E and/or concerns involving **INSTITUTIONAL** entities, implement Risk Management, and utilize the Reporting Determination Guidelines for Developmental Disabilities or Mental Health Treatment Facilities, if appropriate report to Regional Child Protection and Protection & Advocacy.

Follow duties as outlined by Regional Child Protection and/or duties for Developmental Disabilities or Mental Health Treatment Facilities. If the facility is operating under the Protective Services Level System, and Regional Child Protection is not involved, the facility may utilize the flowchart to determine the Action to be taken.
## REPORT OF SUSPECTED CHILD ABUSE OR NEGLECT
ND DEPARTMENT OF HUMAN SERVICES
CHILDREN AND FAMILY SERVICES
SFN 960 (Rev. 09-2001)

<table>
<thead>
<tr>
<th>Name of Child(ren)</th>
<th>Age or Birthdate</th>
<th>Identifying Information</th>
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<tr>
<td>Name of Parent(s)/Caretaker</td>
<td>Address</td>
<td>City</td>
</tr>
<tr>
<td>Telephone Number</td>
<td>Name of Subject (Person(s) Suspected to be Causing Maltreatment)</td>
<td>Address</td>
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<tr>
<td>Telephone Number</td>
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Give nature and extent of the suspected abuse or neglect, including any information of previous abuse or neglect, family composition, and any other information which may be helpful in protecting the health and welfare of the child(ren). If additional space is needed, attach additional pages (BE SPECIFIC. ANSWER; WHO, WHAT, WHERE, WHEN, WHY, HOW OFTEN).

### Name of Reporter
<table>
<thead>
<tr>
<th>Address</th>
<th>City</th>
<th>State</th>
<th>Zip Code</th>
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**Reporter’s Relationship to Children**
| Telephone Number |

**Signature of Reporter**
| Date |

**AGENCY USE ONLY**
<table>
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<tr>
<th>Date Received by Agency</th>
<th>Intake Social Worker</th>
<th>Source</th>
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<tr>
<td>Social Worker Assigned to Case</td>
<td>Date of Entry</td>
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County Social Services

County Social Service Offices provide: Food Stamps, Temporary Assistance for Needy Families (TANF), heating assistance, Medicaid, children's health services, basic care assistance, child care assistance, home and community-based services and supports for elderly and disabled individuals, personal care assistance, child welfare (foster care, child protection services, child care licensing, and related services), and referrals to other local resources and programs.
### LEVEL SYSTEM RESOURCES

<table>
<thead>
<tr>
<th>Name</th>
<th>Organization</th>
<th>Address 1</th>
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<tr>
<td>Dianne Millar</td>
<td>SEHSC</td>
<td>2624 9th Ave SW</td>
<td>Fargo ND 58103</td>
<td>298-4481</td>
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<tr>
<td>Janelle Olson</td>
<td>Protection &amp; Advocacy</td>
<td>14 East Broadway</td>
<td>Williston ND 58801</td>
<td>774-4345</td>
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<tr>
<td>Vicci Pederson</td>
<td>DDD</td>
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<tr>
<td>Teresa Larsen</td>
<td>Protection &amp; Advocacy</td>
<td>400 E Broadway Ste 409</td>
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<tr>
<td>Wendy Schumacher</td>
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<td>Pam Mack</td>
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<tr>
<td>Martha Tollefson</td>
<td>Protection &amp; Advocacy</td>
<td>1351 Page Drive Ste 303</td>
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<td>Corinne Hofmann</td>
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</table>
ACRONYMS/ABBREVIATIONS
SSDI  Social Security Disability Income
SSI  Supplemental Security Income

TA  Technical Assistance
TL  Transitional Living
TCLF  Transitional Care Living Facility
TMH  Trainable Mentally Handicapped

WA  Work Activity

DEFINITIONS/EXPLANATIONS OF TERMS
ACTIVE TREATMENT
Aggressive, consistent implementation of a program of specialized and generic training, treatment, health services and related services that is directed toward the acquisition of the behaviors necessary for the client to function with as much self determination and independence as possible and the prevention or deceleration of regression or loss of current optimal functional status.

AGENCY ACTION LEVEL
Second level in the Protective Services Level system. Criteria requires there to be:
a. Suspected A/N/E
b. and no harm or risk of harm to the consumer
c. and this is not a repeat occurrence of a similar incident within 12 months
All three criteria must be met.
Key – No harm, no risk of harm, not a repeat.
There is no substantiation made at this level.

ALLEGED PERPETRATOR
The person who allegedly abused, neglected, exploited the person with a developmental disability or mental illness. Recommended terminology: alleged staff; involved staff.

ALLEGED VICTIM
The person with a developmental disability or mental illness who allegedly was or is being abused, neglected or exploited. Recommended terminology: involved consumer; individual involved; or use the individual’s name.

AT RISK OF HARM
Exists when there is a strong likelihood that, if the action was allowed to continue a consumer would be harmed.

BEHAVIOR MANAGEMENT/INTERVENTION COMMITTEE
Agency committee responsible to review individual programs designed to eliminate maladaptive behavior and replace them with behaviors and skills that are adaptive and socially productive. Programs that call for any restrictive procedures must be submitted to the behavior management committee for review prior to implementation to ensure that the proposed intervention is likely to produce the desired effect, and that any risks to the consumer are outweighed by the risks of the behavior.
DEFINITIONS/EXPLANATIONS OF TERMS

CARETAKER
Person, organization, association, or facility who has assumed legal responsibility or a contractual obligation for the care of a person with a developmental disability or mental illness, parent, spouse, sibling, other relative, or person who has voluntarily assumed responsibility for the person’s care (NDCC 25-01.3-01).

COLLATERAL CONTACT
Person who may have knowledge about the allegation and/or the individual(s) involved.

CONSENT
An act of reason, accompanied by deliberation, the mind weighing information, such as good/bad, pros/cons, information obtained on each side. It means voluntary agreement by a person in the possession and exercise of, sufficient mental capacity to make an intelligent choice to do something proposed by another or by themselves. It supposes a physical power to act, a moral power of acting and a serious, determined, and free use of these powers. It is an act unclouded by fraud, duress, or sometimes, even mistake.

There are three elements in consent:
- Information – all the information (i.e., facts, data, options, choice available, and the pros and cons of each) the person needs to make a decision, given in a manner in which the individual can comprehend.
- Capacity – the ability to understand the nature and consequences of a specified matter, to process the information received, to weigh out the information.
- Voluntary – the ability to exercise free power of choice without force, duress, undue influence or external persuasion.

Many times we feel “forced” into doing something. There can still be consent as long as we know and understand and relay back the pressure that others may be applying.

CORRECTIVE ACTION LEVEL
The third level in the Protective Services Level System. Criteria requires there to be:

a. Suspected A/N/E
b. And no harm to the consumer is evident and one of the following apply:
c. This is a repeat occurrence of a similar incident within 12 months and the consumer was not placed at risk of harm
d. Or this is a first time incident within 12 months and the consumer was placed at risk of harm
e. Insufficient response to Agency Action

Criteria a and b must be met; then one of c through e.

Keys – no harm; repeat/no risk of harm; first time incident/consumer placed at risk of harm. There is no substantiation made at this level.
DEFINITIONS/EXPLANATIONS OF TERMS

DEEMED STATUS
Term used to denote that a licensed DD provider has completed all requirements for, and has received a letter from the Disabilities Service Division that allows the provider to implement the Protective Services Level System.

DEVELOPMENTAL DISABILITIES DIVISION (DDD)
The Division is part of the Department of Human Services that is responsible for administering monies for specified disabilities (DD), licensure of DD providers, and overall quality assurance regarding policies, regulations and administrative code sections that would apply.

DIGNITY OF RISK
Expressing one’s individuality by consenting to expose oneself to a possible or a known risk connected with an activity. To assist an individual in exercising their right to risk, a provider must:
1. Assess the individual for their current knowledge or skills involved with the desired activity.
2. Provide information/training needed to engage the activity (information element of consent).
3. Ensure the individual understands the potential risks (capacity element of consent).
4. Ensure the individual is voluntarily exposing themselves to the risk (voluntary element of consent).

EMERGENCY
Any situation which could have an immediate and severe, or substantially detrimental impact upon an individual’s mental health and safety.

ESSENTIAL SERVICES
Those social, medical, psychiatric, psychological, or legal services necessary to safeguard the individual’s rights and resources, and to maintain the physical and mental well-being of the individual.

EVIDENCE
Any information collected in the course of the investigation which has the potential to assist in establishing the truth or falsehood of the allegation.
1. Testimonial – All information which is given orally or in an equivalent manner, such as sign language, touch talker, braille, etc.
2. Documentary – Information which is gained from documents such as policy statements, correspondence, medication logs, program plans and progress notes. Documentary evidence may exist on paper, video tape, microfilm or other such medium.
3. Demonstrative – Items such as pictures, diagrams or maps which may be created or become relevant during an investigation.
4. Physical/Real – Any evidence that is tangible, such as a bruise, cut, injury, weapon, etc.
DEFINITIONS/EXPLANATIONS OF TERMS

GUARDIAN
Court appointed decision-makers that have the responsibility to assist with and/or make decisions on behalf of an individual (ward). There are different types of decision-makers:

1. Parent – Parents, barring any circumstances such as certain divorce decrees or termination of parental rights, have broad authority to make decisions on behalf of their minor children until the children reach the age of 18. This does not require a court proceeding, it is considered a “natural” guardianship.

2. Legal custodian – A juvenile court may appoint a legal custodian who, along with parental input can make decisions regarding a minor’s care. Or, a court may determine that a parent(s) will not be able to provide adequate parenting as needed by the child and terminate the rights of the parent(s). In such a case, the legal custodian will make all of the care decisions without input from a parent. Legal custodians are normally appointed for a period of time, which does not exceed 18 months.

3. Guardian of a minor – The court may appoint a guardian for a minor who has no parents (NDCC 30.1-27). Like parents and legal custodians, guardians of minors do not have the authority to continue their decision-making once the minor becomes an adult (age 18).

4. Guardian of an Incapacitated Person – Minors or adults who lack the full capacity to make their own decisions may have a court appoint a full or limited guardian (NDCC 30.1-28). A limited guardian is appointed to assist with and/or make decisions in one or more areas of the ward’s life if that person has some capacity, but not full capacity for making decisions. A full guardian (general guardian) is appointed to make decisions in most areas of a person’s life when that person is considered to have no capacity for making decisions. Guardianships of incapacitated persons do not expire on the person’s 18th birthday. Areas to consider with guardianship: Legal; Financial; Residential; Vocational; Educational; and Medical

5. Conservator – North Dakota law also provides for the possibility of conservator (NDCC 30.1-29) as a means of protecting the estate of one who is unable to manage his/her finances. In North Dakota this term refers only to assistance in the financial area. A person can have both a conservator and a guardian.

GUIDELINES
Reporting Determination Guidelines are used to assist in determining whether a particular incident is reportable as a possible A/N/E. These are merely “guidelines” – each situation must be scrutinized with “professional judgement” utilizing the totality of knowledge regarding the clientele, the staff, the facility, their mission, and the community.

HARM
The existence of a loss or detriment of any kind resulting from the incident:

   - Emotional – that which affects negatively an individual’s emotional well-being and state of mind.
   - Psychological – humiliation, harassment, threats of punishment or deprivation, name calling, sexual coercion, intimidation.
   - Physical – any physical motion or action such as striking, pinching, kicking, slapping, punching, pushing, etc.
   - Financial – that which affects an individual’s state of financial affairs.
DEFINITIONS/EXPLANATIONS OF TERMS

HARM IS EVIDENT
A loss or detriment of any kind which is noticeable or apparent to observation:

- **Emotional** – Crying, unusual behaviors for that individual, behaviors associated with an individual when upset, such as pacing, self-injury, etc.
- **Psychological** – individual becomes passive, withdrawn, aggressive, fearful of people, places, objects, etc.
- **Physical** – bruise marks, injuries, individual displays defensive reaction to an imaginary threat, etc.
- **Financial** – failing to complete required forms for assistance programs/benefits; failing to complete transactions as requested by the individual/guardian; individual’s money not being used for their own well-being; overdrafts not reimbursed by the responsible party; etc.

- **Title XIX Guidelines** – Since many individual residing in ICF/IID’s (Intermediate Care Facilities for Individuals with Intellectual Disability) are unable to communicate feelings of fear, humiliation, etc., the assumption must be made that any actions that would usually be viewed as psychologically or verbally abusive by a member of the general public, is also viewed as abusive by the individual residing in the ICF/IID, regardless of that individual’s perceived ability to comprehend the nature of the incident.

HEALTH FACILITIES
Division of the North Dakota Department of Health responsible to complete annual Medicaid certification of Intermediate Care Facilities for Individuals with Intellectual Disability (ICF/IID). The Division of Health Facilities is also responsible to investigate complaints involving the ICF/IID and service recipients.

HUMAN RIGHTS COMMITTEE (HRC)
The entity responsible for assuring that individual rights are supported and protected. Each provider agency may have its own HRC or may participate in a system-wide HRC. The committee includes individuals served and/or their representatives and at least one-third of the committee’s members are not affiliated with the agency. All instances of alleged abuse, neglect or exploitation of individuals served are reported to the Chairperson of the HRC in accordance with agency policy, state law, and provisions of DDD-PI-10-16.

INCIDENT REPORT/GENERAL EVENT REPORT
Any documentation used by the provider to report and/or communicate issues which may include but are not limited to: alleged abuse, neglect, and/or exploitation; failure to implement individual client programs; medication errors; critical events involving personal injury; unknown bruising; restraint; consumer to consumer mistreatment; etc.

INDIVIDUALIZED FAMILY SERVICE PLAN (IFSP)
Plan currently on the State side of Therap for infants and toddlers under the age of three, or for children who are receiving services through the Autism Spectrum Disorder (ASD) home and community based waiver. The IFSP is the family-centered document that describes the services and support needs of the individual and their family.
DEFINITIONS/EXPLANATIONS OF TERMS

INDIVIDUAL HABILITATION/EDUCATION PLAN (IHP/IEP)

Any institution, facility, agency, or organization that provides services for persons with a developmental disability shall have a written, individualized habilitation plan developed and put into effect for each person for whom that institution, facility, or organization is primarily responsible for the delivery, or coordinating the delivery, of services. A school must have an individual educational plan for each of its students eligible for services under the Individuals with Disabilities Education Act (IDEA). A plan under this section must:

1. Be developed and put into effect within thirty days following admission of the person.
2. Be reviewed and updated from time to time, but no less than annually.
3. Include a statement of the long-term habilitation or educational goals for the person and the intermediate objectives relating to the attainment of those goals. The objectives must be stated specifically, in sequence and in behavioral or other terms that provide measurable indices of progress.
4. State objective criteria and an evaluation procedure and schedule for determining whether the objectives and goals are being achieved.
5. Describe personnel necessary for the provision of the services described in the plan.
6. Specify the date of initiation and the anticipated duration of each service to be provided.
7. State whether the person with a developmental disability appears to need a guardian and determine the protection needed by the individual based on the individual’s actual mental and adaptive limitations and other conditions, which may warrant appointment of a guardian. Any member of the individual habilitation plan may petition, or notify any interested person of the need to petition, for a finding of incapacity and appointment of a guardian (NDCC 25-01.2-140).

INDIVIDUAL SERVICE PLAN (ISP)

The State Individual Service Plan is the pre-authorization of payment for DD Medicaid Waiver and State Plan Services. The ISP is completed by the DD Program manager, representative of the State Medicaid agency. The ISP lists Medicaid funded services that will be provided to the individual as well as other generic services the individual is receiving. The ISP is the document that authorizes Medicaid payment for DD Title XIX services in the Medicaid payment system. An ISP must be completed in order for payment to be made.

INSUFFICIENT RESPONSE

A determination made by the Protection & Advocacy Project and/or DD that the provider’s response to the allegation of A/N/E is not adequate or satisfactory. A determination of insufficient response may be made if:

1. Information required by the Level used is not contained within the provider’s response.
2. Steps to prevent recurrence are believed to not adequately address the issues contained within the allegations.
3. Some issues raised by the review are not addressed within the provider’s response.

INTENT

That which is designed, willful, aimed, purposeful. The definitions of A/N/E must be reviewed carefully to determine if “intent” is a required element, as it is not a required element for each definition.
DEFINITIONS/EXPLANATIONS OF TERMS

INVESTIGATION
A systematic collection of information (facts) to describe and explain an event or series of events relative to the report. An investigation is required for all allegations of A/N/E that meet the level of Investigative Action.

INVESTIGATIVE ACTION LEVEL
This level means the procedural requirements the provider must follow to report and investigate all allegations of A/N/E, unless the provider has been approved to implement the Protective Services Level System.
If the provider is participating in the Protective Service Level System, it is the fourth level of response in the PSI System.
Criteria requires there to be:
   a. Suspected A/N/E
     and one of the following:
   b. Harm to the consumer is evident.
   c. Or, this is a repeat occurrence of a similar incident within 12 months, and the consumer was placed at risk of harm.
   d. Or, insufficient response to Corrective Action.
   e. Or, Professional Judgement.
Criteria “a” must be met; then one of “b” through “e”
Keys – Harm is evident; repeat occurrence/placed at risk; professional judgement.
At the Investigative Action Level there is a determination made as to whether there is a preponderance of evidence to substantiate or not substantiate the allegation.

NO A/N/E
First Level in the Protective Services Level System. In this Level, a determination has been made, based on the Reporting Determination Guidelines, that the incident is not reportable as an allegation of A/N/E.

NOTIFICATION
The requirement of the provider to notify the appropriate entities of the allegation of A/N/E within the required timelines. If the guardian cannot be reached after a reasonable number of attempts, the facility shall send a letter (possibly registered or certified mail, if appropriate). If the DD Regional Program Administrator is not available, the consumer’s DD Program Manager will be notified of the allegation. For notification to P&A, Centralized Intake will be called (1-800-472-2670 or 328-3950) during normal business hours. For after hours, weekends and holidays call the Emergency Line at 1-800-642-6694.

OVERALL SERVICE PLAN (OSP)
A new definition for the individual service planning process in North Dakota for individuals with intellectual disabilities/related conditions. The OSP concept was introduced when the State implemented the new Therap computer web-based application in 2012 that combined the State’s eligibility, service authorization and planning process with the person centered service planning process completed by private adult DD licensed providers into one shared plan. The OSP is located on the provider side in Therap DDD-ND in the Overall Service Plan module. The OSP consists of two (2) sections: the State Individual Service Plan (ISP) and the Person Centered Service Plan (PCSP).
DEFINITIONS/EXPLANATIONS OF TERMS

PERSON CENTERED SERVICE PLAN (PCSP)
Plan currently on the State side of Therap completed by the DD Program Manager for individuals receiving only the service of Traditional Self Directed Services (In Home Support Services Self-directed, Equipment and Supplies, Environmental Supports/Modification, Behavioral Consultation, Transportation Costs for Financially Responsible Caregiver).

PERSON CENTERED SERVICE PLAN (PCSP)
Part of the Overall Service Plan located on the Provider Side in Therap DDD-ND, completed by the primary program coordinator employed by a provider of a licensed DD service. The PCSP describes the individual’s preferences, identified risks, goals and learning and support objectives that will assist the person in achieving their desired outcomes and assure health and safety. The PCSP is individualized based on the individual’s unique needs and aspirations. The PCSP section of the OSP must be current and the OSP approved by the DD Program manager so authorized services on the ISP can be submitted to the Medicaid payment system for reimbursement.

PI-09-23
The North Dakota Department of Human Services policy that prohibits the use of prone restraints and seclusion for any individual receiving services and supports authorized by the Department of Human Services – Developmental Disabilities Division, which include recipients of Medicaid home and community based waivers for individuals with intellectual disabilities (mental retardation) and developmental disabilities and ICF/IID state plan services.

PI-10-16
The North Dakota Department of Human Services policy that describes the responsibilities of licensed providers of DD services to report and investigate alleged incidents of abuse, neglect or exploitation involving service participants.

PREPONDERANCE OF EVIDENCE
That evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of evidence may be determined by the greater weight of all evidence, which does not necessarily mean the greater number of witnesses, but opportunity for knowledge, information possessed, environmental factors, supporting documentation, and physical evidence.

PROFESSIONAL JUDGEMENT
A decision reached through the application of specialized knowledge. Each situation/incident is reviewed and scrutinized utilizing the totality of knowledge regarding the clientele, the facility, their mission and the community.

PROTECTIVE SERVICES
The actions to assist persons with a developmental disability or mental illness who are unable to manage their own resources or to protect themselves from A/N/E or other hazards (NDCC 25-01.3).
DEFINITIONS/EXPLANATIONS OF TERMS

PROTECTIVE SERVICES LEVEL SYSTEM
An alternative form of responding to allegations of A/N/E which utilizes definitions of A/N/E currently found in NDCC 25-01.3.

PROVIDER
An entity licensed by the Department of Human Services under North Dakota Administrative Code (NDAC) 75-04-01 to provide services to eligible individuals.

RECORDS
All records including those identifying specific clients, including staff notes and logs maintained by a facility; all individual records of treatment or care facilities including reports prepared by any staff of a facility rendering care or treatments; reports by an agency investigating incidents of A/N/E and injury occurring at such facility; discharge planning records; hospital, psychiatric, psychological, medical care records; school or educational records; and records otherwise maintained by facilities regarding general care of clients, including facility policies and regulations, staff ratios, staff training records, and employee records (NDCC 65-5-01-02-01).

REPEAT OCCURRENCE
A current incident similar in nature to an incident that previously occurred (12 month time frame) and was addressed through recommendations, instructions, reminders, etc. The reminders, recommendations, instructions, re-training, etc., are intended to ensure the incident does not occur again. Staff across programs within a provider must be informed of any recommendations, instructions, reminders, etc. which may pertain to them in their job or working with a particular individual(s). If a facility fails to do so, they may be neglectful. If staff across programs are informed, then it would be a repeat occurrence no matter where (what home/program) the new incident occurred.

Example 1: Staff in Program A was involved in an incident and it was addressed with Program A staff only, as they are the only staff to work with the involved individual, and the recommendations were all consumer specific. An incident of the same nature occurs in Program B with a different consumer and different staff. This would not be a repeat occurrence.

Example 2: Staff in Program A was involved in an incident and it was addressed with Program B staff as well, as they also work with the individual. If a similar incident occurred in Program B after they were informed of the recommendations, then it would be a repeat occurrence even though this was the first time the incident occurred with Program B.
DEFINITIONS/EXPLANATIONS OF TERMS

REPORT
A verbal or written communication, including anonymous communication, alleging A/N/E of a person with a developmental disability or mental illness. Reports are classified as follows:

Class I – A report which represents an imminent danger or a substantial probability of resultant death, or increased harm or risk of harm to an adult with a developmental disability or mental illness. Immediate action is imperative.

Class II – A report which may represent an endangerment to the health, safety, security, or rights of an adult with a developmental disability or mental illness, but which does not involve a substantial probability of resultant death or increased harm or risk of harm.

Class III – A report which presents no safety or health risks, or one which appropriate Risk Management steps were implemented immediately, thereby eliminating the danger/risk.

REPORTABLE
An incident that has met the criteria to be reported as possible A/N/E per the Reporting Determination Guidelines (A-D, then E). An incident that is reportable is more than mere suspicion, but not established fact. A reportable incident exists when facts, circumstances, and reasonably trustworthy information provides “knowledge of or reasonable cause to suspect” A/N/E.

REPORTER
The person(s) known or anonymous, who communicates or provides information about the report (allegation). The reporter’s name is confidential information.

RISK MANAGEMENT
The process to ensure the safety and well-being of the person(s) with disabilities when there is an allegation of A/N/E, mainly geared to ensure the individual(s) are not at continued risk while the allegation is being reviewed/investigated.

RISK MANAGEMENT ASSESSMENT and PLAN
Assessment completed for each individual as part of the Overall Service planning process. The assessment identifies potential risks to the individual and the person centered service plan incorporates strategies to mitigate the risks subject to the individual’s needs and preferences.

RISK OF HARM
Exists when there is a strong likelihood that if the action were allowed to continue, an individual would be harmed.

SUBSTANTIATED REPORT
A report in which the resulting investigation produces a “preponderance of evidence” that A/N/E has occurred. Under the Level System, a determination of substantiation is made only under Investigative Action.
DEFINITIONS/EXPLANATIONS OF TERMS

TECHNICAL ASSISTANCE
Assistance provided to the provider by the Developmental Disabilities Division, regional DD Program Management, and/or the regional/state Protection & Advocacy Project, regarding questions or concerns related to: A/N/E; the process of review/investigation; consumer rights; or other issues.

THERAP
The computer web-based application initiated in 2012 that combined the State’s eligibility, service authorization and planning process with the person centered service planning process completed by private adult DD licensed providers into one shared plan.

UNSUBSTANTIATED REPORT
A report in which the resulting investigation does not produce a “preponderance of evidence” that A/N/E has occurred. Under the Level System, this determination is made only under the Investigation Action Level.
INDICATORS of POSSIBLE ABUSE
- Individual’s behavior alters (i.e. – more withdrawn, more aggressive).
- Language alters (i.e. – becomes inappropriate, decreases).
- Unexplained bruises, cuts, lacerations, puncture wounds, burns, welts, discolorations.
- Injury that has not been cared for properly.
- Injuries that are not compatible with history.
- Exhibits fear, anxiety, or cowers around certain people, or places; cowers at sudden hand/body movements.
- Fear of speaking around certain people.
- Sudden/unusual/odd attachment to certain people.

INDICATORS of POSSIBLE EXPLOITATION
- Money or property missing (whether individual can “explain” its absence or not.
- Staff says individual “wants” to buy him/her presents/pop/rent videos, etc.
- Unusual charges on the consumer’s telephone bill.
- Unusual purchases.
- Loss in appetite, interest in activities/hobbies.
- Unusual activity in bank accounts.
- Power of attorney given when person is unable to comprehend the financial situation, and in reality, is unable to give a valid power of attorney.
- Recent change of title of house in favor of a “friend’ when the individual is incapable of understanding the nature of the transaction.
- Promises of life-long care in exchange for willing or deeding of all property/bank accounts to caretaker.
- Fear of speaking around certain people.
- Sudden/odd attachment to certain people.
- One sided “friendship.”

INDICATORS OF POSSIBLE NEGLECT
- Poor skin/hair hygiene.
- Poor pallor, sunken eyes/cheeks, dark circles under eyes.
- Chronic runny nose, colds, illness, apart from known effects common with the disability, allergies, etc.
- Clothing dirty, in ill repair, belongs to someone else.
- Little or no progress in the individual’s program/treatment/behavioral plan.
- Individual displays signs of fear or anxiety upon return to their residence or vocational program.
- High frequency of “accidents” or attacks from other residents of the home.
- Dehydration and/or mal-nourishment, loss of weight, without illness-related cause.
- Evidence of inadequate or inappropriate administration of medication.
BEHAVIORAL CHARACTERISTICS AS POSSIBLE CLUES TO A/N/E

Agitation  Resignation
Fear       Confusion of disorientation
Withdrawal Implausible stories
Depression Non-responsiveness
Helplessness Anger
Isolation  Ambivalent/Contradictory statements

INDICATORS OF SEXUAL ABUSE AMONG YOUNG CHILDREN

- Excessive masturbation
- Bedwetting
- Fecal soiling
- Altered sleep patterns
- Severe nightmares
- Fears and phobias
- Regression in developmental milestones
- Learning problems
- Explicit knowledge of sexual acts
- Excessive curiosity about sex
- Precocious sexual play
- Seductiveness
- Overly compulsive behavior
- Clinging/whining to a particular parent (non-abusive parent)
- Open sexual behavior after age 5-7

AMONG OLDER CHILDREN

- Depression
- Withdrawal, child with few friends
- Isolation from peers
- Drug/alcohol abuse
- Chronic runaway
- Increase in physical complaints
- Hysterical paralysis
- Attention-getting behavior
- Physical abuse, self-inflicted or inflicted by parents
- Skipping school/classes
- Drop in academic performance
- Poor self-image, reflected in overall appearance, cleanliness
- Limited participation in organized social activities
- Overly seductive behavior
INDICATORS OF SEXUAL ABUSE AMONG PEOPLE WITH DEVELOPMENTAL DISABILITIES

- Elective mutism
- Initiation of sounds: humming, groaning, screaming
- Withdrawal
- Changes in eating/sleeping patterns and habits, including sleep walking night tremors
- Increased physical aggression towards others
- Onset of sexual aggression: sex talk, grabbing or touching of private parts of others
- Onset of personal sexual behavior: masturbation; putting dangerous objects into one’s genitals with no indication of pain; self-fondling; self-exposure; nudity
- Onset of non-sexualized self-destructive behavior: head banging, self biting
- Onset of non-sexualized anti-social behavior: lying, stealing, eloping, verbal aggression
- Retention: urinary and constipation
- Enuresis (bed wetting) or encopresis (fecal retention with diarrhea-like discharge) and fecal smearing
- Pregnancy and sexually transmitted diseases

(Disability, Abuse & Personal Rights Project, Spectrum Institute, Culver Calif)
OTHER A/N/E INFORMATION

TITLE XIX ICF/IID

W153
The facility must ensure that all allegations of mistreatment, neglect or abuse, as well as injuries of unknown source, are reported immediately to the administrator or to other officials in accordance with State law through established procedures.

W154
The facility must have evidence that all alleged violations are thoroughly investigated.

W156
The results of all investigations must be reported to the administrator or designated representative or to other officials in accordance with State law within five working days.

W157
If the alleged violation is verified, appropriate corrective action must be taken.

TITLE XIX DEFINITIONS Relating to A/N/E, ICF/IID

W127 Threat
Any condition/situation which could cause or result in severe, temporary or permanent injury or harm to the mental or physical condition of individuals, or in their death.

W127 Abuse
Refers to the ill-treatment, violation, revilement, malignment, exploitation and/or otherwise disregard of an individual, whether purposeful, or due to carelessness, inattentiveness, or omission of the perpetrator.

W127 Physical Abuse
Refers to any physical motion or action (e.g., hitting, slapping, punching, kicking, pinching, etc.) by which bodily harm or trauma occurs. It includes use of corporal punishment as well as the use of any restrictive, intrusive procedure to control inappropriate behavior for purposes of punishment.

W127 Verbal Abuse
Refers to any use of oral, written or gestured language by which abuse occurs. This includes pejorative and derogatory terms to describe persons with disabilities.

W127 Psychological Abuse
Includes, but is not limited to, humiliation, harassment, and threats of punishment or deprivation, sexual coercion, or intimidation, whereby individuals suffer psychological harm or trauma.

Individuals must not be subjected to abuse by anyone (including, but not limited to, facility staff, consultants or volunteers, staff of other agencies serving the individual, family members or legal guardians, friends, other individuals, or themselves.

Since many individuals residing in ICF/IID are unable to communicate feelings of fear, humiliation, etc., the assumption must be made that any action that would usually be viewed as psychologically or verbally abusive by a member of the general public, is also viewed as abusive by the individual residing in the ICF/IID, regardless of that individual’s perceived ability to comprehend the nature of the incident.
TITLE XIX DEFINITIONS Relating to A/N/E, ICF/IID, Cont.

W149 Mistreatment
   Includes behavior or facility practices that result in any type of individual exploitation such as financial, sexual, or criminal.

TITLE XIX DEFINITIONS Relating to A/N/E, ICF/IID Continued
W280 Physical Restraint
   Any manual method or physical or mechanical device that the individual cannot remove easily, and which restricts the free movement of, normal functioning of, or normal access to a portion or portions of an individual’s body.

TITLE XIX DEFINITIONS A/N/E
F223, F224 Long Term Care
Abuse means:
   The willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish; the deprivation by an individual, including a caretaker, of goods or services that are necessary to attain or maintain physical, mental, and psychosocial well-being. This presumes that instances of abuse of all residents, even those in a coma, cause physical harm, or pain or mental anguish.

Verbal Abuse means:
   Use of oral, written, or gestured language that willfully includes disparaging and derogatory terms to residents or their families, or within their hearing distance, regardless of their age, ability to comprehend, or disability.

Sexual Abuse means:
   Includes, but is not limited to: sexual harassment, sexual coercion, sexual contact, or sexual assault.

Physical Abuse means:
   Includes hitting, slapping, pinching, kicking, etc. It also includes controlling behavior through corporal punishment.

Mental Abuse means:
   Includes, but is not limited to: humiliation, harassment, threats of punishment or deprivation.

Involuntary Seclusion means:
   Separation of a resident from other residents or from his or her room, or confinement to his or her room, against the resident’s will, or the will of the resident’s legal representative. Emergency or short term monitored separation from other residents will not be considered involuntary seclusion and may be permitted if used for a limited period of time as a therapeutic intervention to reduce agitation until professional staff can develop a plan of care to meet the residents needs.

Misappropriation of Resident Property means:
   The deliberate misplacement, exploitation, wrongful, temporary or permanent use of a resident’s belongings or money without the resident’s consent.
Neglect means:
   Failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness. Failure to monitor and/or supervise the delivery of resident care and services to assure that care is provided as needed by the residents. Failure to provide necessary care for residents.

**OTHER A/N/E INFORMATION**

**NDCC 25-01.3**
-01.8f
A child with developmental disability or mental illness who is not an abused or neglected child as defined in Chapter 50-25.1 is eligible for protective services.

-08
If the Project determines that the report or complaint is warranted, the Project shall investigate or cause the report or complaint to be investigated.

**NDAC 65.5**
-01.04-02
Authority of the Project – Investigation. The Project may investigate incidents of possible abuse, neglect, or exploitation reported to the Project or which the Project has probable cause to believe have occurred, pursuant to NDCC Chapter 25-01.3. If the Project determines that a client is unable to protect himself or herself from abuse, neglect, or exploitation, the Project may take such actions as is necessary to provide for protection of the client through essential services, subject to the limitations of NDCC 25-01.3-11.

**PI-10-16**

Reporting
Verbal report to P&A within 1 working day.
Submit copy of Incident Report, Client Face Sheet, Guardianship Orders within 1 working day.
Submit written report of all follow up activities within 5 days:
   Provider policies & procedures
      Including prompt notification of CEO/designee, HRC Chair, Guardian.
   All documentation that policies were followed
   Signed dated statements from each staff
      What happened, when it happened, precipitating factors
      Individual staff’s involvement
   Report by CEO as to the findings of the organization and any resultant action
      (steps/action to prevent recurrence)

Investigation
In those cases which the report indicates the individual is in imminent danger or there is a substantial probability of resultant death or increased harm or risk of harm, the DSD will also review the alleged incident for impact on licensure. DSD will determine if additional reporting is required and may impose corrective measures upon the service provider.
Follow-Up
Once DSD has received the service provider’s written report, the unit will review all submitted provider information to determine if sufficient & appropriate fact-finding and/or actions have transpired.

If insufficient provider investigation or activities is determined to have occurred, or if P&A findings do not concur with DSD’s findings, a formal request will be made to obtain additional relevant information from the P&A Project. Once the formally requested information has been received, DSD will attempt to reconcile the reports.

OTHER A/N/E INFORMATION
TITLE 75
-04-01-20.2
1. Licencees shall implement policies and procedures to assure that incidents of alleged abuse and neglect:
   a. Are reported to the governing board, administrator, parent, guardian, advocate, and the P&A Project.
   b. Are thoroughly investigated; the findings reported to the governing board, parent, guardian, advocate, and the P&A Project and that the report and the action taken are recorded in writing and retained for three years; and
   c. Are immediately reported to the department.

DD TRAINING MODULE
893.03
“It is only through in-depth fact finding or investigation procedures that a determination of abuse, neglect or exploitation can be made.”

ATTORNEY GENERAL OPINION – Heidi Heitkamp
05/09/96
“… the determination of ‘neglect’ in NDCC 25-01.3-01 (13) expressly includes the failure of a caretaker of a person with developmental disability or mental illness to meet any agency policy or procedures for care of persons with developmental disability or mental illness.

Therefore, subject to the three requirements stated above [caretaker, policy/procedure for people with a developmental disability or mental illness, policy/procedure is valid] it is my opinion that the failure of a “caretaker” to meet agency policies or procedures by itself constitutes “neglect” as those terms are defined in NDCC 25-01.3-01. It is further, my opinion that failure of a caretaker to meet agency policies or procedures would constitute abuse only if the failure to follow policies or procedures results in an injury or death or creates a risk of injury or death. Likewise, it is my opinion that a failure by a caretaker to follow agency policies or procedures would constitute exploitation if the failure involves a taking or misuse of a person’s property or resource.”
OTHER A/N/E INFORMATION
CQL – Personal Outcome Measures

Personal Outcome Questions:
1. Have there been any allegations of abuse or neglect by or on behalf of the person?
2. Is there any evidence that the person has been abused, neglected, or exploited?
3. Is the person experiencing personal distress from a previous occurrence of abuse?
4. If the answers to #1, 2 and 3 are no, the outcome is present.

Individualized Support Questions:
1. Does the organization know about the person’s concerns regarding abuse and/or neglect?
2. Does the organization provide the person with information and education about abuse and neglect?
3. Does the organization provide support for the person if there have been concerns expressed or occurrences of abuse and neglect?
4. Based on the answers to these questions, are individualized supports in place that facilitate this outcome.

Additional Considerations:

- A method to correct a situation of abuse or neglect must include provision of support necessary for the person to cope with the situation no matter when it occurred and to take legal action, if necessary.
- Any allegation of abuse and neglect must be reported and investigated regardless of the source according to organizational policy and procedure and applicable law in order for the individualized supports to be present.
- Lack of intervention in situations where staff have knowledge that the person is in danger or at risk of harm (for example, threats of suicide, threats of physical harm from others including family, inability to handle personal crisis without assistance) constitutes abuse or neglect.
MEDICATION ADMINISTRATION ERRORS  
(Example Of Agency Medication Policy)

Procedures:

1. Medication Administration Certification is required training for all of the full-time employees at _________________. This training must be completed within 60 days of employment. To ensure proper administration, the following medication error policy will be in effect.

DEFINITIONS:

2. A. Medication Error: Any error which involves the 5 rights of an individual (Right individual, Right medication, Right time, Right dose, Right route). Individual refusals, dropped medications, or wastes are not considered errors.

   B. Clerical Error: This includes missing signatures/initials by staff on the MAR forms, including missing the recording of pulse for heart medication.

   C. Falsification of Documentation: Not documenting when things out of the ordinary occur when medications are being administered, (IE - intentionally documenting that a medication was given when it was not; back logging in the MAR without proper documentation; etc.).

   D. Procedural Error: Failure to follow proper procedure for administering medications (IE - failure to wash hands; not comparing the MAR with label; etc.).

GROUP LEVELS:

3. The following groups/levels will be the protocol followed for medication error. This system is based on the degree of medication error; however, it is not intended to diminish the importance of all medication errors.

   A. GROUP 1: Group One offenses are considered to be unacceptable though not serious. The increment of censure for Group One offenses will span 6 months, and the offense will be removed from the employee’s record after 6 months.

      A.1 All Medication Documentation Errors:
      This may include improper documentation of standing orders, packaged medications, missed signatures, insufficiently serious to cause a violation of the Five Rights.

      A.2 All Medication Procedural Errors:
      This may include failure to wash hands, administering medication in an appropriate area with inappropriate people present, improper use of the MAR, failure to check medications and label 3 times, failure to follow procedures when
discovering a medication error, etc., insufficiently serious to cause a violation of the Five Rights.

3. **B. GROUP II:** Group II will probably be the most commonly cited serious offenses. The time span for Group II is one year.

   1. Violation of the Medication Five Rights:
      Wrong dose, wrong client, wrong time, wrong medication, wrong route.

   2. Missed Medication:
      This is to be understood as a medication completely missed, not simply given at the wrong time (see B.1).

**C. GROUP III:** Group III contains the most serious offenses. Though a range of censure is still available to the supervisor in this Group, the assumption is that termination would at least be considered. The time span for Group III is also one year.

An employee with a Group II or Group III offense cited at the level of disciplinary intervention actively on his or her record at the time of evaluation will not be eligible for a merit raise.

   1. Knowingly omitting treatment or medications (See addendum C).

   2. Falsifying medication documentation - reportable as A/N/E.

   3. Failure to report medication error or to utilize proper follow-up procedures.

   4. Stealing medications - reportable as A/N/E.

Disciplinary action for incidents, which are reportable as A/N/E, will be determined by the Internal Review Team.

**C. Addendum** - This citation (Group III #1) applies when a treatment or medication has been omitted by a staff person who has been trained in the individual’s medication and treatment plan, but ignored it.

Two suspensions for any reason from any Group within the span of one year, calculated from the time of the first suspension, will be considered cause for termination.

In each Group, the progression of censure is the same for each offense.
4. At the end of each shift, a supervisor (preferably) will meet with the staff responsible for medication administration, while all staff are still present, and review the MAR’s for errors and attempt to remedy them.

5. A copy of the MAR form must accompany individuals when they are out of town. It is the responsibility of the staff on duty at the time to see that it does.

6. When a medication error is discovered by staff, the Med Error Form must be submitted by that staff person by the end of their shift.

7. All Med Error Forms noting medication errors need to be reviewed by the division nurse.

8. All staff complete the re-certification process annually. NO EXCEPTIONS!

GUIDELINES FOR MEDICAL/MEDICATION ERROR REVIEW
FOR ABUSE/NEGLECT/EXPLOITATION

1. A medication was not administered according to doctor’s orders and the consumer was harmed or placed at risk of harm, including having to repeat medical treatment or medication.

2. A medical procedure was not administered/completed according to doctor’s orders and the consumer was harmed or placed at risk of harm.

3. A controlled substance is missing.

4. Medication documentation is falsified.

5. Professional Judgement

These are merely guidelines to assist in determining if a situation needs to be reviewed for possible A/N/E. Each situation should also be scrutinized with Professional Judgement utilizing the totality of knowledge regarding the clientele, the staff, the facility, their mission and the community.
# PROTECTIVE SERVICES LEVEL SYSTEM ADDRESSES

<table>
<thead>
<tr>
<th>FACILITY/STAFF</th>
<th>PHONE #</th>
<th>FAX</th>
<th>EMAIL</th>
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<tbody>
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<td><strong>ABLE, INC.</strong></td>
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<tr>
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<td><strong>CHILDREN &amp; FAMILY SERVICES DIVISION</strong></td>
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<tr>
<td>600 East Boulevard Bismarck ND 58505-0250</td>
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<td><strong>DEVELOPMENT HOMES, INC.</strong></td>
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<td>3880 S Columbia Rd Grand Forks ND 58201</td>
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- Brad Peterson
- Cheryl Shortall
- Kristen Jones
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## PROTECTIVE SERVICES LEVEL SYSTEM

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<td>All requests for P&amp;A services contact:</td>
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<tr>
<td>328-3950</td>
<td>Centralized Intake – Bismarck/Mandan</td>
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<tr>
<td>1-800-472-2670</td>
<td>Toll-free statewide</td>
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<tr>
<td>1-800-642-6694</td>
<td>After business hours/emergency</td>
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PROTECTIVE SERVICES LEVEL SYSTEM - TRAINING AGENDA

I. Welcome
II. Introduction
III. Level System
   ➢ Background
   ➢ Philosophy
   ➢ Goals
   ➢ Deemed Status
IV. Protective Services Process Overview
   ➢ Incident Report Review
   ➢ Risk Management
   ➢ Reporting Determination Guidelines
   ➢ Definitions of A/N/E
   ➢ Levels
      ➢ Criteria
      ➢ Duties
V. Risk Management
VI. Reporting Determination Guidelines
VII. Definitions
   ➢ Report same things as before
   ➢ Impact/potential impact on consumer
   ➢ Accidents
VIII. Jane Scenario – large group (DDD-PI-10-16)
IX. Levels
   ➢ Criteria
   ➢ Duties
X. Jane Scenario – large group (Level System)
XI. Response Sheets
XII. Jane Scenario – large group (Level System)
   ➢ Do Response Sheets
   ➢ Recommendations
   ➢ Environmental
   ➢ Systems/Facility
   ➢ Consumer
   ➢ Staff
XIII. Scenarios – small groups
XIV. Scenarios – small groups report to large group
XV. Review Manual
XVI. Questions
SCENARIO WORKSHEET

1. **Determine Risk Management Steps**
   * 
   * 
   * 

2. **Reporting Determination Guidelines**
   Identify additional information needed, if any:
   * 
   * 
   * 

2A. **Circle Guideline used (if any); Circle number that pertains:**
   A. Bruises/Injury: 1 2 3 4
   B. Consumer/Consumer: 1 2 3 4
   C. Medical/Med Review: 1 2 3 4 5
   D. General Review: 1 2 3 4 5

   E. 1. Incident could have occurred Yes___No___
      2. Under the age of 18? Yes___No___
      3. Definitions of ANE that may apply:
         1. Abuse: a b c d e f
         2. Exploitation: a b c
         3. Neglect: a b c d e f g

   Discussion:

3. **Determine Protective Services Level**
   Circle all criteria that apply:
   1. Not Reportable: a
   2. Agency Action: a b c
   3. Corrective Action: a b c d e
   4. Investigative Action: a b c d e

   Discussion:

4. **Complete Appropriate Documentation**
AGENCY ACTION RESPONSE
Protective Services Level System

Date:
Consumer Name(s):
Consumer Address:

Alleged Incident:
    Attach Incident Report and Consumer Face/Data Sheet

Risk Management Steps Taken:

Verification of Level:
    _____ a. Suspected A/N/E
    _____ b. AND No Harm or Risk of Harm to Consumer is Evident
    _____ c. AND First Time Occurrence

Steps Taken to Assure Incident is Not Repeated:
CORRECTIVE ACTION RESPONSE
Protective Services Level System

Date:
Consumer Name(s):
Consumer Address:

Alleged Incident:
   Attach Incident Report and Consumer Face/Data Sheet

Risk Management Steps Taken:

Verification of Level:
   _____ a. Suspected A/N/E
   _____ b. AND No Harm to Consumer is Evident
   _____ c. AND Repeat Occurrence/Consumer Not at Risk of Harm
   _____ d. OR First Time Occurrence/Consumer Placed at Risk of Harm
   _____ e. OR Inadequate Response to Agency Action

Steps Taken to Assure Incident is Not Repeated:
   Each response must include:
       WHO is responsible for implementation;
       WHEN it will be completed; and
       WHO is responsible for follow-up.
INVESTIGATIVE ACTION RESPONSE  
Protective Services Level System

Date:
Consumer Name(s):
Consumer Address:

Alleged Incident:
   Attach Incident Report, Consumer Face/Data Sheet; Guardianship Papers

Risk Management Steps Taken:

Verification of Level:
   _____ a. Abuse___ Neglect___ Exploitation___
   _____ b. AND Harm is Evident
   _____ c. OR Repeat Occurrence/Consumer Placed at Risk of Harm
   _____ d. OR Inadequate Response to Corrective Action
   _____ e. OR Professional Judgment

Facts of the Incident:
   Attach signed Interviews, Supporting Documentation (i.e. – Progress Notes, Charting, MAR’s, IPP/BIP/IEP/BMP, etc)

Laws, Rules, Regulations:
   Definitions of A/N/E, provider policies, procedures, etc.

Conclusions:
   _____ The Incident Occurred
       Based On:
   _____ The Incident Did Not Occur/Insufficient Evidence
       Based On:

Steps Taken to Ensure Incident Is NOT Repeated:
   Each response must include WHO is responsible for implementation, WHEN it will be completed, and WHO is responsible for monitoring/follow-up.

Verification that PI-10-16 was followed
Signature of CEO/Designee
ABUSE/NEGLECT/EXPLOITATION SCENARIOS
DEVELOPMENTAL DISABILITIES

1. **Jane** throws folding chairs when agitated. Jane and her team developed a behavior program to address the problem of chair throwing. The program was approved and staff trained. A couple of weeks after the plan went into effect, Jane threw a chair towards an individual sitting on the couch. Staff intervened by physically restraining Jane as the program required. After staff released her, Jane angrily walked over to the staff office and sat down in the doorway. Staff followed Jane, picked her up and had her sit in a chair. There was no further incident from Jane. Staff documented both uses of restraint. Staff also checked the individual who came close to being hit by the chair and she said she was OK.

2. **James** does not like to do household chores and frequently refuses to do them. One evening after supper, James went into the living room and put on his Sony Walkman rather than doing the dishes, which was his chore for the week. A staff person removed James’ Walkman and told him he would earn it back after doing the dishes. James got off the couch and went into the kitchen to start the dishes, mumbling under his breath, and throwing occasional “looks” at the staff. James’ program does not address his non-compliance to doing household chores.

3. On several occasions, staff have found **April** peeking through the crack of the bathroom door to watch Joe, a male resident, bathe. Each time staff have tactfully asked April to leave the area and then quietly shut the door in order to not draw attention to the incident. As requested by the ICF/IID supervisor, staff then completed Incident Reports for each occurrence. This issue has been discussed at numerous staff meetings and at April’s OSP meetings, but staff have not been instructed to do anything differently. Staff do not know what Joe’s reaction is to this as they have not talked to him about it. This has not previously been reported as a possible allegation of A/N/E.
4. Reporting staff and a witness heard a staff say “get the _____ out of here” to Mabel, a resident of an ICF/IID home. The staff apologized to the other staff, explaining that she was upset because Mabel was constantly getting in her way in the staff office, while she was trying to dispense medications. Witnesses say there was no reaction from Mabel except to walk away, which is a common reaction from Mabel, even if she has been hit by another resident. First time incident.

5. Harold, a resident of an ICF/IID, has a very severe cerebral palsy condition. He has received physical therapy for years and is starting to walk but very shakily. He is very proud of his progress in learning to walk. However, he is often in great pain, and at times cruel to the staff and other residents. Harold “swears like a sailor” at staff who either do not help him enough or try to help him too much.

One day you come to work and Harold is crying in the living room. When you ask what is wrong, Harold said that one of the staff got mad because Harold was yelling at one of the other residents. As punishment, the staff forced Harold to walk across the room while they (the staff and residents) all laughed and yelled that he was putting on a good show for them. First time incident.

6. Due to his extremely fragile physical condition, Luther’s program calls for a 2 person transfer, even when using the Hoyer Lift. A staff and a nurse took Luther to a doctor’s appointment. Upon returning to the ICF/IID, the nurse said she would be back in a little while to check on Luther. When the nurse returned, Luther was in his bed. The nurse asked the staff how she got Luther into his bed. The staff said she did it alone with the Hoyer Lift, as there was no other staff to assist and Luther was complaining of pain. The staff did not attempt to get assistance from anyone else. Luther was not complaining of any pain while in bed. First time incident.
ABUSE/NEGLECT/EXPLOITATION SCENARIOS
DEVELOPMENTAL DISABILITIES

7. It is the weekend and you are alone with 6 individuals at the Congregate Care group home. The other staff took 2 individuals shopping. It is 12:00 noon and 3 of your 6 individuals need their medication. You got all 3 medications ready and assisted Tom and April in taking their medications. You then realized that Tom got Joe’s medication. You immediately contacted the RN who said to complete a Med Error form and watch for nausea, vomiting and lethargy. After completing the Med Error form, you noticed the adverse effects described by the RN and called the RN back. The RN came over and took Tom to the Emergency Room. The ER pumped Tom’s stomach and kept him overnight for observation. You gave Joe his medications while waiting for the RN and completed all necessary documentation. This staff was just re-instated for med-distribution.

8. Jim and Tim live together in the same TL facility and they do not get along. Jim has called Tim every name in the book. Staff have repeatedly talked to Jim about his language but to no avail. At least once a week, Jim goes after Tim by shouting and swearing up a storm. Staff have documented increased aggression and self-injurious behaviors by Tim. Staff are frustrated with Jim, so decided to report him.

9. Sally attends a local public school and lives in an ICF/IID home for children. Sally requires total care. One day the schoolteacher removed Sally’s shoes and socks and found severe blisters on the top of her feet and down into her toes. The travel log from the home contained no information regarding the sores and there was no sign of medical treatment.

The teacher called the home manager and asked about the sores. The manager said she knew nothing about it but would check with staff. Staff told the manager that this morning Sally put on her own socks and shoes after her bath so they hadn’t seen anything. First time incident.
ABUSE/NEGLECT/EXPLOITATION SCENARIOS
DEVELOPMENTAL DISABILITIES

10. **Ann** is to receive 3 phenobarbital tablets at 9p.m. One morning, staff A was helping staff B, the designated medication staff, with dispensing the medication. Staff A punched the 3 phenobarbital tablets from Ann’s cardboard container and signed off the MAR as having given the tablets to Ann. Staff B saw the pills sitting in the med cup and asked staff A why she did that, since Ann doesn’t get those until 9p.m. Staff A looked again at the MAR and noticed her mistake. Staff A threw the pills in the staff garbage can and did not complete any other paperwork. First time incident.

11. The **awake-night** staff of a Congregate Care group home was caught dosing while on duty by the relief staff. The staff was taking meds for an ankle injury that causes drowsiness. The individuals in the home were not affected and no cares were missed.

12. **Alexandria**, an ICF/IID resident, was found at 5:30p.m. in the day program restroom by the cleaning crew. Residential staff were called and they said they hadn’t noticed that Alexandria was not at the home. Alexandria told staff she was OK. No cares or medication were missed. Residential staff came immediately to take Alexandria home. Alexandria’s program states she requires 24 hour supervision due to her severe seizures. First time incident.

13. **Herbert**, who lives in an apartment, told his job coach that Tim, a staff person, had told him to shut up and called him a stupid idiot and a moron. Herbert said he was upset but that Tim apologized and Herbert also apologized to Tim. When asked, Herbert told the job coach he didn’t know what he had done to get Tim so upset, but that he apologized because Tim did. First time incident.
14. A staff helped **Izzy** pick out videos to watch in her apartment. Staff took the videos home with her and Izzy told the ISLA supervisor that she didn’t see any of them. The ISLA supervisor also noticed many long-distance phone calls on Izzy’s phone, including some 1-900 calls. Izzy is not able to independently use her telephone. The facility immediately reimbursed Izzy. This staff was warned before that actions like this were inappropriate.

15. **Orville**, a resident of an ICF/IID, likes World Wrestling Federation and watches it on TV all the time. One day staff found a bruise on Orville’s upper arm, that resembled finger marks. Orville does have a behavior management program that calls for a restraint, but according to staff, no restraints have been implemented (documented) for over a week. It is known that Orville and staff rough house on occasion, especially while watching WWF programs.

16. The On-Call supervisor was visiting a TL home and noticed that **Adam** was sitting in the Medication Room by himself. The Medication Cabinet was unlocked and pills were sitting in med cups ready to be passed out. The supervisor worked with the staff to ensure Adam had not taken any pills. First time incident.

17. Staff went to an apartment building at 8p.m. where the ISLA program keeps their time clock, to turn in his weekly time card. While there, he saw 2 ISLA clients, **Jane** and **Justin**, sitting in the lobby with their lunch buckets, which they had taken to work with them. The 4-10p.m. staff had not show up.

Staff called the ISLA supervisor who came and fixed supper and helped Jane and Justin get ready for bed. Neither was harmed or appeared frightened. Jane is blind and dependent on staff. Justin is able to get to his apartment and care for himself, but he stayed with Jane. Justin requires medication, which was given late. The pharmacist was contacted and said the 2 hour delay in the meds was not a concern. It was later found that the supervisor had failed to fill the 4-10p.m. shift.
18. **Wally**, an ICF/IID resident, was in one or two vans returning from summer camp. Both vans stopped at a rest area. After a few minutes, both vans headed out again. The van Wally was assigned to pulled up alongside the other van and asked if Wally was in there. The staff in the other van said no. Wally’s staff then said they must have forgotten him at the rest area. The van returned and staff found Wally in the restroom washing his hands.

Wally was not harmed in any way; he had not even noticed that the others had left. Wally has good survival skills and would not have gotten in a stranger’s car or run away.

19. **Clyde** resides in an ICF/IID. He was taken to his room to calm, per his behavior program. Later when staff went to check on him, he was not in his room. Staff initiated a search and called the police. Clyde was found trying to enter a neighbor’s house. This situation has occurred before with Clyde and also with this neighbor, so they were familiar with Clyde and his behavior. Clyde’s OSP states he is to have one-on-one staff at all times. The last time an incident like this occurred was about 14 months ago.

20. Staff left a bottle of a resident’s *eyedrops* on the kitchen table of a Congregate Care home. When the staff went to the Medication Room later to get the eye drops, she could not find it. Staff then remembered having taken the bottle out of the Medication Room, and then was side tracked by another resident. Staff looked all over the home but could not find the bottle.

Inquiries were made to the pharmacist and physician as to what effect there may be on any resident who may inadvertently swallow the liquid in the bottle. Both agreed it would not cause any discomfort regardless of how it may be ingested, and in particular, would not be harmful to any of the residents in the home.

The bottle was found the next day in the dishwasher. First time incident.
ABUSE/NEGLECT/EXPLOITATION SCENARIOS
DEVELOPMENTAL DISABILITIES

21. **Ingrid**, a resident of an ICF/IID, arrived at the day program with socks but no shoes. There was no rain or snow but it was cold out. Ingrid was smiling; she does like to remove clothing on occasion. Ingrid does not need assistance from staff to get dressed. Residential staff said Ingrid had shoes on at breakfast time.

22. Staff had her hand around the back of **Yoko**’s neck, leading her to the table for lunch. Staff then pushed Yoko’s chair up firmly against the table and pushed Yoko’s head down towards her food. Yoko does not have any kind of eating program. Yoko had a grimace on her face and staff later found red marks on her neck where the staff had pushed her.

23. **Adolf** has a history of severe UTI’s. He was on meds for a current UTI. The doctor ordered a urine sample to be done in 7 days from the start of the med treatment. The urine sample should have been done on Friday but staff did not do it until Monday. As a result, the doctor started the medication treatment all over again.

24. **Cleo** receives services through an ISLA program, and requires significant assistance with money management. The ISLA Coordinator checks each individual’s check book on a quarterly basis, per policy, and found that Cleo’s checking account was overdrawn. When asked, the staff had no explanation and no receipts for many of the items supposedly purchased. Staff failed to follow the agency policy on money management. Cleo did not go without food and her needs were met, however, she had $50 in overdraft charges. First time incident.
25. Three staff from an ICF/IID were outside on a smoke break at the same time, leaving the 6 individuals inside alone. It was 11:30p.m. and all individuals were in bed. The staff checked all individuals before going outside. No cares were missed, and all was well when the staff returned. One of the individuals has a history of getting out of bed and pulling the fire alarm. Staff were outside for about 10 minutes. Staff admitted they do this about every shift.

26. Staff found bruise marks on Heidi, an ICF/IID resident. One bruise, near the buttock area, appeared to be that of a shoe imprint. Heidi is not able to communicate what happened, but it was documented in her log that she had become very upset the previous night, and engaged in extreme self-injurious behaviors. Staff attempted to restrain Heidi to prevent her from harming herself. Staff took Heidi to see the doctor and she was unable to determine the cause of the bruise. Heidi’s team decided they will meet to address the issue of increased self-injurious actions and aggression to others.

27. Elizabeth fell while getting out of the bathtub. She screamed and yelled, and had a noticeable cut on her lip. Staff applied ointment. Staff asked Elizabeth what happened. Elizabeth said she did not remember. Elizabeth was visibly shaken and drowsy looking. Elizabeth continued to be out of touch with the happenings around her. She appeared pale and listless. Elizabeth has seizure activity, although there has never been a problem with seizure activity and the bathtub.

The staff was not in the TL home at the time of the incident. The staff was helping another resident cross the street so she could get to the store. Staff ratios were correct for this home.
ABUSE/NEGLECT/EXPLOITATION SCENARIOS
DEVELOPMENTAL DISABILITIES

28. **Jennifer** is a resident of an ICF/IID home. Staff were assisting Jennifer with her bath one morning, when staff observed scratch marks going the length of Jennifer’s arm. Staff documented that no first-aid was needed and staff ignored it and continued with her bath. Jennifer has a well documented history of scratching herself to get attention. Her program instructs staff to give as little attention as required for these type of injuries.

29. Staff observed another staff mistreating ICF/IID resident **Luella**. Staff stated she saw the other staff pull Luella’s hair, call her names, and flick water in her face. Luella shows no indications of pain or anguish - ever - but the other staff present said they were offended by the staff’s behavior. First time incident.

30. **Timothy** is frequently targeted by **Anthony** at the ICF/IID home in which they reside. Anthony’s behavior program states that staff are to walk next to him and stand between Timothy and Anthony to prevent Anthony from hitting. On this day, Anthony was showing signs of agitation, saying he was going to hit Timothy, but staff did not step in between the two. Timothy ended up getting hit in the chest and the mouth, causing some bleeding and bruises.

31. **Cynthia** was sitting at the dining room table eating supper, when she suddenly started screaming and crying. Staff thought Cynthia was telling them she was finished eating, so the staff removed Cynthia’s plate. Cynthia continued screaming so staff pulled her chair from the table. At that time staff noticed that the puppy which had been brought to the group home by a working staff for a visit, was under the table and had apparently been biting and scratching Cynthia’s toes. There was blood on Cynthia’s socks. Staff applied first-aid.

The facility has no policy regarding staff bringing pets to work with them. The puppy, a pit-bull, had visited the home many times with no incident.
ABUSE/NEGLECT/EXPLOITATION SCENARIOS
DEVELOPMENTAL DISABILITIES

32. **Adrian**’s program plan states that his bed rails will be up at all times when he is in bed. Staff walked by Adrian’s room and noticed that the bed rails were down. Adrian was sleeping comfortably. First time incident.

33. **Albert** requires total care and assistance from staff. Albert is very tall and lanky. One morning, staff was dressing Albert on his bed, as usual. As staff was getting Albert’s shirt on, his legs started to slide off the bed. Staff attempted to grab his legs to prevent him from falling off the bed. While staff were grabbing at the legs, Albert’s trunk slid from the bed. Albert landed on the floor, hitting his head hard enough to cause a small cut. Staff called the nurse and first-aid was applied. First time incident.

34. **Mel** and **Belle** are resident of the same ICF/IID home. Both have lived in the home for many years and tend to harass each other. One day Mel asked where a certain resident was. Belle responded right here, are you blind? Mel became upset and hit Belle.

   Neither of the ladies has any program to address this issue. This type of incident occurs frequently, usually resulting in one or both ladies being hurt.

35. Staff noticed that **Esmerelda** had two red marks on her face. Esmerelda is not able to communicate how the bruises occur. Esmerelda frequently falls, sometimes due to walking too fast, sometimes due to getting up too fast. Esmerelda’s file has documented times when she has fallen and received bruises similar to the current bruises to her face. The physical therapist has assessed Esmerelda’s walking and has instructed staff to try and remind Esmerelda to slow down, but no further instructions or restrictions.
36. **Jessica** resides in an ICF/IID. Staff found several scratch marks on her arms, legs and back. It is believed that Jessica could not have caused these scratch marks herself. Staff denied any knowledge of how the marks occurred.

37. **Kalyn** resides in an ICF/IID. Kalyn wandered away from the facility and was discovered walking near a busy street. Staff figure she was absent for approximately 30 minutes. Kalyn’s assigned staff was on break when she “disappeared” and the other staff each thought someone else was covering Kalyn. This is the first time something like this has happened with Kalyn, or any individual who lives in this home.

38. **Brian** received ISLA services. He is on Zoloft for depression. Brian’s psychiatrist decreased the Zoloft dosage by 50 mg but the MAR wasn’t changed. No one caught the error for over a week. Brian has been unsuccessful with a self medication program. No side effects were noted. Staff called the psychiatrist when the error was noted. The psychiatrist was angry that his orders hadn’t been followed, but said there was no harm or risk of harm with this decrease not being initiated. Staff were to start with the decrease NOW.

39. Day program staff wrote the following in an Incident Report: **Annie** arrived at work today with dried BM under her finger nails, and **Annie** and **Beth**’s wheelchairs are dirty with dried, caked on food. Staff stated they told the residential staff last week about the chairs, but nothing has been done.
40. Residential staff took **Arnold** to his community work site, where he typically meets up with his job coach. Residential staff failed to ensure the job coach was at the site, and left Arnold alone at the site. Arnold was visiting with the business’ receptionist when the job coach finally arrived, about 30 minutes later. Arnold is to have constant supervision due to inappropriate behavior in the community.

41. **Eileen**’s doctor ordered a urine sample due to a concern of dehydration. Staff assisted Eileen with getting the sample. The staff put the sample in the refrigerator, and left a note for another staff to take the sample to the clinic. Staff failed to get the sample to the clinic until the next day. The doctor said the sample would have to be re-done, as it needed to be fresh.

42. **Victor** is to take a medication called Carnitor, which helps the body absorb nutrients. This is a prescribed medication, and part of an overall health plan to improve Victor’s ability to maintain or gain weight (concern of consistently losing weight). Staff failed to give Victor his Carnitor one evening. Doctor was contacted the next day. Doctor said there would be no harm or risk of harm with missing one dose.
ABUSE/NEGLECT/EXPLOITATION SCENARIOS
CHILDREN

1. **Ann** is 16 years old and resides in a treatment facility. Ann alleges that another resident, Andy, an 18 year old, touched her private parts without her permission. Andy denies the allegation. There have been other accusations regarding Andy’s behavior; however, Andy’s team has not met, and no changes have been made to his program plan.

2. **Brian** is 12 years old, and he resides in a treatment facility. Brian and a staff were at a football game. Brian took the staff person’s pop can, and drank from it. When the staff saw this, the staff used a loud voice and said to Brian “You stupid little thief! That was my drink. Now you’re gonna pay!” Brian dropped the can and ran from the staff.

3. **Carla** is 15 years old and resides in a treatment facility. Carla is to receive 50 mg of Depakote 3 times per day. When reviewing Carla’s chart, it was found that the dosage had been written in the MAR as 100 mg. Consequently, staff have been giving Carla 100 mg of Depakote 3 times per day for 2 days. No adverse effects were noted in Carla; nursing staff checked with the pharmacist and general physician regarding risk of harm. All were in agreement that this would not cause harm to Carla; however, the staff were given a list of side effects/symptoms to watch for.

4. **Daniel** is 10 years old and resides in a treatment facility. Daniel’s program plan calls for a basket hold restraint if he throws objects or hits others. Today Daniel is having a very bad day. Daniel throws a glass that hits a wall (no other residents or staff were in the area). Staff attempted to restrain Daniel but he squirmed away. In trying to keep Daniel in the restraint, the staff person’s hand slapped Daniel across the face. Daniel and the staff fell to the floor.
5. **Elroy**, a 13 year old resident of a treatment facility and a staff were outside playing football with another resident and staff. Elroy and his staff were both running to catch the ball and they collided. Elroy got a bump on his head and a scrape on his knee. The staff was not injured.

6. **Fran**, a 6 year old who resides in a treatment facility, returned to the facility after an outing with her parents. While assisting Fran with bathing, staff noticed that Fran had a large bruise on her stomach and left outer thigh. This same staff had assisted Fran with dressing that morning, and recalls there were no bruises at that time.

7. **Gary** is 16 years old and resides in a treatment facility. Gary has drop seizures. Gary’s plan states that he will wear a helmet when outside, for protection. Gary was outside with staff and had a seizure, falling to the sidewalk and injuring his head. Staff said Gary’s helmet was in for repairs. Upon checking, it is discovered that Gary’s helmet has been sitting in the hall closet for 3 days, waiting to be taken in for repairs.

8. **Hannah** is 13 years old and resides in a treatment facility. Hannah requires total assistance from staff. Hannah and staff were sitting outside enjoying the sunshine. When they came inside. It was noticed that Hannah had a severe sunburn.

9. **Issac** is 15 years old and resides in a treatment facility. Issac recently had surgery on his leg, and his leg was to be kept elevated. Issac’s mother came for a visit and saw Issac sleeping in the day room, in his wheelchair. Issac’s leg was dangling off the wheelchair supports and was swollen. While mother was trying to get Issac’s leg elevated again, she noticed that Issac’s pants were wet. Issac wears Depends. When mother asked staff when Issac had last been changed and why his leg was not elevated, staff responded they “didn’t know.”
10. **Kaylin** is 16 years old and resides in a treatment facility. Kaylin wandered away from the facility and was discovered walking near a busy street. Staff figure she was absent for approximately 30 minutes. Kaylin’s assigned staff was on break when she “disappeared” and the other staff each thought someone else was covering Kaylin.

11. **Lester** is 13 years old and resides in a treatment facility. Lester is large for his age. Lester’s arm was broken during a physical restraint. The staff person stated that she and Lester had fallen while she was attempting to restrain and escort Lester.

12. **Martin** is 8 years old and resides in a treatment facility. A staff reported that he saw Martin’s mother physically force open Martin’s mouth to administer medications.

13. **Nathan** is 14 years old and resides in a treatment facility. Nathan’s plan states that he will be searched if money is missing. Nathan reported that during a body search, the staff had “groped” his genitals.

14. **Oliver** is 8 years old and resides in a treatment facility. Oliver recently had hip surgery. Oliver was bouncing on his bed and struck the right side of his forehead on the corner of his desk.

15. **Paula** is 16 years old and resides in a treatment facility. Paula was dancing and lost her balance and fell to the floor, landing on her left side.
16. **Quioxte** is 13 and resides in a treatment facility. Quioxte somehow found some colored hairspray and squirted it into his mouth.

17. **Raven** is 18 years old and resides in a treatment facility. Raven was sitting on a shower bench when it collapsed, causing Raven to slide off the bench and land on her bottom and tail bone area.

18. **Susan** is 6 years old and resides in a treatment facility. Staff saw Susan walking strangely and when they checked, found that staff had put Susan’s shoes on the wrong feet. Susan’s feet were red – pinched across the toes and top of the foot.

19. **Tom** is 17 years old and resides in a treatment facility. Tom has a program for aggression. Staff heard Tom tell another resident he was going to kill him. Later that day, Tom hit the other consumer in the face, causing a bloody nose.

20. **Ulsa** is 13 years old and resides in a treatment facility. Ulsa has a history of being sexually abused by family. Staff found another resident in Ulsa’s room with her, lying on the bed.
1. Alice was admitted to a residential treatment facility. After admission, staff found Alice in her room with a cut wrist. The cut required sutures. Alice said she cut herself with a razor blade, which she brought into the facility with her.

2. Ben is a new patient. He carries a diagnosis of dementia and was recently transferred from a nursing home. It is reported he went into the room of a female patient across the hall from him while she slept early one morning. While in the other patient’s room, he allegedly touched the woman’s private areas. The woman called out and staff responded immediately. Ben’s record did not indicate any history of this type of behavior.

3. Carol was continually asking staff if she could go to the store. Staff finally responded in a loud voice “Shut up, dummy, don’t you get it? When I say no I mean no.”

4. David, a patient returns to his ward after attending a counseling session with bruises around his face. He tells you he got them when the staff accompanying him told him to “shut up and get out of here.”

5. Earl tells you that he runs out of cigarettes because staff bum from him all the time.
ABUSE/NEGLECT/EXPLOITATION SCENARIOS
MENTAL HEALTH TREATMENT FACILITIES

6. **Frank** and **Gary** have not been getting along. Frank has made several remarks to staff that he was going to “smack that silly smile off Gary’s face.” Just before leaving the ward on free time, staff hear Frank say to Gary, “Just wait until I get you alone.” Gary returns to the ward in a few minutes complaining that Frank has just physically assaulted him.

7. **Helen** has been obsessing on needing to go home, and has tried to leave the facility on two occasions. Helen tells her psychiatrist that she will not leave again. Helen regains privileges and leaves the facility grounds, and takes a cab to her home. The cab driver takes all of Helen’s money to pay for the fare.

8. **Ilia** does not want to take a shower. It has been several days since she has washed and there is a definite odor. Fred and Elaine, staff, decide to take care of the problem by carrying Ilia into the shower room and put her under the running water.

9. **Jake**, a patient, has been in an aggressive mood all day. He has been verbally abusive to staff and other patients. Jake comes after a staff and the staff puts Jake in a chokehold.

10. **Kaylin’s** guardian sent her $50 to purchase personal care items from a prepared list. Shawna, a staff person is assigned to accompany Kaylin on the shopping trip. At the store, Shawna sees a blouse she would love to have. She tells Kaylin she wishes she had the money to buy the blouse now, as it may be gone by payday. Kaylin loans the money to Shawna.
ABUSE/NEGLECT/EXPLOITATION SCENARIOS
MENTAL HEALTH TREATMENT FACILITIES

11. **Lewis**, a patient, yells at a staff, who’s down the hall, that he is going to “get him.” Staff close to Lewis put him in a restraint and then escort him to isolation. Threats from Lewis are not part of his Special Treatment Plan.

12. **Mattie** has a diagnosis that includes chemical dependency. The facility is her representative payee for Social Security benefits. The facility decides to stop giving Mattie her spending money, as she purchases alcohol with it.

13. **Nathan** is to receive his medication at 9pm. It has been a long day on the ward, and the staff dispensing medications forgets to give Nathan his seizure medications. The next day Nathan has a seizure.

14. **Oliver** is very volatile and reacts to unexpected changes with physical aggression. Oliver’s treatment plan calls for staff to provide him with one weeks notice of planned changes. Oliver has been receiving $10 spending money each Friday. On Monday the Treatment Team meets and decides to limit Oliver’s spending money to $5 each Friday, in order to encourage him, to participate in work activity. Oliver is informed of the change on Friday when he is given $5. Oliver “blows up,” attacking the individual that gave him the $5. Oliver’s action results in his being physically restrained and placed in seclusion.

15. **Paula**, a patient, approaches you and tells you that a staff person did not give her the right medication, would not allow her to wear her coat and told her to smother herself with a pillow.
I. REVIEW INCIDENT REPORT/ALLEGATION
   a. Report is complete
   b. Information is clear

II. ASSESS RISK MANAGEMENT
   a. Risk Level: (Check One)
      Emergency _____
      Imminent Danger _____
      Non-Emergency _____
   b. Responsive Actions: (Write In)
      Emergency :
      Imminent Danger :
      Non-Emergency :
   c. Determine who needs to be contacted:
      _____ Law Enforcement (or option to guardian/consumer)
      _____ Child Protection at County (under 18)
      _____ Child Protection at HSC (under 18) [after determined reportable]
      _____ Medical/Pharmacy
      _____ Other (Write In)

III. REPORTING DETERMINATION
   a. Incident involves Bruises/Injuries - Guideline A
   b. Incident involves Consumer/Consumer- Guideline B
   c. Incident involves Medical/Medication Error - Guideline C
   d. Incident involves General Review- Guideline D
      Guideline _____ Number _____
   e. 1. Incident could have occurred: Yes_____ No_____ 
      2. Under the age of 18? Yes_____ No_____ 
      3. Incident could meet one or more A/N/E Definitions:
         Abuse : a b c d e f 
         Exploitation : a b c 
         Neglect : a b c d e f g 

IV. LEVEL DETERMINATION
   1. _____ No A/N/E
   2. _____ Agency Action
      a. Suspected A/N/E
      b. AND No harm or risk of harm is evident
IV. LEVEL DETERMINATION (Continued)

c. **AND** First time occurrence

3. _____ Corrective Action
   a. Suspected A/N/E
   b. **AND** No harm to consumer is evident
   c. **AND** Repeat occurrence/consumer not placed at risk of harm
   d. **Or** First time occurrence/consumer placed at risk of harm
   e. **Or** Insufficient response to Agency Action

4. _____ Investigative Action/PI-10-16
   a. Suspected A/N/E
   b. **AND** Harm to the consumer is evident
   c. **OR** Repeat Occurrence/consumer placed at risk of harm
   d. **OR** Insufficient response to Corrective Action
   e. **OR** Professional Judgement

V. PROCEED WITH DUTIES ASSOCIATED WITH THE DETERMINED LEVEL

1. No A/N/E
   May review with P&A

2. Agency Action
   _____ Assess Risk Management
   _____ Notify DDPA and P&A within 1 working day.
   _____ Complete written response.
   _____ Send written response to DDPA and P&A within 5 working days.
   _____ Notify guardian upon completion of review.

3. Corrective Action
   _____ Assess Risk Management
   _____ Contact DDPA and P&A within 1 working day.
   _____ Contact guardian within 1 working day.
   _____ Complete written documentation within 5 working days
   with time specific response plan, steps to avoid recurrence, who is responsible for implementation and follow-up.
   _____ Contact guardian upon completion of review.

4 Investigative Action/PI-10-16
   _____ Assess Risk Management
   _____ Verbal report to P&A within 1 working day.
   _____ Contact DDPA within 1 working day.
   _____ Contact individual’s guardian (if appropriate)
   _____ Provide Incident Report within 1 working day to DSD and DDPA
V. PROCEED WITH DUTIES ASSOCIATED WITH THE DETERMINED LEVEL
(Continued)

_____ Provide Incident Report, Client Face Sheet/Data Sheet and
Guardianship papers to regional P&A within 1 working day

NOTE – the above steps would occur whether the Provider or P&A is
carrying out the primary investigation

_____ Request extension from DSD (if needed)

______ If extension is granted, contact regional P&A

_____ Submit written report of all follow-up activities related to the
alleged incident to DSD, DDPA and P&A within 5 days after
the incident. Written Report will include:

____ Name of alleged victim(s)

____ Date/Time of alleged incident

____ Signed/dated statements from each staff person involved
in the alleged incident as to what happened, when it
happened, precipitating factors to the alleged incident,
and individual staff’s involvement.

_____ Interview with involved consumer (alleged victim). Note
in the report if the consumer is not able to provide
information relative to the alleged incident

_____ Documentation by the CEO as to:

____ Findings of the organization in regard to the alleged
incident, including:

____ Risk Management steps taken

____ Determination as to whether agency policies
and procedures relating to incidents were
followed, and if not, why.

____ Any supporting documentation related to the
incident

____ Steps taken and/or to be taken by the agency
to assure the incident is not repeated.

____ Documentation that the following parties
were promptly notified of the incident and
the findings:

____ The governing body

____ The CEO or designee

____ Chairperson of the Agency’s HRC

____ The alleged victim’s guardian (if
appropriate)

Note: Regional P&A and DSD Quality Assurance are available at any point in the process to
provide Technical Assistance to the Provider.

Upon request from the Provider, the regional P&A advocate can assist or will provide the
Provider with training on: Legal Rights, Self-Advocacy, A/N/E, and Conducting
Investigations.
PROTECTIVE SERVICES LEVEL SYSTEM WORKSHEET

1. **DETERMINE RISK MANAGEMENT STEPS**
   *
   *
   *

2. **REPORTING DETERMINATION GUIDELINES**
   Identify additional information needed, if any:
   *
   *
   *
   *

2A. Circle Guideline used (if any); Circle number that pertains:
   A. Bruises/Injuries : 1 2 3 4
   B. Consumer/Consumer : 1 2 3 4
   C. Medical/Med Error : 1 2 3 4 5
   D. General Review : 1 2 3 4 5

   E. 1. Incident Could Have Occurred Yes____ No____
   2. Under the age of 18? Yes____ No____
   3. Definitions of A/N/E that Could Apply:
      1. Abuse : a b c d e f
      9. Exploitation : a b c
      14. Neglect : a b c d e f g

   Discussion:

3. **DETERMINE PROTECTIVE SERVICES LEVEL**
   Circle all criteria that apply:
   1. No A/N/E : a
   2. Agency Action : a b c
   3. Corrective Action : a b c d e
   4. Investigative Action : a b c d e

   Discussion:

4. **COMPLETE APPROPRIATE DOCUMENTATION**
AGENCY ACTION RESPONSE
Protective Services Level System

Date:
Consumer Name(s):
Consumer Address:

Alleged Incident:
   Attach Incident Report and Consumer Face/Data Sheet

Risk Management Steps Taken:

Verification of Level:
   _____ a. Suspected A/N/E
   _____ b. **AND** No Harm or Risk of Harm to Consumer is evident
   _____ c. **AND** First Time Occurrence

Steps Taken to Assure Incident is Not Repeated:
CORRECTIVE ACTION RESPONSE
Protective Services Level System

Date:
Consumer Name(s):
Consumer Address:

Alleged Incident:
Attach Incident Report and Consumer Face/Data Sheet

Risk Management Steps Taken:

Verification of Level:
_____ a. Suspected A/N/E
_____ b. **AND** No Harm to Consumer is Evident
_____ c. **AND** Repeat Occurrence/Consumer not at Risk of Harm
_____ d. **OR** First Time Occurrence/Consumer placed at Risk of Harm
_____ e. **OR** Inadequate response to Agency Action

Steps Taken to Assure Incident is Not Repeated:
Each response must include **WHO** is responsible for implementation, **WHEN** it will be completed, and **WHO** is responsible for follow-up.
INVESTIGATIVE ACTION RESPONSE  
Protective Services Level System

Date:  
Consumer Name(s):  
Consumer Address:

Alleged Incident:  
Attach Incident Report; Consumer Face/Data Sheet; Guardianship Orders  

Risk Management Steps Taken:  

Verification of Level:  
_____ a. Abuse _____ Neglect_____ Exploitation_____  
_____ b. AND Harm is Evident  
_____ c. OR Repeat Occurrence/Consumer placed at Risk of Harm  
_____ d. OR Inadequate response to Corrective Response  
_____ e. OR Professional Judgement

Facts of the Incident:  
Attach signed Interviews, Supporting Documentation (IE - Progress Notes, Charting, MAR’s, IPP/IEP/BIP/OSP/PCSP/IJP etc.)

Laws, Rules, Regulations:  
List specific A/N/E Definitions, Provider Policies, Other Regulations, Policies, Procedures

Findings:  
_____ The Incident occurred  
B A S E D O N  
_____ The Incident did not occur/insufficient evidence  
B A S E D O N

Steps Taken to Assure Incident is not Repeated:  
Each response must include WHO is responsible for implementation, WHEN it will be completed, and WHO is responsible for monitoring/follow-up.

Verification that PI-10-16 was followed:  
_____ YES _____ NO

Signature of CEO/Designee
I. WHY CONDUCT INVESTIGATIONS

II. REPORTING REQUIREMENTS

III. INVESTIGATIONS

IV. INVESTIGATOR

V. GATHERING INFORMATION EVIDENCE
   1. DOCUMENTARY
   2. PHYSICAL/REAL
   3. DEMONSTRATIVE
   4. TESTIMONIAL (Interviews)
      A. Identifying those to be Interviewed
      B. Preparing for the Interview
      C. Conducting the Interview
      D. Questioning the Witness
      E. Uncooperative Witness

VI. DELINEATING FACTS

VII. DRAWING CONCLUSIONS

VIII. RECOMMENDATIONS

IX. WRITTEN REPORT

X. LETTER OF FINDINGS

XI. REPORTING INFORMATION

XII. RISK MANAGEMENT

XIII. REPORTING DETERMINATION GUIDELINES

XIV. DEFINITIONS OF A/N/E
XV. SCENARIOS

PROTECTIVE SERVICES INVESTIGATIONS

I. WHY CONDUCT INVESTIGATIONS

A. QUALITY ASSURANCE

B. ENSURE SAFETY OF A VULNERABLE POPULATION

C. IDENTIFY PROBLEMS/SYSTEMIC ISSUES

D. MANDATED BY STANDARDS

E. REASSURANCE FOR FAMILY
   Compare response from facility to demands from parents for children in a daycare or family for someone in a nursing home.

II. REPORTING REQUIREMENTS

A. MANDATED REPORTERS
   1. NDCC 25-01

B. LICENSURE REQUIREMENTS
   1. DDD-PI-10-16
   2. ADMINISTRATIVE CODE

C. STANDARDS/REGULATIONS
   1. TITLE XIX
   2. The COUNCIL ON QUALITY & LEADERSHIP
   3. AGENCY POLICIES
III. INVESTIGATION:
A systematic collection of information (facts) to describe and explain an event or series of events relative to a reported incident of abuse/ neglect and/or exploitation.

TWO TYPES OF INVESTIGATIONS:

1. CONSTRUCTIVE:
The alleged abusive/neglectful situation is currently happening; the investigator has the opportunity to see the situation as it is occurring. The investigator builds the investigation from events he/she witness.

2. RECONSTRUCTIVE:
The alleged abusive/neglectful situation has already occurred. The investigator’s job here is to “reconstruct” what occurred through the process of the investigation.

INVESTIGATION SEEKS TO ANSWER 6 QUESTIONS:

1. WHO was involved?
2. WHAT happened?
3. WHERE did it happen?
4. WHEN did it happen?
5. WHY did it happen?
6. HOW can we prevent it from happening again?

FOCUS OF AN INVESTIGATION:

1. IS NOT to point a finger at a staff/facility.
2. IS NOT to say “you screwed up.”
3. IS NOT to damage a staff or facility’s reputation.
4. IS to ensure safety of the individual.
5. IS to ensure quality services are being provided.
6. IS to identify training needs, needed system changes, needed service changes for individuals, etc.
COMPONENT PARTS OF AN INVESTIGATION

1. Gathering of INFORMATION
2. Research LEGAL STANDARDS that apply
3. ORGANIZE the factual information
4. ANALYZE the factual information
5. Determine FINDINGS from the analysis.
6. Arrive at CONCLUSIONS based on the findings.
7. Make RECOMMENDATIONS to prevent recurrence.

IV. INVESTIGATOR:
An individual, or team of individuals, that systematically collects information to describe and explain an event or series of events relative to a reported incident of abuse/neglect and/or exploitation.

AN INVESTIGATOR MUST HAVE:
1) OBJECTIVITY
   - No preconceived notions about what may or may not have happened.
   - Must start with a “blank slate”.
   - No conflicts of interest. The investigator should examine past or existing relationships with the players, his/her ties to the situations, and whether he/she has anything to gain or lose as a result of the investigation.

2) CREDIBILITY
   - How the investigator is perceived by others – do they see him/her as being objective.
   - The necessary time and resources must be devoted to conduct a thorough investigation, including accessing appropriate professional assistance/consults.
   - The investigation needs to be completed on a timely basis.

V. GATHERING of INFORMATION
Information is gathered through the collection of EVIDENCE or DOCUMENTATION.

EVIDENCE is any information gathered in the course of an investigation which has the potential to assist in describing and explaining the incident under review.

EVIDENCE can be DIRECT, CIRCUMSTANTIAL, or SUPPORTING:

**DIRECT** – evidence or information related directly to the incident.

**CIRCUMSTANTIAL** – evidence or information not based on personal knowledge, observation, or other definitive source, from which inferences may be drawn.

**SUPPORTING** – evidence or information that gives credence to other information or evidence.

There are 4 types of EVIDENCE:

1. **DOCUMENTARY**
2. **PHYSICAL/REAL**
3. **DEMONSTRATIVE**
4. **TESTIMONIAL**

1. **DOCUMENTARY**
   Information gained from documents, either on paper, videotape, microfilm, or other such medium. Examples of Documentary evidence:
   A. Incident Reports
   B. Progress Notes/Log Notes
   C. Evaluations
   D. Treatment/Program plans.
   E. Reports
   F. Personnel Records
   G. Provider Policies/Procedures

   **Documentation serves several important functions in an investigation, such as:**
• Determine the alleged victim’s overall level of functioning.
• Determine a sequence of events preceding, during and following the incident.
• Help to clarify the physical/environmental, psychological, social and other circumstances surrounding the incident.
• Ascertain existing statutes, regulations, provider standards, policies and procedures as applicable to a given situation.
• Determine the alleged person’s behavioral history (previous performance evaluations and disciplinary actions), abilities (training and education) and propensities (temperament).

SOURCES OF DOCUMENTATION:
• Medical
• Psychiatric
• Nursing
• Psychological
• Social Work
• Physical Therapy
• Occupation Therapy
• Speech/Language Therapy
• Personnel
• Residential
• QMRP
• Other relevant disciplines/departments

FORMAT FOR WORKING WITH DOCUMENTATION
• Gathering Documentation – what to look for
  • Documentation for a historical perspective.
  • Documentation of a general nature (ie – program plan, medication, personnel records, etc).
  • Documentation surrounding (prior, during and following) the time period during which the alleged incident occurred (e.g. – Log/Progress Notes, Incident Reports, etc).

• Organizing Documentation – how to facilitate the review
• Organize by discipline/department
• By type within each discipline/department
• Chronological, from most recent to oldest

The method of organizing documentation should be selected based on what works best for the provider/investigator.

• **Reviewing Documentation**
  • If a photocopy is made of the documentation, high-lite noteworthy information
  • If you’re using original documents, jot down notes or summarize relevant information, specifically identifying the source of the notes (document name/date, etc.)
  • Review documentation for information that would collaborate the incident of concern;
  • Review documentation for information that would refute or not corroborate the incident of concern.

• **Analysis**
  • Look for patterns from the information reviewed.
  • Look at historical information regarding matters of relevance for the alleged person, alleged victim, and the physical and social setting in which the incident occurred.
  • Formulate questions for interviews, especially information that is inconsistent within the documentation
  • The use of charts, graphs, or tables can be helpful in examining data for patterns, especially when there is a variety of sources of information, or a variety of issues to be explored.

• **Identify Facts from the Information**
  • Identify known facts (e.g. – the plan states…)

2. **PHYSICAL/REAL**
   Any object, arrangement of objects, substance, or the condition of any person’s body, which has the potential for describing or
explaining what occurred. Steps need to be taken as soon as possible to preserve and/or collect all physical evidence. **Examples are:**

A. Bruises
B. Pictures of bruises/injuries
C. Scene of the incident
D. Physical objects or samples

**BRUISES/INJURIES**

A. Should be examined by a medical professional as soon as possible (a doctor if warranted). Ask the medical professional to complete a written report specifying:

1. The nature of the bruise/injury
2. Ways the bruise/injury could have occurred, if possible.

B. The investigator should see the bruise/injury if at all possible, either before or after it has been treated by a medical professional.

C. The investigator should take detailed, descriptive notes (e.g. – The bruise is 2 cm wide and 3 cm in length. It is a dull purplish color, with a bright red center. The bruise is located 3 inches up from the left wrist, on the inner forearm).

D. Photographs should be taken of any bruise/injury. Photographs are valuable because they can be studied at a later date; show more than any witness can recall; and may show information previously overlooked.

E. The date and time of each photograph should be recorded, as well as who took the picture and who else was present at the time the picture was taken.

F. When taking a photograph of a bruise/injury, place a ruler or tape measure next to the bruise/injury, to have a valid measurement of the bruise/injury. If a ruler/tape measure is not available, use an object of known (consistent) size, such as a quarter.
G. The photographer should be the same sex as the alleged victim, if at all possible. There should always be a third person to act as a witness.

H. A 35mm camera is recommended for taking pictures. It is also recommended that a One-Step camera be used, to ensure that pictures do turn out.

SCENE OF THE INCIDENT
A. The investigator should visit the area in which the incident occurred.

B. This can be helpful with framing questions for interviews and conducting role-plays.

C. If warranted, pictures can and should be taken of the area where the incident occurred.

3. DEMONSTRATIVE
Any information that may be developed or created to assist in describing or explaining how the incident occurred. Examples are:
   A. Pictures
   B. Diagrams
   C. Maps
   D. Role Plays/Re-enactment
   E. Expert Evidence

Demonstrative evidence can be especially useful when discrepancies occur in interviews. Explain to the witness/alleged person that you are not getting a clear picture of how the incident occurred. Ask the witness/alleged person to role-play or diagram what happened, to help you visualize what happened.

Expert evidence can also be valuable, such as professional opinions from doctors, therapists, pharmacists. Ask questions
in a general nature about something related to the incident, or more specific questions relating to the alleged victim's medical condition. For example, asking a medical professional about prevention of bed sores.

4. TESTIMONIAL
Any type of information gathered directly from a person, whether oral, Sign Language, Touch Talker, etc. through a process of an INTERVIEW.

Interviews occur with:
   A. Witnesses
   B. Alleged Victim
   C. Alleged Person (Perpetrator)

“For the person who is willing to ask and listen the world will always be new. The Skilled Questioner and Attentive Listener knows how to enter into another's experience”.
   (Holcom: Biography of a master evaluator)

Traits of a good interviewer:
- Finds out what is in and on someone else's mind.
- Does not put his/her ideas in someone else's mind.
- Wants people to talk about their experiences, opinions, what they know, how they feel.
- Non-judgmental.
- Takes information from each source at face value.

How:
- Need to connect in some way with the person you are interviewing.
- Need to talk their language.
- Let them know their cooperation is helpful and appreciated.
- LISTEN
  - Commit to improving your listening skills.
  - Think about the speaker in advance.
  - Limit your talking.
  - Do not worry about what you are going to say next.
  - Do not come to quick conclusions about people, things.
  - Become less self centered.
  - Get into a listening posture.
• Hold your fire – let them talk.
• Focus on the speaker’s words.
• Monitor your non-verbal messages.
• Monitor their non-verbal messages.
• Ask questions.
• Paraphrase back to the speaker periodically.

COLLECTING TESTIMONIAL EVIDENCE

1. Identify those to be Interviewed.
2. Prepare for the Interview.
3. Conduct the Interview: Demeanor
4. Conduct the Interview: Asking Questions
5. Interviewing Uncooperative Witness’
6. “Targets/Alleged Perpetrator’s” and the Right to Representation

A. IDENTIFYING THOSE TO BE INTERVIEWED

1. Initiate the investigation ASAP following the receipt of the report/allegation.
3. Review existing documents, such as work schedules, visitor logs, events schedules, etc., to identify witnesses or collateral contacts.
4. Assess need to gather testimonial information from people who are not witnesses, e.g. staff trainers, administrators, etc., to help clarify pertinent information such as training received, role responsibility, etc.
5. The order of witnesses is an important consideration. Generally, interview the person to whom you expect to get the most information first (typically the reporter) and interview the alleged person last.
6. The consumer(s) involved must be interviewed. If a consumer cannot be interviewed, there must be a statement to this effect.
7. IT IS VITAL that staff be informed that they should not share information with each other. This is a breach of
confidentiality for the staff, for the consumer, and it distorts each individual’s perception of what happened.

8. The location of the interview can also be important. Generally, the interview should take place in a comfortable, private setting. If the interviewee is “friendly” then the interview can occur in a place of their choosing. If the interviewee is “unfriendly” then it should be at a place of your choosing.

B. PREPARING FOR AN INTERVIEW

1. If possible separate the known witnesses.
2. Visit the incident site. This allows you as the interviewer, to more clearly interpret information provided by the witness.
3. Outline the basic information you want to obtain from each interviewee, such as length of employment, training received, perception of role/responsibility.
4. Outline the issues you want to discuss with each witness.
5. As the interviewer you must remain in control of yourself. DO NOT react to information shared or demonstrate a judgmental posture to any statements the interviewee may make.
6. Prepare an opening statement which provides an honest explanation for the purpose of the interview and of your role.
7. When you contact each person to set a time for the interview, you may want to have them write a synopsis of how they recall the incident. This is especially helpful if it will be a few days before the interview can take place. Again, reinforce with the staff that they should not discuss this with other staff, family or friends.
8. OR inform the staff they will be asked to write a statement when they come in for the interview.
9. Ensure there will be a private place, free of interruptions, to conduct the interview.

C. CONDUCTING THE INTERVIEW - DEMEANOR
GOAL- to learn and access all relevant information. GOAL IS NOT – to confirm what the investigator has found out, or believes to be the case.

1. Remain Neutral, Remain Calm.
2. Monitor your body language.
3. Monitor the interviewee’s body language.
4. Maintain eye contact, but don’t stare.
5. Develop a rapport
   a. APPREHENSION – resolve with the initial statement.
   b. EXPLORATION – don’t interrupt; give the message that their information is important.
   c. COOPERATION – be careful not to discourage comments. Allow for some digression from specific questions.
   d. PARTICIPATION – give the message that their sharing of information is important to you and will assist in completing your responsibilities, etc.
6. Monitor your voice, talk in a steady even tone and do not exaggerate responses.
7. Inform them that you will be taking notes, to be accurate, to jog your memory, but do not take excessive notes as this interferes with the flow of the interview.

D. QUESTIONING THE WITNESS
1. Characteristics of a good question:
   • Use short questions
   • Use open-ended questions
   • Use questions confined to one topic
   • Use questions that are clear and easy to understand
   • Do not use frightening or super-realistic words in your questions
   • Use questions that are precise and call for a specific or exact answer
2. Where to start
• Opening statement
• Small talk to develop rapport
• Utilize “Cognitive Interviewing” (See a.b.c.)
  a. Ask the interviewee to describe the whole day of the incident, of their shift.
  b. This allows greater retrieval of the information versus traditional “yes” “no” questions or asking for “cold recall.”
  c. Entry – events leading up to the incident
      Event – incident itself
      Escape – events that occurred after the incident
• Allow witness to give their account, without aid, prodding or questions (even to clarify).
• After the witness has gone through their account, go back through, this time asking prodding questions. Always start with broad questions and become more specific as the need to elicit information dictates.
• Question on one topic until all information is exhausted.
• Ask appropriate follow-up questions to confirm, validate, clarify.
  e.g. – How do you know it was 4:45 p.m.?
  e.g. – Who else was in the hallway?
• Format your questions to start with WHERE, WHEN, WHY, and WHO, WHAT, HOW. This avoids asking leading questions.

E. UNCOOPERATIVE WITNESSES…

1. All employees have the obligation to respond honestly to all questions, as long as the questions regard job duties, actions on the job, or are job related.
2. If the interviewee refuses to cooperate, be sure you have reviewed the provider policies regarding Conducting Investigations – the provider may invoke disciplinary action for failure to cooperate.
3. Be patient – the initial lack of cooperation may just be an attempt to deflect you from your purpose.
4. If you lose control from the interviewee’s lack of response or from their provocation, stop the interview, calm down, apologize and start over.

5. Position yourself to be in a direct path to an exit. Try and position something between yourself and the interviewee.

6. Be honest – never make promises you can’t keep:
   - Anonymity
   - Immunity
   - Off the record information

7. The person being interviewed always has the right to representation during an interview. This is at the interviewee’s expense.

VI. DELINEATING FACTS

A. DETERMINE RELEVANT INFORMATION and SEPARATE FROM IRRELEVANT INFORMATION:

RELEVANT INFORMATION - that which assists in describing or explaining an incident, or which sheds light on a incident.

IRRELEVANT INFORMATION - information which, even if true, would not have the potential to assist in describing or explaining an incident.

EXAMPLE: It is alleged that a staff hit a consumer.
Relevant Information: Staff schedules show that the staff person was not scheduled to work the evening that the incident was to have occurred.

Irrelevant Information: The client works at a sheltered workshop.

B. DELINEATE THE FACTS from the RELEVANT INFORMATION.

Each fact should be based on a statement, observation, record review, or some other form of evidence – record the facts in terms of what the witnesses said and/or the evidence shows:
Example: (Right) Jack said Jill fell down the hill.
(Wrong) Jill fell down the hill.
(Right) The doctor’s report described multiple fractures.

a. Identify WHERE the fact came from.

b. SUMMARIZE similar facts (e.g. – three witnesses said they saw the staff hit the client).

Example: Fact - Three witnesses (Abe, Ben, Cal) said they saw the staff hit client Dale, with his fist, while they were in the living room, at approximately 7:00 p.m.

C. ANALYZE THE FACTS

Look for similarities and differences in the witness statements. Are the differences significant?
If there are significant differences, can they be accounted for?
Example – One witness was present during the entire incident, while the second witness came in at the last moment.
Would additional questions resolve the differences?
Is there circumstantial evidence which can support or refute other direct evidence?
Example – A client alleges that his arm was hurt while he was being restrained by a staff person.
The clients upper arm has two bruises.

Witnesses to the same event are likely to give differing information. This is fairly common and not necessarily an indication that someone is lying.

VII. DRAWING CONCLUSIONS

Conclusion – Using an analytical process to make the decision whether the incident occurred or did not occur.
1. What facts support finding that the incident did occur?

2. What facts support finding the incident did not occur?

3. What are the relevant agency policies, laws, rules, regulations?

4. Do the facts meet the standard for burden of proof?

Recommended standard is the **preponderance of evidence**:  
The evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; evidence which as a whole shows that the fact sought to be proved is more probable than not.

Preponderance of evidence may be determined by the greater weight of all evidence, but does not necessarily mean the greater number of witnesses, but rather, the opportunity for knowledge, information possessed, environmental factors, supporting documentation and physical evidence.

This is the standard applied in civil actions, as opposed to the standard of “beyond a reasonable doubt” which is applied in criminal actions.

5. If the facts meets the standard of “preponderance of evidence” then the incident occurred.

6. If the facts do not meet the standard of “preponderance of evidence” then it is determined there is not sufficient information to say the incident did occur. This does not mean the incident did not occur, or that the reporter was not believed, ONLY that the burden of proof was not met.

7. The conclusion should be made only at the end of the investigation, when all information has been gathered and thoroughly analyzed.
8. It is highly recommended that the conclusion be made by more than one person – not the investigator alone. The facility may want to assemble a review team for such purposes, keeping CONFIDENTIALITY in mind.

VIII. RECOMMENDATIONS
Suggestions from the facility and/or the P&A Project that address need areas delineated from the investigation.

A. PURPOSE of recommendations:
1. Prevent recurrence of the incident.
2. Ensure consumer safety.
3. Improve quality of services
4. Identify training needs.
5. Identify needed system changes.

B. TYPES of recommendations:
1. Consumer oriented
2. Staff oriented
3. Environment oriented

C. FOLLOW-UP
1. Ensure the recommendations are implemented.
2. Ensure the recommendations are effective.
IX. WRITTEN REPORT OUTLINE

1. Information regarding the alleged victim.
   - Name
   - Address
   - Date of birth
   - Guardianship status
   - Name and address of guardians
   - Diagnosis

   Therap includes an Individual Data record which contains the demographic and basic information for consumers. This can be attached to the report, rather than repeating all the information.

2. Information regarding the Allegation or Report
   - Date and time report was received
   - Reporter’s name, address, and telephone number
   - Name of alleged staff/person
   - Relationship of alleged staff/person to the alleged consumer
   - Specifics of the allegation, as communicated by the reporter
   - Class of report: emergency, imminent danger, non-emergency
   - Risk management steps taken

3. Collateral Contacts/Interviews
   - List all contacts and interviews, providing the date, time, name, role/relationship
   - Summarize the content of each contact
   - Attach each interview to the report in a separate sheet

4. Documentation/Other Evidence
   - List all records reviewed (date of review; date, type/title and location of each document).
• List other evidence pertinent to the investigation (pictures, diagrams, etc.).

5. Findings

• List identified facts related to the report

6. Other Findings

• Identify other facts that may have a circumstantial bearing on the incident.

7. Laws, Rules, Regulations

• Record the cite and title for applicable laws, rules, regulations, and/or policies.

8. Conclusions

• Document the findings as to whether the incident occurred:
  If it did: WHAT IS THE BASIS?
  If it did not: WHAT IS THE BASIS?

10. Recommendations

• List recommended actions to be taken by the agency (or recommendations for other agencies/people).
• Include specific information as to who is responsible for implementing the recommendation, by when, and how it will be follow up.

X. LETTER OF FINDINGS

The format for a letter of findings in a protective services investigation can be outlined in terms of the functions of a letter of findings:

• Clearly identify the allegation/concern.
• Concisely state the conclusions of the investigation.
• State the rationale for the conclusions reached in a brief/summary form.
• State the recommendations resulting from the investigation.
• Verification that DDD-PI-10-16 (for licensed DD providers) was followed.

REPORTING INFORMATION FOR ABUSE, NEGLECT, EXPLOITATION NDCC 25-01.3

1. MANDATORY REPORTERS (required by law to report): medical, mental health or developmental disabilities professional, educational professional, police or law enforcement officer, or caretaker while in one’s official or professional capacity.

Caretaker is defined as a person, organization, association or facility who has assumed legal responsibility or a contractual obligation for the care of a person with a developmental disability or mental illness, or a parent, spouse, sibling, other relative, or person who has voluntarily assumed responsibility for the individual’s care.

All others not mentioned above may report, but it is not mandated by law.

The law requires the Protection & Advocacy Project to keep the reporter’s name confidential.

2. CRITERIA FOR REPORTING: having knowledge of or reasonable cause to suspect a situation of abuse, neglect, exploitation is or has occurred.
Best Practice: If something you see or hear makes you feel uncomfortable, or if you question if what happened was right or not, it is best to talk to a supervisor about the situation and be prepared to report.

3. HOW TO REPORT: Reports (verbal and written) are made to the Protection & Advocacy Project Centralized Intake (1-800-472-2670). Outside normal business hours, reporters will call the Protection & Advocacy’s 24 hour emergency number (1-800-642-6694).

The Project is required by law to accept anonymous reports (reporter is not required to give their name). A call-back procedure will be implemented.

4. GOOD FAITH REPORTS: Any reporter/witness providing information pertaining to a good faith report (reports given accurately describing only what the reporter/witness saw/heard, an honest portrayal of what occurred) are provided immunity from civil or criminal liability which may otherwise arise from the report.

5. FAILURE TO REPORT: If you are a mandated reporter and willfully fail to report, you are guilty of an infraction.

6. EMPLOYER RETALIATION: Employers may not retaliate against employees or individuals with disabilities, due to the reporting of possible abuse, neglect, or exploitation. Employers who do so are guilty of a Class B Misdemeanor.

A/N/E CASE SCENARIO #1

It’s Friday noon and you have just received a call from a day program supervisor who stated that your ISLA client, Earl Done, has been quite odoriferous at work lately. Further, the lunch Earl brought to work today included moldy bread, spoiled milk, and horrible smelling meat. Lastly, Earl made a statement to the supervisor about “Olive” hitting him because he got mad in a store. Olive is a staff that works with Earl.

Risk Management:

Reporting Determination Guideline:
Is it Reportable?

If it is:

1. In conducting the investigation, which individuals should be interviewed and in what order?

2. What documents need to be reviewed?

3. Besides TESTIMONIAL and DOCUMENTARY EVIDENCE, is there other evidence that should be gathered? If so, WHAT?

RECORD REVIEW – A/N/E CASE SCENARIO #1
(DOCUMENTARY EVIDENCE)

After reviewing work schedules, you discover that Dizzy works Monday and Wednesday; Olive works Tuesday, Thursday and Friday; and Paula works Saturday and Sunday.

After reviewing Earl’s program plan, you discover that Earl has an objective where staff are to assist/train him in meal preparation, showering, and cleaning. Earl has no behavior program.

After reviewing charting for objectives, you discover that staff have not been signing off on many of the objectives, and that Olive has already
signed off for the rest of today’s training objectives and medication administration (9pm medication).

INTERVIEW SUMMARIES – A/N/E CASE SCENARIO #1
(TESTIMONIAL EVIDENCE)

Earl: Repeated statement that Olive hit him because he got mad in a store, but no further information. Said he didn’t always like his lunches. Said staff don’t always come. You find a big bruise on his arm.

Paula: Said she works Saturday and Sunday. Suspects that Dizzy and Olive have in the past not done their work, as she often has to do extra cleaning when she arrives. Has not heard any statements from Earl regarding being mistreated. Has had to
clean out the refrigerator a few times but didn’t this Saturday or Sunday.

Dizzy: Said she arrives on time and does her work. Said she sometimes forgets to do the charting but always does the training. Said she helps Earl with his personal hygiene, but sometimes thinks he’s not showering every day as his program indicates. Said she often teases Earl about all the women working with him. Said Olive always doe the grocery shopping with Earl and thinks they clean the refrigerator on Fridays.

Olive: Denies any wrong doing. Claims she helps Earl as much as he lets her. Denies hitting him. Says they were in WalMart and Earl did get upset. She said she needed to escort Earl out because he was yelling. Said Earl’s lunches have been fine when she helps him at the apartment.

SAMPLE INVESTIGATION – A/N/E CASE SCENARIO #1

1. List the major facts delineated relative to the report.
2. List cites for the applicable laws, regulations, policies.

3. State your conclusions and the basis behind it.

4. List your recommendations.

A/N/E CASE SCENARIO #2

When talking with Joe (an individual who resides in one of the group homes) on June 12, 2012, he told me that Gina (a residential staff person) had hurt Sally (a resident of the group home) and said bad words to her. Joe could not give me a date or time, but said it happened at the group home when Sally was making dinner. Joe said Sally was crying after Gina hit her and yelled at her.

Risk Management:
Reporting Determination Guideline:

Is it Reportable?

If it is:

1. In conducting the investigation, which individuals should be interviewed and in what order?

2. What documents need to be reviewed?

3. Besides TESTIMONIAL and DOCUMENTARY EVIDENCE, is there other evidence that should be gathered? If so, WHAT?

RECORD REVIEW – A/N/E CASE SCENARIO #2
(DOCUMENTARY EVIDENCE)

RECORDS REVIEWED:
• Staff Training Record:

Gina S.  Employed 6 months
Training received: First Aid, CPR, A/N/E. Orientation Modules.

Laura T.  Employed 2 years
Training received: First Aid, CPR, A/N/E. Completed all modules for certification.

Tom R.  Employed 1 month
Training received: Orientation

• Staff Schedules, Menu Plan, Client Activity Schedule, Staff Log Book, Daily Staff Assignment Schedule:

Summary of review of above records:
Based on the review of the above, it was established that staff, Gina, was assisting resident Sally in meal preparation on Wednesday 6/06/12. It was also established that Laura T. and Tom R. were also scheduled to work on that evening.

• Client File:

Sally’s OSP identified a primary objective related to meal preparation. Sally is also participating in a behavior management program focusing on developing acceptable methods to communicate unwillingness to comply with directives or her desire to do an activity a different way than instructed. Given the adaptation of an acceptable way to communicate this, it is also planned there will be a
corresponding reduction in the physically aggressive manner she currently uses to communicate this message. The program identified precursor/antecedent behaviors to aggression and indicates therapeutic responses of giving Sally space and asking her if she would like to show you a different way of doing the current task.

Further review of Sally’s daily client log entries indicates that she responds positively when staff follow the program but escalates when verbally confronted or cornered.

INTERVIEW SUMMARIES – A/N/E CASE SCENARIO #2
(TESTIMONIAL EVIDENCE)

Fred – Manager of ICF/IID: Reporter

Fred had a talk with Joe on the afternoon of 6/12/12. Fred said Joe initiated the conversation. Joe said that he saw Gina make Sally cry.
Upon being questioned by Fred, Joe said that it happened when Sally was making dinner. He said that Gina got mad at Sally because she was so slow at cooking. Joe said Gina called Sally bad names like “dummy.” When asked by Fred if anything else happened, Joe told Fred that he saw Gina slap Sally’s hand. Fred said Joe was not able to give a date for when the incident happened.

Joe – ICF/IID Resident

In Summary, an interview with Joe relayed the following: 1) Gina was helping Sally make dinner (date unknown); 2) Sally was late getting home and dinner was late; 3) Gina was unhappy because dinner was late; 4) Joe heard Gina call Sally “dummy”; 5) Joe saw Gina slap Sally’s hand when Sally was going to taste the food; 6) Joe said Sally cried and felt bad; 7) Joe was in the kitchen while this happened, getting dishes to set the table; and 8) Joe and Sally are friends.

Laura – ICF/IID Direct Care Professional

In summary, an interview with Laura relayed the following: 1) she has worked for the provider, in the ICF/IID, for two years; 2) Laura has worked with Gina approximately two times each week for the last six months; 3) Laura was working last week the night that Gina was helping Sally make dinner; 4) Laura does not recall the specific date, as she worked every night last week; 5) Laura is not aware if Sally would have gotten home late; 6) During dinner preparation time, Laura was in the laundry room helping Jill with her wash; 7) Laura did not observe or hear any interactions between Gina and Sally while they were cooking; 8) Except for Sally, Jill, and Alex, the residents were in the den watching a movie on television; and 9) Laura said she has never observed or heard of any problems between Gina and the clients.

INTERVIEW SUMMARIES – A/N/E CASE SCENARIO #2
(TESTIMONIAL EVIDENCE) CONT...

Tom – ICF/IID Direct Care Professional
In summary, an interview with Tom, relayed the following: 1) Tom has worked for the provider, in the ICF/IID, for one month; 2) Tom’s training to date has consisted of the initial orientation; 3) Tom was working the night Gina helped Sally make dinner; 4) Tom worked last Saturday from 7am to 3pm, Sunday from 7am to 3pm and Wednesday from 3pm to 10pm; 5) Tom was the driver on Wednesday who picked the residents up from the day program and brought them home; 6) Tom and the residents were delayed in getting home as they had to make a stop at the clinic; 7) During dinner preparation time, Tom was in the dining room doing training objectives with Alex; 8) Tom heard Gina raise her voice at Sally in telling her to hurry with dinner; 9) Tom heard Gina call Sally “dummy” and “idiot;” 10) Tom did not visually observe any interactions with Gina and Sally but saw Sally leave the kitchen crying; and 10) Last Wednesday was the first time Tom worked at the same time as Gina.

Alex – ICF/IID Resident

In summary, an interview with Alex related the following: 1) Alex is not able to recall specific activities of last Wednesday evening; 2) Alex did not respond to open-ended questions but responded “yes” when asked if he liked Gina; 3) When asked if he ever heard staff holler at clients, Alex said “no” and; 4) When asked if he ever saw staff hit or be mean to clients, Alex said “no”.

INTERVIEW WITH SALLY:
INTERVIEW WITH GINA:
1. List the major facts delineated relative to the report.

2. List cites for the applicable laws, regulations, policies.

3. State your conclusions and the basis behind it.

4. List your recommendations.

ANE CASE SCENARIO #3
The Facts:
Irene has been involved in 15 restraint episodes during the last month. In the most recent episode, she received a black eye. Client alleges staff hit her.

The Exercise:
1. What are the issues involved?
   *
   *
   *

2. What possible records do you want to review:
   *Medical
   *
   *
   *
   *
   *
   *
   *
   *
   *
   *
   *Administrative
   *
   *
   *
   *
   *
   *
   *
   *
   *
   *
   *Policies & Procedures
   *
   *
   *
   *
   *
   *
   *
   *
   *
   *
   *Other Standards for Comparison
   *
   *
   *

CASE #1
GROUP A

Claire was admitted to your facility following a hospitalization for psychiatric care. Claire has a history of exhibiting behavior, impulsiveness and impaired cognition and judgment. Diagnosis included dementia with psychosis and delusion, psychomotor agitation, acute behavioral disturbances, and possible right cerebral vascular accident (CVA). Claire’s admission papers state she has a documented history of standing by the facility door waiting for someone to open the door and then will sneak out real fast.

You are the Admissions Committee. What proactive steps need to be taken to ensure safety for Claire? What questions would you have/information you would need to address safety/programming concerns?
CASE #1
GROUP B

Claire was admitted to your facility following a hospitalization for psychiatric care. Claire has a history of exiting behavior, impulsiveness and impaired cognition and judgment. Diagnosis included dementia with psychosis and delusion, psychomotor agitation, acute behavioral disturbances, and possible right cerebral vascular accident (CVA). Claire’s admission papers state she has a documented history of standing by the facility door waiting for someone to open the door and then will sneak out real fast.

You are the Facilities Investigating Committee. You have been informed that Claire just eloped from the facility this morning.

Assess Risk Management
Conduct a “Quasi Investigation”
(Claire was found 2 hours later, approximately 15 blocks from the facility wearing her nightgown and slippers).
Specifically address steps to prevent recurrence.
Ingrid came to work at the ICF/IID home ABCD Saturday 8am. Ingrid went to check on ANNA and found her still in bed, with Depends, sheets and blankets soaked with urine and dried feces. Anna’s skin was red and raw.

Risk Management:
Reporting Determination Guideline:
Is It Reportable?

Documentary Evidence:

Physical/Real Evidence:

Demonstrative Evidence:

Testimonial Evidence:
   Order of Interviews:
   Questions:

Relevant Information: Irrelevant Information:

Delineate Facts:

Analyze Facts:

Drawing Conclusions:

Recommendations to Prevent Recurrence:
Consumers **Bruce** and **Andy** were caught in Bruce’s bedroom, and Andy had his pants down by his ankles. Both denied anything was going on. Andy looked really embarrassed. Bruce got angry at staff for coming into his room. Staff are getting tired of dealing with this as they believe Bruce is taking advantage of Andy.

Risk Management:
Reporting Determination Guideline:
Is It Reportable?

Documentary Evidence:

Physical/Real Evidence:

Demonstrative Evidence:

Testimonial Evidence:

Order of Interviews:

Questions:

Relevant Information: Irrelevant Information:

Delineate Facts:

Analyze Facts:

Drawing Conclusions:
Recommendations to Prevent Recurrence:

Adrian’s bed rails were down when staff checked on him at 12 a.m. Adrian’s one leg was a little over the edge, but Adrian was still in bed. Staff frequently forget to put up the rail, and last year Adrian fell out of bed and sustained a mild concussion.

Risk Management:
Reporting Determination Guideline:
Is It Reportable?

Documentary Evidence:

Physical/Real Evidence:

Demonstrative Evidence:

Testimonial Evidence:

Order of Interviews:

Questions:

Relevant Information:             Irrelevant Information:

Delineate Facts:

Analyze Facts:

Drawing Conclusions:
Recommendations to Prevent Recurrence:

As staff Sam entered the living room, staff Vernon was yelling at consumer Chris to shut up and get into his room. Sam pulled on Chris’ arm to get him started.

Risk Management:
Reporting Determination Guideline:
Is It Reportable?

Documentary Evidence:

Physical/Real Evidence:

Demonstrative Evidence:

Testimonial Evidence:

Order of Interviews:

Questions:

Relevant Information:  Irrelevant Information:

Delineate Facts:

Analyze Facts:

Drawing Conclusions:
Recommendations to Prevent Recurrence:

Consumer **Dale** has been driving staff crazy, constantly asking when he was going to be going home, and saying that he was going home. Staff Shelby, in exasperation, told Dale “Go then.” Staff later found Dale outside by the street with a suitcase in his hand. Dale does not have good survival skills.

Risk Management:
Reporting Determination Guideline:
Is It Reportable?

Documentary Evidence:

Physical/Real Evidence:

Demonstrative Evidence:

Testimonial Evidence:
  Order of Interviews:
  Questions:

Relevant Information: Irrelevant Information:

Delineate Facts:

Analyze Facts:
Drawing Conclusions:

Recommendations to Prevent Recurrence:

Consumer Albert has autism. He resides in an apartment and receives ISLA services. Albert’s regular staff took Albert to the train station frequently to look at the trains and get him accustomed to the noise. They were planning on some day taking the train to see Albert’s parents. One day, Albert’s regular staff was off and a sub was there. Albert left the apartment without staff’s knowledge. Police were called and eventually Albert was found at the train station.

Risk Management:  
Reporting Determination Guideline:  
Is It Reportable?

Documentary Evidence:

Physical/Real Evidence:

Demonstrative Evidence:

Testimonial Evidence:  

Order of Interviews:  
Questions:

Relevant Information:  
Irrelevant Information:

Delineate Facts:

Analyze Facts:
Drawing Conclusions:

Recommendations to Prevent Recurrence:
TO: Licensed DD Service Providers  
Regional DD Program Administrators  
Teresa Larsen, ND Protection & Advocacy Project  
Lucille Torpen, ND Department of Health, Health Facilities Division  
Marlys Baker, Children and Family Services, Child Protection Services  
Barb Murry, ND Association of Community Providers  
FROM: Developmental Disabilities Division  
DATE: March 15th, 2011  
SUBJECT: Response to Reports of Serious Events and Alleged Incidents of Abuse, Neglect, or Exploitation of Persons Receiving Developmental Disabilities Services from Licensed DD Providers (Formerly known as DDD-PI-006)  

EFFECTIVE DATE OF POLICY: March 15, 2011  

PI-10-16 has been revised. Please discard all former versions of PI-10-16 and DDD-PI-006, as well as any accompanying attachments.  

I. Background  

Revised: 03-14-11
The 1989 State Legislature enacted North Dakota Century Code Chapter 25-01.3 regarding the definitions and reporting of abuse, neglect, or exploitation of adults with developmental disabilities or mental illness. This statute authorized the Department of Human Services to develop rules for implementation. Administrative Code Chapters 75-04-01 and 75-04-02, 42 Code of Federal Regulations 483.420 (conditions for participation of ICFs/MR for Federal Financial Participation - Medicaid), 42 Code of Federal Regulations 441.302 (a) (Home and Community Based Services: Waiver Requirements) and current standards of The Council on Quality and Leadership in Supports to People with Disabilities pertaining to abuse, neglect or exploitation are incorporated into this policy issuance.

Click on the following link to view **NDCC 25-01.3-01 - Definitions of Abuse/Neglect/Exploitation** [http://www.legis.nd.gov/cencode/T25C013.pdf](http://www.legis.nd.gov/cencode/T25C013.pdf)

The State of North Dakota has an overriding obligation to ensure that people receiving publicly-financed developmental disabilities services are treated with dignity and respect, receive services and supports designed to meet their individual needs, and are able to live safe and secure lives in their respective communities.

The elements of an effective quality assurance and state-monitoring program consist of, at a minimum, the following:

A. Investigation of Abuse, Neglect and Exploitation

1. **A proactive risk management strategy for people receiving services and supports.** A fundamental element of this strategy is the systematic identification of health and safety risks facing each person receiving community services and supports, and as part of the person-centered planning process, the development of specific safeguards, on a person-by-person basis, to minimize such risks. The resulting safeguard should balance individual safety and security against the risks inherent in being a fully participating member of the community. A workable risk management strategy also entails that service providers have the capabilities and/or the external quality management supports necessary to safeguard the health and safety of people receiving services.

2. **Administrative policies and procedures for reporting and investigating alleged incidents of abuse, neglect and exploitation involving people receiving services.** These policies/procedures specify the
reporting/investigative time frames as well as the steps that must be taken to protect people receiving services from possible further harm or retribution while the investigation is being conducted. Within such policies/procedures, the entity(ies) responsible for conducting investigations and following up to ensure that any necessary corrective actions are completed in a prompt and effective manner, must be identified.

3. A description of the range of corrective actions a state may order as well as the penalties and sanctions it may impose in confirmed cases of abuse, neglect and exploitation. These actions, including penalties and sanctions, must encompass both individual perpetrators of the abuse, neglect, or exploitation as well as the agency that employs them (where negligence on the part of the agency has been established during the course of the investigation).

4. Provider agreements that obligate all agencies and individuals furnishing community DD services to report Serious Events and alleged incidents of abuse, neglect and exploitation in accordance with policies promulgated by the state. These state policies delineate clearly the parties (including direct contact staff) who are required to report, the procedures for doing so, and the time frames such reports must be filed and required follow up actions completed.

a. A description of the steps that will be taken to ensure that all responsible staff members of the licensed/certified provider agencies are notified, in writing, of their obligation to report Serious Events and incidents of abuse, neglect and exploitation. Steps should also be taken to ensure that all such employees receive pre-service and periodic in-service training in identifying and properly reporting Serious Events and incidents of abuse and neglect and exploitation.

b. A description of the steps that will be taken to ensure that all Serious Events and abuse, neglect and exploitation reports are promptly and effectively investigated, including the plan for assuring that responsible provider agency personnel are trained to conduct thorough investigations and summarize their findings in writing.

c. A requirement that each person receiving services (and his/her legal guardian, where appropriate) is notified, in a medium and manner understandable to the person involved, of how to report Serious Events and alleged incidents of abuse, neglect and exploitation.
B. Completion of periodic, in-depth reviews of the services and support furnished to persons with intellectual disabilities and related disabilities by the responsible program management agency. These reviews will include on-site observations to determine the appropriateness of the services and supports being furnished to people with disabilities and families. Reports summarizing the findings should identify any follow-up corrective actions that need to be pursued, the responsible parties and the required time lines for completing such actions.

C. The policies and procedures that will be followed in soliciting, investigating and resolving complaints from people receiving services and others concerning the appropriateness and quality of the services provided (including allegations of mistreatment).

The various components of the state’s quality improvement system will be properly synchronized to achieve their stated objectives. It is critical that all stakeholders within the state’s service delivery system fully appreciate the importance the state places on protecting vulnerable people from harm as well as their respective responsibilities for assuring that this goal is achieved. A quality assurance system will be judged on its effectiveness in keeping vulnerable people out of harm’s way, assuring that the services and supports provided to people are appropriate and effective, and identifying and swiftly rectifying Serious Events and incidents of abuse, neglect, exploitation, and sub-standard care when they occur.

Abuse, neglect and exploitation cannot co-exist with provision of quality services and support. Incidents that have the capacity to cause harm or injury to a person receiving services, create an atmosphere of intolerance or hostility, or cause actual injury or death, must be reported. Reporting of Serious Events and abuse, neglect, exploitation and implementing changes to minimize the recurrence is an integral part of the larger function of quality assurance and quality improvement. The system should not be punished for finding deficiencies, but for failing to correct them.

II. Reporting Requirements
A. **Who Must Report Suspected Abuse, Neglect or Exploitation**

All licensed provider staff are required to immediately report Serious Events and incidents that meet the Reporting Determination Guidelines, internally. This will ensure that prompt risk management steps are taken. All provider staff are also mandated reporters and agency policies and procedures must ensure that State Law and this policy are complied with. Therefore, if any employee is not comfortable in reporting internally, or if the employee questions whether the agency will act on the report, the employee may report directly to the Protection and Advocacy Project (P&A). In every case, the employee must report Serious Events and any alleged incident of abuse, neglect or exploitation either internally or directly to P&A.

B. **Good Faith Reports**

Any reporter/witness providing information pertaining to a good faith report (reports given accurately, describing only what the reporter/witness saw/heard, an honest portrayal of what occurred) are provided immunity from civil or criminal liability which may otherwise arise from making the report.

C. **Employer Retaliation**

Employers may not retaliate against employees or people with disabilities, due to the reporting of possible abuse, neglect or exploitation. Employers who do so are guilty of a Class B Misdemeanor. Employees who believe their employer is retaliating against them for reporting should contact their States Attorney’s office for investigation of the employee’s allegation of retaliation.

D. **Provider Responsibilities**

All Serious Events or incidents meeting the Reporting Determination Guidelines must be reported. It is the provider’s responsibility to:

1. Report the allegation to Regional DD Program Management, the Developmental Disabilities Division (DDD), the person’s guardian (if appropriate), P&A, and Child Protective Services (CPS) (if the person is...
under age 18), the governing board, and the Human Rights Committee (if appropriate),

2. Implement risk management steps,

3. Assess, and

4. Take corrective action to minimize the probability of the incident re-occurring.

Provider failure to report any suspected incidents of abuse, neglect or exploitation may result in a formal investigation by the DDD, Regional DD Program Management and/or P&A. Applicable corrective action may include, but is not limited to: notification of Health Facilities for ICFs; notification of The Council; licensure sanctions; and/or revocation of the provider’s license. The intent is not to assign guilt for an incident but to rectify the conditions that caused it. Failure to report is a violation of state law and will be considered a serious violation of licensure. (Chapter 25-01.3-12(2).)

If the incident appears to be of criminal intent or of a criminal nature, the provider should contact law enforcement immediately and follow their directives for preserving evidence. Following contact with law enforcement, the provider should proceed with the aforementioned steps 1-4, which include notification of the incident to the DDD, Regional DD Program Management, P&A, Child Protective Services (if appropriate) and the guardian (if appropriate). The person receiving services and guardian should be informed of their right to file a complaint with law enforcement as well. Law enforcement will then take the lead in further investigation of the incident. The provider must assure that immediate risk management steps are taken, but the provider will not take further action beyond notification to law enforcement, P&A, DD Program Management, the DDD, Child Protection Services, and the guardian until law enforcement has concluded their investigation or requests the provider to assist them in their investigation. The provider will maintain contact with law enforcement during the police investigation process and provide updates to DD Program Management and P&A, as needed. Once law enforcement has concluded their investigation, the provider will submit the results of the investigation to DD Program Management and P&A, and will also notify the person receiving services/guardian of the final report and outcome. DD Program Management, the provider and P&A will determine if additional follow up or action within the DD system is needed.
III. Serious Events – Requirements for Reporting and Follow Up Procedures

Serious Events are defined as:

A. Events that result in medical treatment or care, for physical or mental health, beyond first aid. Examples may include but are not limited to the following:
   - Fractures, sutures, burns (including sunburn), heat exhaustion, frost bite, ingestion of harmful substances
   - Self-injurious behaviors and suicide attempts
   - Unplanned hospital admissions requiring an overnight stay (This does not include individuals with chronic medical conditions which result in treatment that is consistent with the individual’s medical plan of care).

B. Unauthorized use of seclusion, chemical or physical restraint including the use of seclusion or restraint on an emergency basis. [Authorized use means that the use of seclusion or restraint is written into the person’s plan and has been approved by the Human Rights Committee and the Behavior Intervention Committee].

C. Alleged sexual abuse or inappropriate sexual contact of a person with a disability.

D. Deaths of people with developmental disabilities.

1) Serious Events Reporting Process
A. Verbal report must be made to P&A within eight (8) hours of the event.

B. Within one (1) working day of the event, guardian/legal decision maker must be notified.

C. Within one (1) working day of the verbal report, a written report of the incident (General Events Report in Therap) must be submitted to:
   - P&A
   - Regional DD Program Management at HSC
   - DDD

For Serious Events, the Reporting Determination Guidelines (RDG’s) are not utilized to determine whether they are reportable. If an incident meets the definition for Serious Event, it must be reported to P&A. Investigation is not initiated by the provider. The provider is still responsible to assure that risk management has been addressed.

D. For children less than 18 years of age:
   Reports of Serious Events will be made to Child Protective Services by completing and submitting SFN 960 - Report of Suspected Child Abuse or Neglect. SFN 960 can be accessed by clicking on the following link: http://www.nd.gov/eforms/Doc/sfn00960.pdf

   In addition, Reports of Serious Events will be made to P&A for children less than 18 years of age:
   - P&A will always receive the verbal report within 8 hours.
   - If the child is under age 18, a report will also be made to Child Protective Services by the provider if it would have been reported to CPS as a potential child abuse/neglect issue before the inception of the Serious Events process.
   - ICFs will contact the Regional Supervisor for Child Protective Services at the regional Human Service Center.
• All other reports will be made to County Child Protective Services.

2) Risk Management

   A. Immediately following an incident or event, risk management steps must be taken. This may include, but is not limited to:

   • Assuring the person’s safety.
   • Assuring the safety of others.
   • Providing the necessary medical and emotional support.
   • Notifying law enforcement if criminal in nature.

   The service provider should not begin an investigation. Serious Events must be first assessed by P&A or, if a person is under age 18, by Child Protective Services.

   Providers will need to gather enough information to assess the situation so that appropriate risk management, including any necessary personnel action, can be taken. Providers should describe what risk management steps were taken in the initial written incident report.

3) Follow Up

   A. Within 2 working days, P&A will determine whether:

   a) P&A will conduct a primary investigation;

   b) P&A will conduct a collaborative investigation with the provider;

   c) P&A will direct the provider to investigate & submit a report to P&A.
B. If a primary investigation is conducted by P&A, the final report will be completed within 10 working days.

C. DD Program Manager will follow up with the provider, person receiving services and/or legal decision maker to determine if it is necessary to modify the person’s current plan, supports and services.

D. Once the investigation is complete, the DD Program Manager will assure and verify that all recommendations and action steps developed to minimize the chance or reoccurrence have been implemented. This will be documented in the Quality Enhancement Review (QER).

E. The DDD will determine if follow up is needed relative to the licensing standards NDAC 75-04-01.

4) Death Reports

When reporting the death of a person, the caller should be prepared to provide the following information to P&A during the initial call (within 8 hours):

- name and age of the deceased
- date and estimated time of death
- whether the person had a legal decision-maker (e.g. guardian)
- where the person was when death occurred
- whether death was expected and the cause, if known
- who, if anyone, was present at time of death
- others who have been notified (family, law enforcement, etc.)

A client death must also be verbally reported to the DDD (DDD) and the Regional DD Program Administrator (DDPA) within one working day. Completed “client death notification reports” must be completed and submitted to P&A, the DDD, and DD Program Management within seven days.

5) Reporting Timelines

<table>
<thead>
<tr>
<th>Initial notification to:</th>
<th>Written report to:</th>
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Revised: 03-14-11
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<tbody>
<tr>
<td>Serious Events</td>
<td>8 hours</td>
<td>1 working day</td>
<td>1 working day</td>
</tr>
<tr>
<td>Deaths</td>
<td>8 hours</td>
<td>1 working day</td>
<td>7 working days</td>
</tr>
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</table>

* Initial notification to P&A is verbal
INCIDENT OCCURS

PROVIDER TO IMPLEMENT IMMEDIATE RISK MANAGEMENT* AND COMPLETE NECESSARY DOCUMENTATION

IS IT A “SERIOUS EVENT”?

YES

INITIAL NOTIFICATION TO:
  P&A (within 8 hours; VERBAL)
  DDD, DDPA & OTHERS AS APPLICABLE (GUARDIAN, CPS)
  (within 1 working day)

WRITTEN REPORT (GER in Therap) TO: P&A, DDD, DDPA
  (within 1 working day; death reports within 7 working days)

NO

IS THE INCIDENT REPORTABLE (use RDG’s)?

YES

NOTIFICATION TO:
  P&A & DDPA (GER), & OTHERS AS APPLICABLE (GUARDIAN, CPS)
  (within 1 working day)
  (to all within 1 working day)

See PI-10-16 for further steps

NO

IMPLEMENT INTERNAL QUALITY ASSURANCE PROCESS

Within 2 working days of receiving the written report, P&A will notify the provider, DDD, & the DDPA as to whether an investigation is required and, if so, whether P&A will:
  • Do a primary investigation; OR
  • Direct the provider to do a primary investigation & submit to P&A for review; OR
  • Collaborate on an investigation w/ the provider

* RISK MANAGEMENT is the assessment of risk levels (emergency, imminent danger, or non-emergency) and implementing appropriate responsive action. P&A can provide technical assistance.

^ If individual is < 18 years old, P&A will wait for a determination from CPS.
IV. Incidents Meeting the Reporting Determination Guidelines - Requirements for Reporting and Follow Up Procedures

A. Those incidents not meeting the criteria for Serious Events will be reviewed in a timely manner applying the Reporting Determination Guidelines to determine if the incident meets the criteria for the reporting of alleged abuse, neglect and exploitation. Not all incidents will meet the reporting guidelines for Abuse, Neglect or Exploitation (A/N/E). However, if any of the criteria is met, a report must be made. Timelines for reporting the incident will begin when a mandated reporter has knowledge of, or reasonable cause to suspect that an incident of potential A/N/E may have occurred. If the incident does not meet the reporting guidelines for A/N/E, the provider will proceed within agency policy in regard to personnel action, administrative or quality assurance protocol.
B. When the incident meets the Reporting Determination Guidelines:

a. Within one (1) working day of the incident, guardian/legal decision maker must be notified.
b. Prior to submission of a written report, a verbal report must be made to P&A.
c. Within one (1) working day of the incident, a written report (General Event Report in Therap) must be submitted to:
   - P&A
   - Regional DD Program Management
   - DDD

d. Initiate Investigative Action or, if applicable, the Protective Service Level System if the person is over age 18, or

e. If the person is under the age of 18:
   - Report the incident to Regional Child Protective Services. The SFN 960 used to report suspected child abuse or neglect is located at: http://www.nd.gov/eforms/Doc/sfn00960.pdf
   - Inform P&A Centralized Intake or On Call Advocate of the incident and the report to Child Protective Services.
   - Inform the Regional DD Program Administrator or designee of the incident and the report to Child Protective Services.
   - Inform the person’s guardian/parent of the incident (Take into account who the alleged perpetrator is. If the allegation identifies the parent or guardian or some other family member as the alleged perpetrator, Child Protective Services should be contacted and a determination made as to whether the guardian or parent should be contacted.)
If Child Protective Services determines that they will conduct an investigation and/or assessment, the provider does not need to conduct any further follow up once they have assured that appropriate risk management steps have been taken; however,

If Child Protective Services indicates that the incident does not fall within the purview of their responsibility, and in cases where the allegation identifies DD licensed agency staff as the alleged perpetrator, the provider will inform P&A that Child Protective Services is not investigating and implement Investigative Action or the Protective Service Level System even if the child is under the age of 18.

The provider’s follow up investigation report should indicate that Child Protective Services was contacted but that the representative indicated the incident did not fall within the responsibility of CPS and therefore the agency has initiated the process contained within Investigative Action or the Protective Service Level System.

C. Reporting of Incidents Involving another Agency

It is critical that incidents involving suspected abuse, neglect, and/or exploitation are reported immediately, so that appropriate risk management steps can be taken.

If Agency “A” has knowledge of or reasonable cause to suspect that a person with a disability may be or may have been abused, neglected, and/or exploited by Agency “B”:

1) Agency “A” will report the incident by telephone to Agency “B” and P&A Centralized Intake or On Call Advocate, and submit copies of the Incident Report and any supporting documentation i.e., photos etc. to Agency “B” and P&A Centralized Intake. (Agency “A” will maintain the original Incident Report).

2) Agency “B” will review the submitted Incident Report and supporting documentation utilizing the Reporting Determination
Guidelines and any information they may have regarding the details of the incident, the individual’s plan etc.

3) If Agency “B” determines the incident is reportable, Agency “B” will notify the proper parties and proceed with the appropriate steps (including interviewing staff from Agency “A” if necessary).

   a) If any issues arise during the course of the investigation that would affect, or have the potential of affecting the person across environments, the agency(ies) will notify the person’s team members from other involved agencies so that, as a team, issues can be addressed in a timely manner in the best interest of the person.

4) If Agency “B” determines the incident is not reportable, Agency “B” will notify P&A Centralized Intake of their determination, and provide P&A with the information supporting that decision.

5) If, for any reason, Agency “A” is not able/willing to follow the above outlined procedure, Agency “A” must notify P&A Centralized Intake of the incident, submit a copy of the Incident Report, and explain why they are not reporting to Agency “B”.

6) In the case of multiple agency involvement and Agency “A” does not know who the alleged agency is, Agency “A” will forward the Incident Report to all agencies involved, as well as P&A Centralized Intake. Each receiving agency will then conduct their assessment utilizing the Reporting Determination Guidelines and notify P&A Centralized Intake of their determination and the information supporting that decision.

If any of the involved agencies determine that the incident is reportable, the agency (ies):

   a) Will notify the proper parties and proceed with the appropriate steps (the agency (ies) may wish to coordinate follow up with the other agency’s staff, if appropriate).

   b) If any issues arise during the course of the investigation that would affect, or have the potential of affecting the person receiving services across environments, the agency(ies) will notify the person’s team members from other involved agencies so that, as a team, issues can be addressed in a timely manner.
to the best interest of the person receiving services.

D. Reporting of Incident Involving Non-facility Staff

If a provider has knowledge of or reasonable cause to suspect a person with a disability may be or may have been abused, neglected and/or exploited by a person other than agency staff, e.g., family members or members of the community, the provider will implement whatever risk management steps they are capable of implementing, and notify P&A Centralized Intake or the On Call Advocate immediately of the incident. P&A is responsible to take the lead in conducting the investigation. Provider staff may be asked to provide assistance in gathering information, interviewing the person receiving services, etc., at the request of P&A.

If the incident falls under “Emergency” or “Imminent Danger” Levels the provider will notify P&A Centralized Intake at 328-3950 (providers local to Bismarck) or at 1-800-472-2670 (providers outside of Bismarck-Mandan) during regular work hours or the On Call Advocate at 1-800-642-6694 after hours, weekends and holidays.

The provider will also contact Regional DD Program Management during regular work hours.

III. Implementation of Investigative Action

All providers must follow the requirements of Investigative Action unless they have been given approval to participate in the Protective Service Level System by the DDD. Implementation of the Protective Service Level System is addressed in Section IV of this policy.

Regardless of the source of an allegation, service providers are expected to fulfill the following responsibilities when there is knowledge of, or reasonable cause to suspect abuse, neglect or exploitation:

A. Within one (1) working day of the incident, guardian/legal decision maker must be notified.

B. Prior to submission of a written report, a verbal report must be made to P&A.

C. Within one (1) working day of the incident, a written report (General Event Report in Therap), identifying the applicable Reporting Determination
Guideline and initial risk management steps must be submitted to:

1) P&A Centralized Intake

2) Regional DD Program Management

3) DDD

D. Within five working days after the alleged incident, a written report of all follow-up activities related to the incident must be submitted to the regional P&A advocate, Regional DD Program Administrator, and the DDD. By statute, P&A staff have access to providers, facilities, and staff, individual records, individuals of the agency and other persons deemed to be relevant to an investigation. Pursuant to ND Century Code 65.5-01, “Providers are required to make reasonable accommodation to the P&A Project so as to permit them to promptly complete their investigation.”  **Note: The documentation submitted for the provider’s internal report must include the Investigative Action Level Checklist (See Appendix 4). The dates that contacts were made with P&A, Regional DD and the DDD should be listed under Provider Responsibilities.**

1. Inform the person receiving services, and/or the person’s guardian (if one has been appointed and the issue is within the guardian’s area of authority) of the findings. (Refer to G - Guardian Notification)

2. If additional time is needed to complete the internal assessment/investigation, the provider must contact the DDD to request an extension and inform the regional P&A advocate of the extension.

E. The internal report must include the following:

1. Name of the alleged victim(s) and date and time of the incident

2. Signed and dated statement from the alleged victim(s). If the person receiving services cannot participate in an interview, or sign the statement, this must be documented within the report.

3. Signed and dated statements from each staff person of the provider involved in the incident as to what happened, when it happened, precipitating factors to the incident and the individual staff person’s involvement. (The staff interviewed must sign their written statement. If the provider summarizes the interview, the staff interviewed must sign the
summary to indicate that they have reviewed the summary of their statements and have the opportunity to comment/respond.)

4. Documentation by the provider’s chief executive officer/designee as to the findings of the organization in regard to the incident, including a statement as to whether the incident occurred and any supporting documentation related to the incident (i.e., progress notes, charting, Medication Administration Records, relevant components of the person’s program or behavior plan, etc.).

a. The documentation of the provider’s findings must include the following:

   1) What happened.

   2) What immediate steps were taken to assure the health and safety of the person (risk management).

   3) Why the incident happened. Consider whether the incident could have been prevented, and if so how? Was the necessary training provided to staff? Were provider policies and procedures followed? Was the person’s plan of care followed? Role of the provider that may have contributed to the incident occurring, etc.

   4) Any resultant disciplinary action taken by the provider.

   5) Steps taken by the provider to assure the incident is not repeated. The response must indicate:

      (a) Who is responsible for implementation of the plan or recommendations?
      (b) When the plan or recommendations will be implemented.
      (c) Who is responsible for follow up?
      (d) Once the plan is implemented, the provider must have documentation that it was in fact completed and available to the DD Program Manager.

   6) Documentation that the following parties were promptly notified of the incident and the findings:

      (a) The governing body;
      (b) The chief executive officer or designee;
      (c) The chairperson of the provider’s Human Rights Committee if
appropriate;
(d) The alleged victim’s guardian (if one has been appointed and the issue is within the guardians area of authority.); and,
(e) The person receiving services if they are their own decision-maker.

b. The provider is not required to state in their internal assessment whether or not the incident is substantiated or not substantiated as abuse, neglect or exploitation. The provider’s internal report must, however, indicate whether the incident occurred. P&A will determine the substantiation or non-substantiation of the incident in their Letter of Findings.

c. If the Chief Executive Officer of the provider is the subject of an allegation of abuse, neglect or exploitation (i.e., the CEO is the person who allegedly abused, neglected or exploited the person with an developmental disability) it is the responsibility of the provider’s board to fulfill the reporting and investigation/follow up requirements of this policy. The Board has the option to conduct the investigation themselves, conduct the investigation jointly with P&A or request P&A to complete the investigation independently.

F. Notification to the Human Rights Committee

All incidents involving rights violations and/or restrictions MUST be reported to the Human Rights Committee (HRC). Providers who have an internal Protective Service Review Committee or quality assurance team that reviews all incident reports utilizing the Reporting Determination Guidelines have the option to report to the HRC only those incidents in which there are rights violations and/or restrictions as part of the allegation. If the incident does not involve a rights violation or restriction, the provider is not required to report the incident to the HRC. The Protective Service Review Committee/quality assurance team will be responsible to review the incident and report according to the requirements of this policy.

Providers must document whether the incident was reported to the HRC; and if the incident was reported to HRC, the date of notification. This can be accomplished by noting it on the Investigative Action Level Checklist or documenting it in the internal investigation report.

The HRC may, upon request, have access to provider reports, investigations and findings related to incidents of abuse, neglect and exploitation, if in the
course of their reviews they have reason to believe there may be patterns of rights violations or systemic issues that need to be examined and analyzed. Provider agencies, P&A, and DD Program Management may also ask the HRC to review.

G. Guardian Notification

Notification of the guardian regarding the provider’s findings may consist of a summary of III D. and E. Name(s) of other people receiving services and/or staff involved in the incident, and/or other confidential information, should not be included in contacts or correspondence with the guardian.

H. Developmental Disabilities Program Management/DDD Responsibilities

1. Regional DD Program Management and DDD staff will review all reports and assessments completed by the provider. The DDD will determine if additional reporting or information is required, and may impose corrective measures upon the service provider in consultation with Regional DD Program Management. There may be situations when the Developmental Disabilities regional and state staff, P&A and/or Health Facilities will conduct a joint review relative to complaints received and/or alleged incidents of abuse, neglect and exploitation. In these cases, the review will be coordinated and conducted jointly.

2. Regional DD Program Management will follow up on alleged incidents of abuse, neglect and exploitation through the quality enhancement review (QER) process, to determine if the provider’s recommendations and plan to prevent recurrence was implemented as stated in the agency report. DD Program Management will also review the incident and findings with the person receiving services and guardian, during the QER process to address any additional areas of concern. DD Program Management’s follow-up will focus on the health, safety and quality of life for the person.

3. Repeat incidents, or outstanding issues of a systemic nature will be addressed with the Chief Executive Officer at the provider level by the Regional DD Program Administrator as it relates to quality assurance. The DDD is available for technical assistance in this area at the request of the DD Program Administrator. The DDD is responsible to address identified issues related to licensure. Approval and acceptance of provider plans to resolve identified problems and implement changes to prevent future incidences, rests with the DDD as the licensing entity in consultation

Revised: 03-14-11
I. Nonconcurring Conclusions/Findings

1. If P&A has questions related to the provider’s internal investigation, or P&A does not concur with the conclusions of the provider’s internal investigation, or the provider does not concur with P&A’s Letter of Findings, the case will be reviewed by the provider and P&A. If requested, staff from Regional DD Program Management and/or the State DD State Division may participate. If agreement is not reached through this process, the final determination will be made by P&A relative to the substantiation or non-substantiation of the allegation. A public inquiry procedure is available to the person receiving services, guardian and provider, through P&A.

2. Approval and acceptance of provider plans to resolve identified problems and implement changes to prevent future incidents, rests with the DDD as the licensing entity, in consultation with Regional DD Program Management.

J. DD Training and Monitoring on Reporting of Alleged Incidents of Abuse, Neglect and Exploitation and Risk Management

1. Providers and DD Program Managers must participate in training on recognizing and responding to incidents of abuse, neglect and exploitation. Training will include PI-10-16 (a historical review of incident reports to determine compliance), application of the Reporting Determination Guidelines, conducting investigations and response planning. The DDD will coordinate and provide training with P&A.

V. Protective Services Level System

A. Description and Purpose

The Protective Services Level System is an alternative approach to responding to allegations of abuse, neglect and exploitation as outlined in Investigative Action. The definitions of abuse, neglect, and exploitation found in NDCC 25-01.3 remain the same in the Level System, as does the application of the Reporting Determination Guidelines, but the response to the
allegation may be different. All incidents that meet the Reporting Determination Guidelines for abuse, neglect and exploitation continue to be reported to P&A Centralized Intake and Regional DD Program Management.

The Level System offers a more streamlined and efficient response to allegations that are determined to be less serious, and reserves the full investigation process and resources for the more serious allegations. In addition, under the Level System, only allegations falling under the Investigative Action Level would follow the requirements of Investigative Action and result in a substantiation/non-substantiation of the allegations by P&A.

The Level System is available to licensed DD providers who have consistently complied with state law, regulations and polices for reporting and investigating allegations of abuse, neglect and exploitation and have completed additional training with P&A and Regional DD Program Management. The DDD may permit a provider the opportunity to utilize the Level System in lieu of Investigative Action once they have fulfilled the necessary requirements. (See Deemed Status section below). A copy of the letter granting approval for participation in the Level System is sent to the provider and a copy placed in the provider's licensure file in the DDD.

The Level System was developed through collaborative efforts of P&A, provider representatives, and the Department of Human Services Developmental Disabilities Division and Regional DD Program Management. Participation in the Level System is voluntary on the part of the provider, and the provider may choose to terminate involvement and be subject solely to Investigative Action at any time. The DDD reserves the right to modify the Level System or terminate a provider's involvement in the Level System at anytime.

B. Participation Requirements (Deemed Status)

1. Licensed DD providers are subject to Investigative Action, which requires a specific process to be followed upon identification of suspected abuse, neglect and exploitation (A/N/E). “Deemed Status” may be granted to licensed DD providers that will enable the provider to implement the Level System. “Deemed Status” implies that the provider exhibits the desire, knowledge, skills and ability to objectively assess and respond to identified incidents where A/N/E is suspected, resulting in the removal/minimization of potential harm to people with an intellectual disability. “Deemed Status” is granted by the Director of the DDD.
2. In order to be granted “Deemed Status” a licensed Developmental Disabilities provider must request to participate in the Level System process. There are four “stakeholder” agencies involved: the licensed provider requesting to participate, Regional Developmental Disabilities Program Management, the ND Department of Human Services Developmental Disabilities Division, and the ND Protection & Advocacy Project (P&A).

When a provider requests to participate with the Level System, whether that request is made to P&A, the Regional DD Program Administrator/DDPM, or DDD, the following protocol will be followed by the involved parties.

a. If a provider is requesting information regarding the Level System, they will be referred to the DDD. The DDD will then disseminate information regarding the Level System to the provider.

b. If a provider is requesting to participate in the Level System, they will be referred to the DDD and/or informed they should write a letter to the Director of the DDD, to request participation.

c. Once a provider has requested to participate, the DDD will contact P&A and the Regional DD Program Administrator.

d. Agreement must be reached with the identified stakeholders to begin the Level System process. This includes a commitment made by the Regional parties (DDPM and P&A) to participate fully with the process, and commitment by the identified stakeholders to participate as allowed by schedules.

e. Once the agreement has been reached, the identified stakeholders will set a date for Phase One training on the Reporting Determination Guidelines and introduction to the Historical Review Process, and training on Conducting Investigations. This training will be conducted by the State DD Division and P&A.

Prior to implementation of Phase I, the provider will need to assure that the staff responsible for completing the internal investigations have received training from P&A and the DDD within the past year in the areas of: abuse, neglect and exploitation, conducting investigations, risk management, response planning and use of the reporting determination guidelines. If agency staff have not participated in this
training with P&A and the DDD within the past year, they need to arrange for it.

f. The Historical Review Process will entail meetings by the provider, regional DD Program Management staff, DDD, and P&A, to review the provider’s past year’s Incident Reports. This review will include the following process:

- Review Incident Reports;
- Assess Risk Management;
- Apply Reporting Determination Guidelines;

Note: The “Historical Review Process” is a process to help ensure a common understanding, through the review of actual incidents, of risk management and the application of the Reporting Determination Guidelines. The intent is not to find fault with a provider’s reporting process or to identify a failure to report.

g. The Historical Review process will continue until the provider, Regional DD Program Management staff, DDD, and P&A believe the team is ready for the next phase.

h. Typically, the team is ready for Phase Two when they are able to openly communicate concerns and reach consensus and respect each other’s opinion regarding the situations.

i. Once consensus is reached with the identified stakeholders, the Director of DDD will then write a letter to the Provider to proceed to Phase Two.

j. Phase Two involves the identified stakeholders scheduling a time for the Level System training to occur. The time required for the training is 3 ½ hours. This time must be scheduled so ALL participants will be available for the complete time (no one can leave early). Phase Two training will be conducted by DDD and P&A.

k. Phase Two training consists of a review of the Level System, a review of the Process, a review of the Protective Services Level System Manual, and application of the complete Process to scenarios, and/or actual Incident Reports provided by the Provider, with participants completing all steps of the Process, including the paperwork.
l. When the Phase Two training is complete, the Regional participants will be expected to again meet in their team and review past Investigations, utilizing the complete Level Process. This allows the participants to see how the Level System can benefit their facility. At each of these scheduled meetings, the team will discuss their knowledge of, and comfort in, the Level System process.

While Phase Two meetings are proceeding, the Provider will still be implementing the “Investigative Action” process for reporting and investigation purposes.

m. Phase Two meetings are complete when ALL Regional participants believe the team has a thorough understanding of the Level System. This is determined through discussion and consensus.

n. When the identified stakeholders agree that the Provider is ready to request “Deemed Status” the Director of DD Division will be informed of this agreement.

o. Once this agreement is reached a Letter of Support (can be e-mail) will be sent to the DDD from the following parties to verify that agreement has been reached:
   a. Regional DD Program Administrator and DDPM
   b. P&A

p. Once the Letters of Support are received, DDD will instruct the provider to write a letter to the Director of DDD requesting “Deemed Status.”

q. If agreement is not reached by the identified stakeholders a meeting will occur with the Provider Director, P&A, Regional DD Program Administrator/DDPM, and DDD, to discuss the concerns and determine an appropriate course of action.

r. If agreement is reached, the provider will receive a letter from the Director of the DDD, informing the provider of their approval for Deemed Status, and the effective date contained within the letter, to begin implementing the Level System.

s. The decision of the DDD Director is final, although a provider may re-apply in the future.
t. Participation in the Level System is voluntary on the part of the provider, and the provider may choose to terminate involvement and be subject solely to the “Investigative Action” process at any time. The DDD reserves the right to modify or terminate “Deemed Status” at any time.

C. Implementation of the Protective Service Level System

1. Review of Incident
    a. Staff must document and notify supervisor of incident report immediately.
    b. Risk Management steps must be implemented and documented.
    c. The Reporting Determination Guidelines must be applied to determine if the incident is reportable as abuse, neglect or exploitation.

2. If it is determined that the incident is reportable:
    a. Apply the decision-making criteria to determine what level of response is required. See attached decision-making graph in Appendix 3. The criteria will determine what level of response is required based on whether harm to the person receiving services is evident; if the person was placed at risk of harm and/or whether the incident was a repeat occurrence of a similar incident within the last 12 months.
    b. There are four (4) levels of response to allegations of abuse, neglect and Exploitation:
        1) No A/N/E - the incident does not meet the criteria for reporting as an incident of abuse, neglect or exploitation.
        2) Agency Action
           (a) Suspected A/N/E AND
(b) No harm or risk of harm to the person is evident AND
(c) This is not a repeat occurrence of a similar incident
       within 12 months. (First time incident.)
3) Corrective Action
(a) Suspected A/N/E, AND
(b) no harm to the person is evident (risk of harm may be
    present) AND
(c) This is a repeat occurrence of a similar incident within 12
    months - person was not placed at risk of harm OR
(d) This is not a repeat occurrence of a similar incident
    within 12 months (first time incident) - person was
    placed at risk of harm OR
(e) Insufficient response to Agency Action as determined
    by DD or P&A.
4) Investigative Action
(a) Suspected A/N/E, AND
(b) harm to the person is evident, OR
(c) This is a repeat occurrence of a similar incident within 12
    months - person was placed at risk of harm, OR
(d) Insufficient response to Corrective Action (determined
    by DD or P&A) OR
(e) Professional Judgment

c. Allegations that would otherwise fall under the Agency Action or
   Corrective Action Levels may be upgraded to Investigative Action at
   the discretion of the provider’s Chief Executive Officer/designee. P&A
   and the Regional DD Program Administrator/DDD also reserve the
   right to upgrade the response to Investigative Action if it is determined
   that previous responses were not effective or it is felt that the incident
   requires full investigative action and implementation of Investigative
   Action.

d. The provider will notify the guardian, P&A and the Division of
   Developmental Disabilities depending upon the Level of Response and
   submit the report within the established timelines.

1) Agency Action
   a. Notify P&A Centralized Intake and DD Program Administrator within
      1 working day.
b. Prior to submission of a written report, a verbal report must be made to P&A.

c. Complete written response (GER in Therap). Response must include risk management steps taken and how they will benefit the person receiving services.

d. Written response (GER in Therap) to the incident must be submitted to P&A Centralized Intake and the Regional DD Program Administrator within 5 working days.

e. Notify guardian upon completion of the review.

2) **Corrective Action**

(a) Notify P&A Centralized Intake and the DD Program Administrator within 1 working day.

(b) Prior to submission of a written report, a verbal report must be made to P&A.

(c) Verify and document risk management steps.

(d) Submit written documentation (GER in Therap) to P&A Centralized Intake and the Regional DD Program Administrator within 5 working days. Report must include: documentation of risk management steps taken, time specific response plan addressing individual and system issues, provider plan to prevent reoccurrence, and how it will benefit the person receiving services.

(e) Notify guardian upon completion.

3) **Investigative Action**

See Implementation of Investigative Action Section III.
APPENDIX 1

Risk Management Procedures

1. Solicit any additional information needed from the person who reported the incident.
2. If appropriate, make collateral contacts.
3. Ensure contact is made with the alleged victim.
4. Assess the Risk Level and necessary Responsive Actions. See Risk Level and Actions below.
5. If provider has questions or requires technical assistance to determine Risk Level or Actions, contact P&A or DD Program Management.

Immediately assess the risk level of the alleged victim and, as necessary, develop the appropriate responsive actions.

Risk Levels:
1) Emergency - there is a current and immediate threat to the safety of the person receiving services; e.g., the alleged victim is currently being threatened; there is a medical emergency;
2) Imminent danger - there is reason to believe there is impending risk of harm to the alleged victim, e.g., alleged victim is receiving services/care from the alleged perpetrator; the alleged perpetrator has access to the alleged victim;
3) Non-emergency - the alleged victim is not in need of emergency services and imminent danger is not present.

Responsive Actions:
1) Emergency intervention - priority focus is on the life/safety of the alleged victim; involve necessary services to accomplish this such as law enforcement, medical/mental health, case management, person’s guardian, Protection & Advocacy, etc. (Provider may remove alleged perpetrator from direct client care; access medical/emergency room services; rape/crisis intervention);
2) Imminent danger - priority focus is on the protection of the alleged victim, and other potential victims, through the involvement of services such as those mentioned above, as well as through the implementation of protections within the providers authority (e.g., removal of the alleged perpetrator from direct client care, increase staff to client ratio, increase supervision, etc.).
3) **Non-emergency** - priority is to focus on remedying any abuse/neglect/exploitation and to prevent any further occurrences. Once Emergency and Imminent Danger situations have been resolved, those cases may then be re-assessed under this level. Determine responsibilities and cooperative efforts between P&A and the Provider (and any other entities) in conducting the investigation.

In determining Responsive Actions, one must take into account the alleged victim’s ability to consent, their right to self-determination, their right to refuse services and their right to risk.

**APPENDIX 2**

Revised: 03-14-11
Reporting Determination Guidelines

Determine which category is applicable to the incident and apply those criteria. Utilize the General Review section only when the incident under review does not fall into one of the other categories.

Category A: Bruises/Injury Review

NOTE – All bruises/injuries will be documented and reviewed by the consumer’s QMRP/Team/Nursing Services to ensure that possible causes are assessed and the safety of the consumer is assured. (Title XIX; The Council Standards)

If one of the following applies, GO TO E.

1) ___ Adequate safety precautions are not in place to reduce the likelihood of bruises/injuries for a consumer that has a documented history of similar bruises/injuries due to a medical condition, medications, or self-injurious tendencies.

2) ___ There is no documentation regarding how the bruise/injury occurred (i.e., restraint implemented; consumer returns from a substitute caregiver with a bruise/injury; consumer fell, etc.) and a reasonable person would suspect it is a result of possible abuse or neglect.

To assess for possible abuse/neglect:
- Look at type of bruise (i.e., finger/nail marks; nail scratches; teeth marks; imprint of possible weapon; bruise from a “twisting motion”; etc).
- Look at location of bruise (i.e., face; neck; “private parts”; areas the individual could not reach; etc)

3) ___ There is a pattern of unknown bruises/injuries for this consumer, or in this setting, and it is not being addressed by the team/facility.

4) ___ Professional Judgment indicates a need for review (i.e., repeated bruises due to restraints; unauthorized restraint implemented etc).
Category B: Consumer to Consumer Review

NOTE – Focus is on the facility’s responsibility versus holding a consumer accountable.

If one of the following applies, GO TO E.

1) ___ Incident occurred because staff failed to follow a consumer’s program, facility policy, staffing levels, etc. The consumer whose program, etc., was not followed would be the focus of the incident for reporting, review and investigation.

2) ___ This is a repeat occurrence of a similar incident within 12 months and the team is not addressing the issue.

3) ___ This is a first occurrence of an incident but staff could have foreseen and prevented the incident.

4) ___ Professional Judgment indicates a need for review (i.e., - severity of the incident; response from consumers/staff; etc.)

Category C: Medical/Medication Error Review

NOTE – Risk of harm is assessed by the consumer’s physician, nurse, and/or pharmacist (preferably a medical person with knowledge of the consumer).

If one of the following applies, GO TO E.

1) ___ A medication was not administered according to doctor’s orders and the consumer was harmed or placed at risk of harm (including having to repeat medical treatment or medication).

2) ___ A medical procedure was not administered or completed according to doctor’s orders and the consumer was harmed or placed at risk of harm.

3) ___ A controlled substance is missing.

4) ___ Medication documentation is falsified (i.e., - signing the MAR before giving medication).

5) ___ Professional Judgment indicates a need for review (i.e., - pattern of errors in a setting and/or by a staff; repeated errors for a particular consumer; non-medication certified staff dispensing medications; error indicates possible...
systems issues, etc.)

Category D: General Review

NOTE – Used ONLY when the incident under review does not fall into one of the above categories.

If one of the following applies, GO TO E.
1. ___ The consumer’s IPP/BMP/BIP (etc) was not implemented correctly with the result of a negative, or potentially negative impact on the consumer.

2) ___ The issue related to the incident had been identified as a need/concern but has not been addressed within the consumer’s programs.

3) ___ Staff failed to follow agency policies, regulations, or standards, resulting in a negative impact, or potentially negative impact on the consumer.

4) ___ Staff failed to provide appropriate intervention, resulting in a negative impact or potentially negative impact on the consumer.

5)___ Professional Judgment indicates a need for review (i.e., - multiple concerns; serious nature of the report; consumer report; common sense, etc.)

Section E: Verify the Following

1. ___ The incident could have occurred as reported (must apply)
2. ___ If the consumer is under the age of 18, contact Regional Child Protection
3. ___ The incident may fall within the parameters of one or more of the statutory definitions of Abuse, Neglect and Exploitation according to NDCC 25-01.3 (must apply if the consumer is over the age of 18 years of age)
APPENDIX 3

Investigative Action Level Checklist

Provider Responsibilities:

_____ An initial verbal report must be made to P&A prior to submitting a written report.

_____ Within one (1) working day, guardian/legal decision maker must be notified.

_____ Within one (1) working day of the incident, a written report (General Event Report in Therap) must be submitted to:

___ State Protection and Advocacy Project

___ Regional DD Program Unit at the HSC

___ Developmental Disabilities Division

_____ Within five (5) working days, submit a copy of the provider’s written report of all follow-up activities related to the alleged incident to:

___ The Regional Protection and Advocacy Project

___ Regional DD Program Administrator

___ Developmental Disabilities Division

This internal report must include the following:

1) Name of the alleged victim(s); date and time of alleged incident

2) **Signed** and dated statement from the person receiving services (alleged victim(s)). If the person cannot participate in an interview, or sign the statement, this must be documented within the report.

3) **Signed** and dated statements from each staff person of the organization involved in the alleged incident as to what happened, when it happened, precipitating factors to the alleged incident and the individual staff person’s involvement.

4) Documentation by the provider's chief executive officer as to the:

   **Findings of the organization in regard to the alleged incident**
   The statement of findings must include the following:
   a. What happened?
b. What immediate steps were taken to assure the health and safety of the person receiving services (risk management)?

c. Why the incident happened, i.e., consider, could the incident have been prevented? If so, how? Was the necessary training provided to staff? Were agency policies and procedures followed? If not, why not? Was the person’s plan of care followed?

d. Agency’s role, if any, in the incident occurring

e. Any supporting documentation (i.e., progress notes, charting, Medication Administration Records, relevant components of individual program or behavior plan etc.).

f. Any resultant disciplinary action.

g. Steps taken by the agency to assure the incident is not repeated. The response must indicate:
   1. who is responsible for implementation of the plan or recommendations,
   2. when it will be completed and
   3. who is responsible for follow up.
   4. once the plan is implemented, the provider must provide documentation that it was in fact completed and available to the DD Program Manager.

h. Documentation that the following parties were promptly notified of the incident AND the findings:
   1. the governing body
   2. the chief executive officer or designee;
   3. the chairperson of the provider’s Human Rights Committee, and
   4. the alleged victim’s guardian (if one has been appointed and the issue is within the guardian’s area of authority.)
   5. the person receiving services, if they are their own decision-maker.

☐ If applicable, indicate if an extension (additional time to complete the report) was requested by the provider and that the request was granted.
APPENDIX 4

Definitions

The following definitions apply to this policy:

“Active Treatment” refers to aggressive, consistent implementation of a program of specialized and generic training, treatment and health services. Active treatment does not include services to maintain generally independent clients who are able to function with little supervision or in the absence of a continuous active treatment program.

“Agency Action Level” is the second level in the Protective Services Level system.

“Alleged Perpetrator” is the person who allegedly abused, neglected and/or exploited the person with a developmental disability or mental illness. Recommended terminology: alleged staff and alleged person.

“Alleged Victim” is the person(s) with a developmental disability who allegedly was or is being abused, neglected and/or exploited. Recommended terminology: person involved.

“At Risk of Harm” means there is a strong likelihood that, if the action were allowed to continue, a person would be harmed.

“Behavior Management/Intervention Committee” is the agency committee responsible to review individual programs designed to eliminate maladaptive behavior and replace them with behaviors and skills that are adaptive and socially productive. Programs that call for any restrictive procedures must be submitted to the behavior management committee for review prior to implementation to ensure that the proposed intervention is likely to produce the desired effect, and that any risks to the person receiving services are outweighed by the risks of the behavior.

“Caretaker” is a person, organization, association, or facility who has assumed legal responsibility or a contractual obligation for the care of a person with a developmental disability or mental illness, or parent, spouse, sibling, other relative, or person who has voluntarily assumed responsibility for the person’s care (NDCC 25-01.3-01).

“Collateral Contact” is a person who may have knowledge about the allegation and/or the person(s) receiving services involved.

“Consent” means an act of reason, accompanied by deliberation, the mind weighing as in a balance the good/bad, pros/cons, information obtained on each side. It means voluntary agreement by a person in the possession and exercise of, sufficient mental capacity to make an intelligent choice to do something proposed by another or by themselves. It supposes a physical power to act, a moral power of acting and a serious, determined, and free use of these powers. It is an act unclouded by fraud, duress, or
sometimes-even mistake.

Information – all the information (i.e., facts, data, options, choice available, and the pros and cons of each) the person needs to make a decision, given in a manner in which the person can comprehend.

Capacity – the ability to understand the nature and consequences of a specified matter, to process the information received, to weigh out the information.

Voluntariness – the ability to exercise free power of choice without force, duress, undue influence or external persuasion.

Many times we feel “forced” into doing something. There can still be consent as long as we know and understand and relay back the pressure that others may be applying.

“Corrective Action Level” is the third level in the Protective Services Level System.

“Deemed Status” means the licensed DD provider has completed all requirements and has received a letter from the Division of Developmental Disabilities that allows the provider to implement the Protective Services Level System.

“Division of Developmental Disabilities” is the division of the North Dakota Department of Human Services that is responsible for administering monies for specified disabilities, licensure of DD providers, and overall quality assurance regarding the policies, regulations and administrative code sections that would apply.

“Dignity of Risk” means expressing one’s individuality by consenting to expose oneself to a possible or a known risk connected with an activity. To assist a person to exercise their right to risk, a provider must: 1) Assess the person for their current knowledge or skills involved with the desired activity. 2) Provide information/training needed to engage in the activity. 3) Ensure the person understands the potential risks. 4. Ensure the person is voluntarily exposing themselves to the risk.

“Emergency” is any situation that could have an immediate and severe or substantially detrimental impact upon a person’s physical or mental health and safety.

“Essential Services” are those social, medical, psychiatric, psychological, or legal services necessary to safeguard the individual’s rights and resources, and to maintain the physical and mental well being of the person.

“Evidence” is any information collected in the course of the investigation that has the potential to assist in establishing the truth or falsehood of the allegation.

Testimonial – All information which is given orally or in an equivalent manner, such as sign language, touch talker, Braille, etc.

Documentary – Information which is gained from documents such as policy statements, correspondence, medication logs, program plans and progress
notes. Documentary evidence may exist on paper, videotape, microfilm, on computer or other such medium.

**Demonstrative**—Items such as pictures, diagrams or maps, which may be created or become relevant during an investigation.

**Physical/Real**—any evidence that is tangible, such as a bruise, cut, injury, weapon etc.

“**General Events Report (GER)**” is the universal incident report form on the Therap system which constitutes a written report of a Serious Event or alleged abuse, neglect or exploitation. At minimum, information entered into a GER must include: a thorough description of the incident, risk management steps taken, decision making process that led to identification of type of report (i.e. What led the provider to determine it was a serious event, or what RDG was used to determine an incident was a reportable ANE issue). For providers who are on the Level System, a description of the determination regarding level of response must also be included.

“**Guardian**” – for the purposes of this policy, “Guardian” is used to describe the decision-makers that may have the responsibility to assist with and/or make decisions on behalf of a person. The types of decision-makers are:

A) **Parent(s)** – Parents, barring any circumstances such as certain divorce decrees or termination of parental rights, have broad authority to make decisions on behalf of their minor children until the children reach the age of 18.

B) **Legal custodian** – A juvenile court may appoint a legal custodian who, along with parental input can make decisions regarding the minor’s care. Or, a court may determine that a parent/parents will not be able to provide adequate parenting as needed by the child and terminate the rights of the parent/parents. In such a case, the legal custodian will make all of the care decisions without input from a parent. Legal custodians are normally appointed for a period of time, which does not exceed 18 months.

C) **Guardian of a minor** – A guardian may be appointed for a minor solely because of minority. Like parents, and legal custodians, guardians of minors do not have authority to continue their decision-making once the person becomes an adult.

D) **Guardian of an Incapacitated Person** – Minors or adults who lack the full capacity to make their own decisions may have a court appoint a full or limited “guardian of an incapacitated person”. A “limited guardian” is appointed to assist with and/or make decisions in one or more areas of the person’s life if that person has some capacity, but not full capacity for making decisions. A “full guardian” (sometimes referred to as a “general guardian”) is appointed to make decisions in most areas of a person’s life when that person is considered to have no capacity for making decisions. Guardianships of incapacitated persons do not expire on the person’s 18th birthday.

E) **Conservator** – North Dakota law also provides for the possibility of conservatorship as a means of protecting the estate of one who is unable to manage his or her finances. In this state, the term conservatorship only refers to assistance in the financial area. A person can have both a conservator and a guardian.

“**Guidelines**” are the Reporting Determination Guidelines that must be applied to an
incident to assist in determining whether a particular incident is reportable as possible abuse, neglect or exploitation. These are merely “guidelines” – each situation should also be scrutinized with “professional judgment” utilizing the totality of knowledge regarding the clientele, the staff, the facility, their mission, and the community.

“Harm” is the existence of a loss or detriment of any kind resulting from the incident:

- **Emotional** – (i.e., that which affects negatively an individual’s emotional well-being and state of mind).
- **Psychological** – (i.e., humiliation, harassment, threats of punishment or deprivation, name calling, sexual coercion, intimidation).
- **Physical** – (i.e., any physical motion or action such as striking, pinching, kicking, punching, pushing, etc.)
- **Financial** – (i.e., that which affects a person’s state of financial affairs).

“Harm is Evident” – is a loss or detriment of any kind which is noticeable or apparent to observation:

- **Emotional** – i.e., crying, unusual behaviors for that person, behaviors associated with a person when upset such as pacing, self-injury etc.
- **Psychological** – i.e., person becomes passive, withdrawn, aggressive, fearful of people, places, objects etc.
- **Physical** – i.e., bruise marks, injuries, individual displays defensive reaction to an imaginary threat, etc.
- **Financial** – failing to complete required forms for assistance programs/benefits; failing to complete transactions as requested by the person/guardian; person’s money not being used for their own well being; overdrafts not reimbursed by the responsible party, etc.

**Title XIX Guidelines** – since many persons residing in ICFs are unable to communicate feelings of fear, humiliation, etc., the assumption must be made that any actions that would usually be viewed as psychologically or verbally abusive by a member of the general public, is also viewed as abusive by the person residing in the ICF, regardless of that person’s perceived ability to comprehend the nature of the incident.

“Health Facilities” - is a division of the North Dakota Department of Health responsible to complete annual Medicaid certification of Intermediate Care Facilities (ICF). The division of Health Facilities is also responsible to investigate complaints involving the ICF and service recipients.

“Human Rights Committee” is the entity responsible for assuring that individual rights are supported and protected. Each provider agency may have its own HRC or may participate in a system-wide HRC. The committee includes people served and/or their representatives and at least one-third of the committee’s members are not affiliated with the agency. All instances of alleged abuse, neglect, or exploitation of people served are reported to the Chairperson of the Human Rights Committee in accordance with agency policy, state law, and provisions of PI-10-16.
“Incident Report” is defined as any documentation used by the provider to report and/or communicate issues which may include but are not limited to: alleged abuse, neglect and/or exploitation; failure to implement programs; medication errors; critical events involving personal injury; unknown bruising; restraint; consumer to consumer mistreatment etc.

“Individualized habilitation or education plan” – Any institution, facility, agency, or organization that provides services for persons with a developmental disability shall have a written, individualized habilitation plan developed and put into effect for each person for whom that institution, facility, or organization is primarily responsible for the delivery, or coordinating the delivery, or services. A school must have an individual educational plan for each of its students who are eligible for services under IDEA.

A plan under this section must:
1. Be developed and put into effect within thirty days following admission of the person.
2. Be reviewed and updated from time to time, but no less than annually.
3. Include a statement of the long-term habilitation or education goals for the person and the intermediate objectives relating to the attainment of those goals. The objectives must be stated specifically, in sequence and in behavioral or other terms that provide measurable indices of progress.
4. State objective criteria and an evaluation procedure and schedule for determining whether the objectives and goals are being achieved.
5. Describe personnel necessary for the provision of the services described in the plan.
6. Specify the date of initiation and the anticipated duration of each service to be provided.
7. State whether the person with a developmental disability appears to need a guardian and determine the protection needed by the person based on the person’s actual mental and adaptive limitations and other conditions, which may warrant appointment of a guardian. Any member of the individual habilitation plan team may petition, or notify any interested person of the need to petition, for a finding of incapacity and appointment of a guardian. (NDCC 25-01.2-14).

“Insufficient response” is a determination made by the Protection and Advocacy Project and/or DD that the provider’s response to the allegation of abuse, neglect and/or exploitation is not adequate or satisfactory. A determination of insufficient response may be made if: a) information required by the Level used is not contained within the provider’s response; b) steps to prevent recurrence are believed to not adequately address the issues contained within the allegation; c) some issues raised by the review are not addressed within the provider’s response.

“Intent” is that which is designed, willful, aimed, and purposeful. The definitions of abuse, neglect and exploitation must be reviewed carefully to determine if “intent” is a required element as it is not a required element of each definition.

“Investigation” is a systematic collection of information (facts) to describe and explain an event or series of events relative to the report. An investigation is required for all
allegations of abuse, neglect and exploitation that meet the level of Investigative Action.

“Investigative Action level” means the procedural requirements the provider must follow to report and investigate all allegations of abuse, neglect, and exploitation, unless the provider has been approved to implement the Protective Services Level System. If the provider is participating in the Protective Service Level System, it is the fourth level of response in the PSI Level System. Criteria requires there to be:
   a) suspected abuse, neglect or exploitation;
      and one of the following:
   b) harm to the person receiving services is evident;
   c) or this is a repeat occurrence of a similar incident within 12 months, and the person receiving services was placed at risk of harm;
   d) or insufficient response to Corrective Action;
   e) or Professional Judgment.
Criteria “a” must be met; then one of b through e.
Keys – Harm is evident; repeat occurrence/placed at risk; professional judgment.
At the Investigative Action Level there is a determination made as to whether there is a preponderance of evidence to substantiate or not substantiate the allegation.

“No Abuse, Neglect and/or Exploitation (No A/N/E)” is the first level in the Protective Services Level System. In this level, a determination has been made based on the Reporting Determination Guidelines that the incident is not reportable as an allegation of A/N/E.

“Notification” – means the requirement of the provider to notify the appropriate entities of the allegation of A/N/E within the required timelines.

“PI-10-16” – is the North Dakota Department of Human Services policy that describes the responsibilities of licensed providers of DD services to report and investigate alleged incidents of abuse, neglect or exploitation involving service recipients.

“Preponderance of Evidence” – means evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of Evidence may be determined by the greater weight of all evidence, which does not necessarily mean the greater number of witnesses, but opportunity for knowledge, information possessed, environmental factors, supporting documentation, and physical evidence.

“Professional Judgment” – is a decision reached through the application of specialized knowledge. Each situation/incident is reviewed and scrutinized utilizing the totality of knowledge regarding the clientele, the facility, their mission, and the community. Professional Judgment is one of the criteria applied in the Reporting Determination Guidelines.

“Protective Services” are the actions to assist persons with a developmental disability or mental illness who are unable to manage their own resources or to protect
themselves from abuse, neglect, or exploitation, or other hazards (NDCC 25-01.3)

“Protective Services Level System” – is an alternative form of responding to allegations of abuse, neglect, and exploitation which utilizes definitions of A/N/E currently found in NDCC 25-01.3

“Provider” is an entity licensed by the Department of Human Services under North Dakota Administrative Code (NDAC) 75-04-01 to provide services to eligible people.

“Record” means all records including those identifying specific clients, including staff notes and logs maintained by a facility; all individual records of treatment or care facilities including reports prepared by any staff of a facility rendering care or treatment; reports by an agency investigating incidents of A/N/E and injury occurring at such facility; discharge planning records; hospital, psychiatric, psychological, medical care records; school or education records; and records otherwise maintained by facilities regarding general care of clients, including facility policies and regulations, staff ratios, staff training records, and employee records (NDCC 65-5-01-02-01).

“Repeat Occurrence” is a current incident similar in nature to an incident that previously occurred within a 12-month time frame and was addressed through recommendations, instructions, reminders, etc. The reminders, recommendations, instructions, re-training etc., are intended to ensure the incident does not occur again. Staff across programs within a provider must be informed of any recommendations, instructions, reminders etc., which may pertain to them in their job or working with a particular person(s). If a facility fails to do so, they may be neglectful. If staff across programs are informed, then it would be a repeat occurrence no matter where (what home/program) the new incident occurred.

Example 1: Staff in Program A was involved in an incident and it was addressed with Program A staff only, as they are only staff to work with the involved person, and the recommendations were all person specific. An incident of the same nature occurs in Program B, with a different person and different staff. This would not be a repeat occurrence.

Example 2: Staff in Program A was involved in an incident and it was addressed with Program B staff as well, as they also work with the person. If a similar incident occurred in Program B after they were informed of the recommendations, then it would be a repeat occurrence, even though this was the first time the incident occurred with Program B.

“Report” is a verbal or written communication, including anonymous communication, alleging abuse, neglect, or exploitation of a person with a developmental disability or mental illness.

“Reportable” – is an incident that has met the criteria to be reported as possible abuse, neglect, and /or exploitation per the Reporting Determination Guidelines. An incident that is reportable is more than mere suspicion, but not established fact. A reportable
incident exists when facts, circumstances, and reasonably trustworthy information provides “knowledge of or reasonable cause to suspect” abuse, neglect and/or exploitation.

“Reporter” is the person(s), known or anonymous, who communicates or provides information about the report (allegation). The reporter’s name is confidential information.

“Risk Management” is the process to ensure the safety and well-being of the person(s) with disabilities when there is an allegation of abuse, neglect, or exploitation, mainly geared to ensure the person(s) is/are not at continued risk while the allegation is being reviewed/investigated.

“Risk of Harm” exists when there is a strong likelihood that if the action were allowed to continue, a person receiving services would be harmed.

“Substantiated Report” is a report in which the resulting investigation produces a “preponderance of evidence” that abuse, neglect, or exploitation has occurred. A determination of substantiation is only made under Investigative Action.

“Technical Assistance” is assistance provided to the provider by the Division of Developmental Disabilities, regional DD Program Management, and/or the regional Protection and Advocacy Project regarding questions or concerns related to: abuse, neglect, and/or exploitation; the process of review/investigation; rights; or other issues.

“Therap” is a web-based data system utilized by all DD service providers in North Dakota and is the designated means by which written reports of Serious Events and alleged abuse, neglect, or exploitation are provided to P&A, the DD Division and DD Program Administrators.

“Unsubstantiated Report” is a report in which the resulting investigation does not produce a “preponderance of evidence” that abuse, neglect, or exploitation has occurred.