

**DEPARTMENT OF HUMAN SERVICES
Division of Developmental Disabilities**

POLICY ISSUANCE

PI-10-16

TO: Licensed DD Service Providers
Regional DD Program Administrators
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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

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>

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 and 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.)

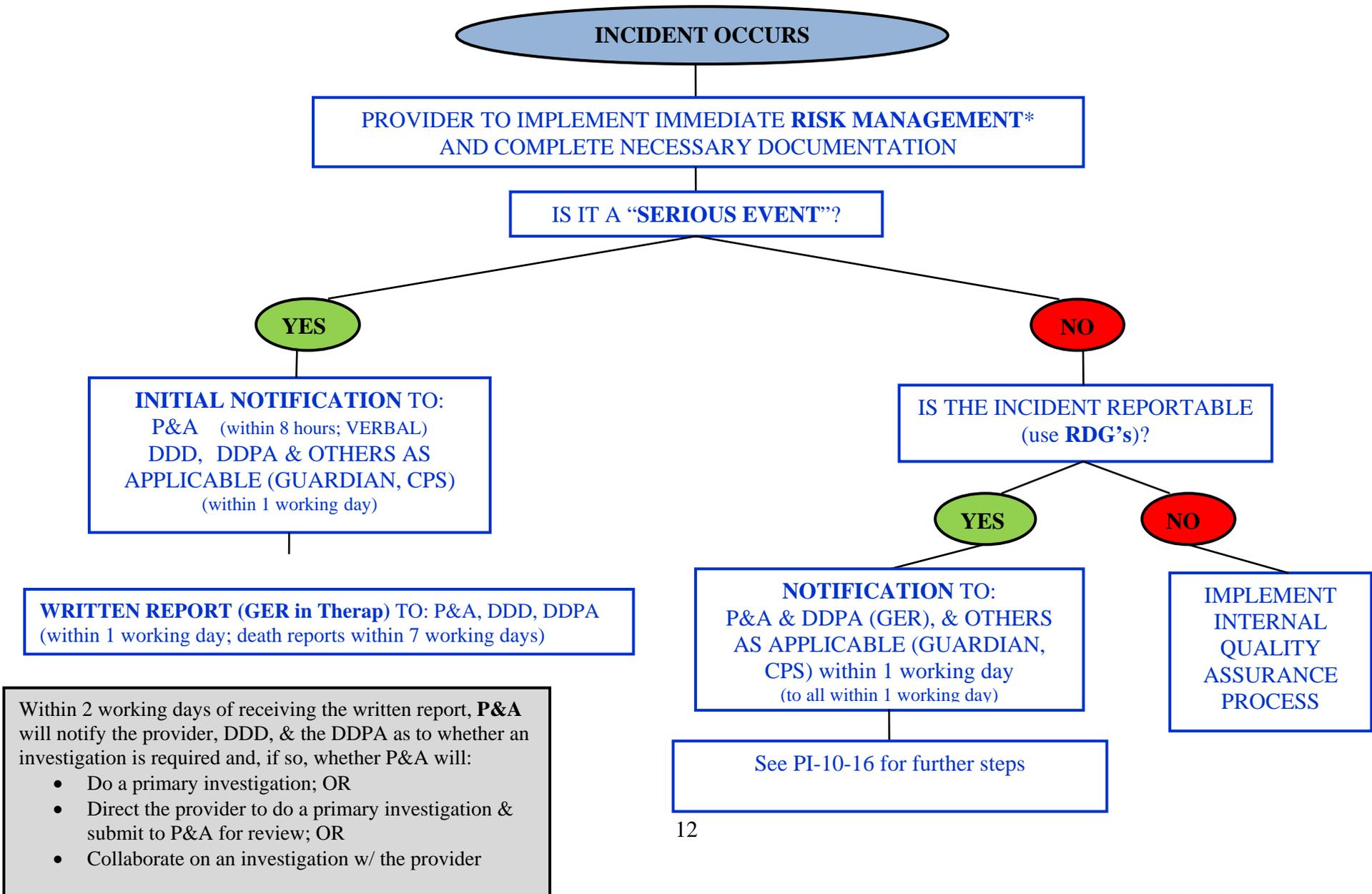
A client death must also be verbally reported to the DDD (DDD) and the Regional DD Program Administrator (DDPA) within one working day. Completed “client death notification reports” must be completed and submitted to P&A, the DDD, and DD Program Management within seven days.

5) Reporting Timelines

| | | |
|--|---------------------------------|---------------------------|
| | Initial notification to: | Written report to: |
|--|---------------------------------|---------------------------|

| | P&A* | DDD, DDPA, & OTHERS AS APPLICABLE (GUARDIAN, CPS) | P&A, DDD, DDPA, & OTHERS AS APPLICABLE (GUARDIAN, CPS) |
|-----------------------|-----------------|--|---|
| Serious Events | 8 hours | 1 working day | 1 working day |
| Deaths | 8 hours | 1 working day | 7 working days |

* Initial notification to P&A is verbal



* **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 a 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

with Regional DD Program Management.

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 policies 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.

- I. 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

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.