DDD-PI-006

TO: DD Service Providers
Regional DD Program Administrators
DD Case Managers
Protection & Advocacy Project
Health Facilities
Child Protective Services

FROM: Gene Hysjulien, Director
Disability Services Division

DATE: May 1, 2005

SUBJECT: DDD-PI-006 - Department of Human Services Policy and Procedure: Response to Reports of Alleged Incidents of Abuse, Neglect, or Exploitation of Individuals Receiving Developmental Disabilities Services from Licensed DD Providers.

Effective Date: **May 1, 2005**

This policy replaces the previous policy and attachments issued on June 6, 2002 with an effective date of July 1, 2002.

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.

The State of North Dakota has an overriding obligation to ensure that individuals 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 individuals receiving services and supports. A fundamental element of this strategy is the systematic identification of health and safety risks facing each individual 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 or program participants.

2. Administrative policies and procedures for reporting and investigating alleged incidents of abuse and neglect involving service participants**.** These policies/procedures specify the reporting/investigative time frames as well as the steps that must be taken to protect the affected program participants 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 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 MR/DD services to report 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 incidents of abuse and neglect. Steps should also be taken to ensure that all such employees receive pre-service and periodic in-service training in identifying and properly reporting incidents of abuse and neglect.

b. A description of the steps that will be taken to ensure that all abuse and neglect 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 participant (and his/her legal guardian, where appropriate) is notified, in a medium and manner understandable to the individual involved, of how to report alleged incidents of abuse, neglect and exploitation.

B. Completion of periodic, in-depth reviews of the services and support furnished to persons with mental retardation and related disabilities by the responsible case management agency. These reviews will include on-site observations to determine the appropriateness of the services and supports being furnished to consumers and families. Reports summarizing the findings should identify any follow-up corrective actions that needs 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 consumers and others concerning the appropriateness and quality of the services provided (including allegations of mistreatment).

The various components of the states quality assurance 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 harms way, assuring that the services and supports provided to such individuals are appropriate and effective, and identifying and swiftly rectifying incidents of abuse, neglect and sub-standard care when they occur.

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

II. Policy

A. Who Must Report Suspected Abuse, Neglect or Exploitation

Every medical, mental health, or developmental disabilities professional, educational professional, police or law enforcement officer or caretaker having knowledge of or reasonable cause to suspect that an adult with developmental disabilities or mental illness coming before the individual providing services in that individuals official or professional capacity is abused, neglected, or exploited shall report the circumstances of that abuse, neglect, or exploitation.

Employees of provider agencies are encouraged to report incidents of suspected abuse, neglect and exploitation internally as described in this policy and the agency's policies and procedures in order to ensure that prompt risk management steps are taken. However, if the employee is not comfortable in reporting internally, or if the employee questions whether the agency will act on the report, then the employee may report directly to the Protection and Advocacy Project. In every case, the employee must report any alleged incident of abuse, neglect or exploitation either internally or directly to the Protection and Advocacy Project.

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 the report.

C. 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. 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. Failure to Report

All **suspected** incidents of abuse, neglect or exploitation must be reported. It is the provider's responsibility to:

1. report the allegation to Regional DD Case Management, the State DD Unit, the individual's guardian, if appropriate, the Protection & Advocacy Project, and Child Protective Services, if the individual is under age 18, the governing board, and the Human Rights Committee.

   If the incident appears to be of a criminal intent or nature, the provider should also contact law enforcement immediately. In addition, the provider will inform the consumer and/or guardian of their right to file a complaint with law enforcement as well.

2. implement risk management steps,

3. assess, and

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

Agency failure to report any suspected incidents of abuse, neglect or exploitation may result in a formal investigation by D.D. central office staff, Regional D.D. Case Management and the Protection and Advocacy Project. Applicable corrective action may include, but is not limited to: notification of Health Facilities for ICF/MRs; 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).)

E. Incident Report

An 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 exploitation; failure to implement individual client programs; medication errors; critical events involving personal injury; unknown bruising; restraint; consumer to consumer mistreatment; or any event determined to be atypical.
Staff must document and notify supervisor of incident report immediately or by the end of their assigned shift.

Providers must review incident reports in a timely manner and apply the Reporting Determination Guidelines (Appendix 1) to determine if the incident meets the criteria for reporting the incident as alleged abuse, neglect and exploitation.

In addition, providers must assure that all incident reports are available and accessible to DD Case Management upon request.

F. Risk Management

Risk Management must be implemented and documented immediately after an incident has occurred. Required risk management procedures are outlined in Appendix 3.

G. Reporting Determination Guidelines

All incident reports must be reviewed in a timely manner according to the Reporting Determination Guidelines (Appendix 1) 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, and Exploitation. 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 abuse, neglect or exploitation may have occurred.

H. Incident Reporting and Agency Follow up

1. An incident must be reported if it meets the criteria outlined in the Reporting Determination Guidelines for Abuse, Neglect and Exploitation. If the incident does not meet the reporting guidelines for abuse, neglect and exploitation, the provider will proceed within agency policy in regard to personnel action, administrative or quality assurance protocol.

2. When the incident meets the Reporting Determination Guidelines:

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

    b. If the individual is under the age of 18:
        1) Report the incident to Regional Child Protective Services
        2) Inform the Regional Protection and Advocacy Project of the incident and the report to Child Protective Services.
        3) Inform the Regional D.D. Program Administrator or designee of the incident and the report to Child Protective Services

4) Inform the consumer's guardian/parent of the incident
   (Take into account who the alleged perpetrator is. If the allegation identifies the parent/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).

5) 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,

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

7) The provider's follow up investigation report should indicate that Child Protective Services was contacted but that the representative indicated that 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.

3. 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 and submit copies of the Incident Report and any supporting documentation i.e., photos etc. to Agency "B" and the Regional P&A office. (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 consumer across environments, the agency(ies) will notify the individual’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 consumer.

4) If Agency “B” determines the incident is not reportable, Agency “B” will notify the Regional P&A Advocate 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 the Regional P&A office 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 the Regional P&A Project. Each receiving agency will then conduct their assessment utilizing the Reporting Determination Guidelines and notify P&A 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 consumer across environments, the agency(ies) will notify the individual’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 consumer.

4. Reporting of Incident Involving Non-facility staff

   If an agency has <u>knowledge of or reasonable cause to suspect</u> 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 agency will implement whatever risk

management steps they are capable of implementing, and notify the Regional P&A advocate immediately of the incident. Protection & Advocacy is responsible to take the lead in conducting the investigation. Agency staff may be asked to provide assistance in gathering information, interviewing the consumer, etc., at the request of the Protection & Advocacy staff.

If the regional advocate is not available and the incident falls under the “Emergency “ or “Imminent Danger” Levels, the agency will notify the State P&A office (1-800-472-2670) during regular work hours or the On-Call Advocate (1-800-642-6694) after hours, weekends and holidays.

The agency will also contact Regional DD Case 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 Disability Services Division-DD Unit. 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. Contact P&A.

1. Within 8 hours if the report is a Class I -
   Class I is defined as a report that 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.
   Within first working day if the report is a Class II or III
   Class II is defined as a report which may present 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 or resultant death or increased harm or risk of harm.
   Class III is a report, which presents no safety or health risks, or one that appropriate Risk Management steps were implemented immediately, thereby eliminating the danger/risk.

   If the initial report is from outside the service provider agency directly to P&A, then P&A will notify the service provider within 8 hours after the

alleged incident is brought to their attention if the incident is Class 1; or within the first working day for Class II and III reports.

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, proceed with the following steps A through C, which include notification of the incident to DD, P&A, and the guardian. The consumer 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, 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 DDCM and P&A, as needed. Once law enforcement has concluded their investigation, the provider will submit the results of the investigation to DD Case Management and the Protection & Advocacy Project, and will also notify the consumer/guardian of the final report and outcome. DD Case Management, the provider and Protection & Advocacy will determine if additional follow up or action within the DD system is needed.

2. Contact the individual's guardian, if one has been appointed, and the issue is within the guardian's area of authority

    a. <u>Within 8 hours if the report is a Class I</u>
    Class I is defined as a report that 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.

    b. <u>Within first working day if the report is a Class II or III</u>
    Class II is defined as a report which may present 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 is a report, which presents no safety or health risks, or one that appropriate Risk Management steps were implemented immediately, thereby eliminating the danger/risk.

    Notification of the guardian regarding the alleged incident may consist of a phone call or written summary of the alleged incident. Name(s) of other consumers and/or staff involved in the incident and/or other

confidential information, should not be included in contacts or correspondence with the guardian. However, documentation of guardian notification must be included in the agency report.

B. Contact the Regional DD Program Administrator or designee within one working day after the alleged incident.

C. Within three days after the incident, submit a copy of the incident report, initial risk management activities, the individual data/face sheet, and *guardianship papers (if a guardian has been appointed) to the

1. *Regional P&A Project, (P&A is the only entity that needs a copy of the guardianship papers)

2. Regional D.D. Program Administrator, and

3. DD Unit of the Disability Services Division

D. Within five working days after the alleged incident, submit a written report of all follow-up activities related to the incident to the Regional Protection and Advocacy Project, Regional D.D. Program Administrator, and the D.D. Unit of the Disabilities Services Division

1. Inform the individual, and/or the individual's guardian (if one has been appointed and the issue is within the guardians area of authority) of the findings. (see "G" Guardian notification)

2. If additional time is needed to complete the internal assessment/investigation, the agency must contact the State D.D. Unit to request an extension and inform the P&A Project 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 consumer 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 incident as to what happened, when it happened, precipitating factors to the incident and the individual staff persons involvement. (The staff interviewed must sign their written statement. If the agency 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 providers chief executive officer 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 individual 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 individual (risk management)
      3) Why the incident happened. Consider whether or not the incident could have been prevented, and if so how?; was the necessary training provided to staff? Were agency policies and procedures followed? Was the consumer's plan of care followed? Role of the agency that may have contributed to the incident occurring, etc.
      4) Any resultant disciplinary action taken by the agency.
      5) Steps taken by the agency 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 D.D. Case 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 providers Human Rights Committee,
         (d) the alleged victim's guardian (if one has been appointed and the issue is within the guardians area of authority.) and
         (e) The consumer 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. The Protection and Advocacy Project will determine the substantiation or non-substantiation of the incident in their Letter of Findings.

c. If the Chief Executive Officer of the agency 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 agency/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 Protection and Advocacy Project or request the Protection and Advocacy Project to complete the investigation independently.

F. Notification to the Human Rights Committee

All incidents involving consumer rights violations and/or restrictions MUST be reported to the Human Rights Committee. Providers, who have an internal Protective Service Review Committee or quality assurance team that reviews all incident reports utilizing the Reporting Determination Guidelines, do 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 (DDD-PI-006).

Providers must document whether or not the incident was reported to the Human Rights Committee; and if the incident was reported to HRC, the date of notification. This can be accomplished by either attaching the Checklist for DDD-PI-006, noting it on the Incident Report Form, or documenting it in the internal investigation report.

If upon review of the incident report/investigation, the Protection & Advocacy Project believes the incident should have been reported to HRC but was not, the Project will contact the provider to request this be done or will make this recommendation to the provider agency in the P&A Letter of Findings.

The Human Rights committee may, upon request, have access to agency 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, the Protection & Advocacy Project, and DD Case Management may also ask the Human Rights Committee to review.

G. Guardian Notification

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

H. Protection and Advocacy Responsibilities

1. Upon receipt of the report of the alleged incident, the Regional P&A Project will assess the need for an investigation by that agency. The Project may accept the Providers report in whole or in part, or may conduct an independent investigation. As warranted, the class type of report is determined and the immediacy of initiating investigation activities is established (as appropriate). A review will be completed with the provider regarding risk assessment and risk management, including involvement of law enforcement or other entities.

   By statute, P&A staff have access to providers, facilities, and staff, individual records, clients 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 P&A Project so as to permit them to promptly complete their investigation."

2. Within 30 days of receipt of the report from the Provider, the Regional P&A staff will submit a written report to the State P&A Project for review and will determine whether or not the incident is substantiated as abuse, neglect or exploitation. Within 7 days of this review, the P&A staff will mail a letter of findings to the Providers CEO, with copies to
   a. Providers Board President
   b. Human Rights Committee (if appropriate)
   c. Regional D.D. Program Administrator
   d. Disability Services Division - D.D. Unit
   e. Alleged victims guardian, if appropriate
   f. The consumer if they are their own decision-maker
   g. Division of Health Facilities, if appropriate

3. Recommendations made to the service provider within P&A's letter of findings may require a written plan of response from the provider. In these cases, copies of the provider response must be forwarded to the Regional D.D. Program Administrator and the state Developmental Disabilities Unit.

I. Developmental Disabilities Case Management/Disability Services Division – State DD Unit Responsibilities

1. Regional D.D. Case Management and State D.D. Unit staff will review all reports and assessments completed by the provider. The DD Unit will

determine if additional reporting or information is required, and may impose corrective measures upon the service provider in consultation with the Regional D.D. Case Management Unit. There may be situations when Developmental Disabilities regional and state staff, Protection and Advocacy 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 D.D. Case Management will follow up on alleged incidents of abuse, neglect and exploitation through the quality enhancement review (QER) process, to determine if the providers recommendations and plan to prevent recurrence was implemented as stated in the agency report. Case Management will also review the incident and findings with the consumer and guardian, during the QER process to address any additional areas of concern. D.D. Case Managements follow-up will focus on the health, safety and quality of life for the individual. The abuse, neglect, and exploitation should be re-framed in the QER to identify the activities that have taken place to resolve the situation and minimize the likelihood of a similar incident recurring.

3. Repeat incidents, or outstanding issues of a systemic nature will be addressed with the Chief Executive Officer at the agency level by the Regional D.D. Program Administrator as it relates to quality assurance. The State D.D. Unit is available for technical assistance in this area at the request of the D.D. Program Administrator. The State D.D. Unit 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 Disability Services Division - D.D. Unit as the licensing entity in consultation with Regional D.D. Case Management.

J. Nonconcurring Conclusions/Findings

1. If the Protection and Advocacy Project has questions related to the provider's internal investigation, or the Project does not concur with the conclusions of the provider's internal investigation, or the provider does not concur with Protection and Advocacy's Letter of Findings, the case will be reviewed by the Provider agency and Protection and Advocacy staff. If requested, staff from Regional DD Case Management and/or the DD State Office may participate. If agreement is not reached through this process, the final determination will be made by the Protection and Advocacy Project relative to the substantiation or non-substantiation of the allegation. A grievance procedure is available to the consumer, guardian and provider, through the Protection and Advocacy Project.

2. Approval and acceptance of provider plans to resolve identified problems and implement changes to prevent future incidents, rests with the Disability Services Division - D.D. Unit as the licensing entity, in consultation with Regional D.D. Case Management.

K. Training and Monitoring of Abuse, Neglect and Exploitation

1. Providers must participate in abuse, neglect and exploitation training as mandated by the Disability Services Division. Training will Include DDD-PI-006 (a historical review of incident reports to determine compliance), conducting investigations and response planning. The DD Unit will coordinate and provide training with the P&A Project.

IV. Protective Service 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 remains the same in the PSI Level System, 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 the Regional Protection and Advocacy Project and Regional DD Case Management. However, only reports that meet the Investigative Action Level are reported to the Disability Services Division - DD Unit.

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 the Protection and Advocacy Project.

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 the Protection and Advocacy Project and Regional DD Case Management. The Disability Services Division-DD Unit may permit a provider the opportunity to utilize the Protective Service 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 PSI Level System is sent to the provider and a copy placed in the provider's licensure file in the Disability Services Division.

The Protective Services Level System was developed through collaborative efforts of the State and Regional Protection and Advocacy Project, Provider representatives, and the Department of Human Services Developmental Disabilities Unit and Regional DD Case Management. 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 Investigative Action at any time. The Disability Services Division reserves the right to modify the Protective Services Level System or terminate a Provider's involvement in the Protective Services 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 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 Disability Services Division (DSD).

2. In order to be granted "Deemed Status" a licensed Developmental Disabilities provider must request to participate in the Level System process. The process will be detailed as follows: There are four "Key" agencies involved: the licensed provider requesting to participate; the Regional Developmental Disabilities Case Management Unit; the ND Department of Human Services Disability Services Division (DSD); and the ND Protection & Advocacy Project (P&A).

When a Provider requests to participate with the Level System, whether that request is made to the Regional P&A Advocate, the Regional DD Program Administrator/DDCM, or State DSD, 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 DSD. DSD 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 DSD and/or informed they should write a letter to the Director of DSD, to request participation.

c. Once a Provider has requested to participate, DSD will contact the appropriate identified "Key Contact" people, **AND** the Regional P&A Advocate and the Regional DD Program Administrator.

d. Agreement must be reached with the appropriate Key Contact people and the Regional people for a Provider to begin the Level System process. This includes a commitment made by the Regional parties (DDCM and P&A) to participate fully with the process, and commitment by the Key Contact people to participate as allowed by schedules.

e. Once the agreement has been reached, the Regional people, Provider and the appropriate Key Contact people 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 DSD, the appropriate Key Contact person from P&A, and the Regional P&A Advocate. 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 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 within the past year, they need to arrange for it.

f. The Historical Review Process will entail meetings by the Regional people, the Provider and to the extent possible, the Key Contact people, to review the Provider's past year's Incident Reports. This review will include the following Process:
    Review Incident Report;
    Assess Risk Management;
    Apply Reporting Determination Guidelines;
    Determine "E" – Is the Incident Reportable

    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, the Regional people, and the appropriate Key Contact people 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 involved parties (Regional people, Key Contact people from DSD and P&A), the Director of DSD will then write a letter to the Provider to proceed to Phase Two.

j. Phase Two involves the Provider, Regional people and the appropriate Key Contact people 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 DSD and the appropriate Key Contact person from P&A.

k. Phase Two training consists of a review of the Level System, a review of the Process, a review of the Level 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 team believes the Provider is ready to request "Deemed Status" it will be discussed at one of the regularly scheduled meetings. At this point, the Regional P&A Advocate will contact their Key Contact person and the Regional DDCM will contact their Regional DD Program Administrator, and together they will contact DSD.

Agreement must be reached with all parties that the Provider is ready to completely implement the Level System.

o. Once this agreement is reached a Letter of Support (can be e-mail) will be sent to DSD from the following parties to verify that agreement has been reached:

   a. Regional DD Program Administrator and DDCM
   b. Regional P&A Advocate and Key Contact Person from P&A

p. Once the Letters of Support from Regional DDCM/Program Administrator and Regional/Key Contact P&A are received, DSD will instruct the Provider to write a letter to the Director of DSD requesting "Deemed Status."

q. If agreement is not reached among the Regional or Key Contact people, a meeting will occur with the Provider Director, Regional Advocate, Regional DD Program Administrator/DDCM, DSD, and the appropriate Key Contact person from the Project 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 DSD, informing the Provider of their approval for Deemed Status, and the effective date contained within the letter, to begin implementing the Protective Services Level System.

s. The decision of the DSD Director is final, although a Provider may re-apply in the future.

t. 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 the "Investigative Action" process at any time. The DSD reserves the right to modify or terminate "Deemed Status" at any time.

C. <u>Implementation of the Protective Service Level System</u>

1. Review of Incident

   a. Staff must document and notify supervisor of incident report immediately or by the end of their assigned shift.

   b. Risk Management steps are implemented and documented.

c. The Reporting Determination Guidelines are applied to determine if the incident is reportable as abuse, neglect and 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 5. The criteria will determine what level of response is required based on whether or not harm to the consumer is evident; if the consumer 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 consumer 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 consumer is evident (risk of harm may be present) AND
         (c) this is a repeat occurrence of a similar incident with in 12 months - consumer 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) consumer 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 consumer is evident, OR
         (c) this is a repeat occurrence of a similar incident within 12 months -consumer was placed at risk of harm, OR
         (d) insufficient response to Corrective Action (determined to 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 agency Chief Executive Office/designee. The Protection and Advocacy Project and the Regional DD Program

Administrator/Disability Services Division 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, the Protection and Advocacy Project and Developmental Disabilities depending upon the Level of Response and submit the report within the established timelines. (See Appendix 6).
   1) <u>Agency Action</u>
      (a) Notify Regional Protection and Advocacy Project and Regional DD Program Administrator within 1 working day.
      (b) Complete written response to incident. Response may be the actual incident report and must include risk management steps taken and how it will benefit the consumer.
      (c) Send the report/incident form to the Regional Protection and Advocacy Project and Regional DD Program Administrator within 5 working days.
      (d) Notify guardian upon completion of the review.

   2) <u>Corrective Action</u>
      (a) Notify Regional Protection and Advocacy Project and Regional D.D. Program Administrator within 1 working day.
      (b) Verify and document risk management steps.
      (c) Submit written documentation to P&A and Regional DD Program Administrator within 5 working days. Report may be the actual incident report. 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 consumer.
      (d) Notify guardian upon completion.

   3) <u>Investigative Action</u>
      See Implementation of Investigative Action Section III.

Report of Suspected Child Abuse or Neglect Form, ND Department of Human Services, Children and Family Services – SFN 960 (Rev.09-2001) is available on the North Dakota Website (Discovernd.com, Government, State Forms, 960)