

Definitions/Explanation of Terms

PI-10-16

"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. Criteria requires there to be:

- a) suspected abuse, neglect and exploitation (A/N/E)
- b) and no harm or risk of harm to the consumer
- c) and this is not a repeat occurrence of a similar incident within 12 months.

All three criteria must be met.

Key - No harm, no risk of harm and not a repeat occurrence. There is no determination of substantiation made at this level.

"Alleged Perpetrator" is the person who allegedly abused, neglect and/or exploited the person with a developmental disability or mental illness.

Recommended terminology: alleged staff; alleged person.

"Alleged Victim" is the person(s) with a developmental disability or mental illness, who allegedly was or is being abused, neglected and/or exploited. Recommended terminology: consumer involved.

"At Risk of Harm" means there is a strong likelihood that, if the action were allowed to continue, an individual 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 individual 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 individual(s) 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 individual can comprehend.

Capacity - the ability to understand the nature and consequences of a specified matter, to process the information received, to weigh out the information.

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. Criteria requires there to be:

- a) suspected abuse, neglect and exploitation
- b) and no harm to the consumer is evident
and one of the following apply:
- c) this is a repeat occurrence of a similar incident within 12 months and the consumer was not placed at risk of harm
- d) or this is a first time incident within 12 months and the consumer was placed at risk of harm

e) or insufficient response to Agency Action.

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

Keys - no harm; repeat/no risk of harm; first time incident and consumer placed at risk of harm.

There is no determination of substantiation made at this Level.

"Deemed Status" means the licensed DD provider has completed all requirements and has received a letter from the Disability Services Division that allows the provider to implement the Protective Services Level System.

"Developmental Disabilities Division" 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 an individual to exercise their right to risk, a provider must: 1) assess the individual for their current knowledge or skills involved with the desired activity. 2) provide information/training needed to engage in the activity. 3) ensure the individual understands the potential risks. 4. Ensure the individual is voluntarily exposing themselves to the risk.

"Emergency" is any situation that could have an immediate and severe or substantially detrimental impact upon an individual'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 individual.

"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 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.

"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 an individual. 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 judgement" 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 an individual'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 individual, behaviors associated with an individual when upset such as pacing, self-injury etc.

Psychological - i.e., individual 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 individual/guardian; individual's money not being used for their own well being; overdrafts not reimbursed by the responsible party, etc.

Title XIX Guidelines - since many individuals residing in ICF/MRs are unable to communicate feelings of fear, humiliation, etc., the assumption must be made that any actions that would usually be viewed as psychologically or verbally abusive by a member of the general public, is also viewed as abusive by the individual residing in the ICF/MR, regardless of that individual'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 for the Mentally Retarded (ICF/MRs). The division of Health Facilities is

also responsible to investigate complaints involving the ICF/MR 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 individuals served and/or their representatives and at least one-third of the committee’s members are not affiliated with the agency. All instances of alleged abuse, neglect, or exploitation of individuals served are reported to the Chairperson of the Human Rights Committee in accordance with agency policy, state law, and provisions of PI-10-16 (formerlyDDD-PI-006).

“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 individual client 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 individual based on the individual's actual mental and adaptive limitations and other conditions, which may warrant appointment of a guardian. Any member of the individual habilitation plan 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" - 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 consumer is evident;
- c) or this is a repeat occurrence of a similar incident within 12 months, and the consumer was placed at risk of harm;
- d) or insufficient response to Corrective Action;
- e) or Professional Judgement.

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

Keys - Harm is evident; repeat occurrence/placed at risk; professional judgement.

At the Investigative Action Level there is a determination made as to whether there is a preponderance of evidence to substantiate or not substantiate the allegation.

"No 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.

If the guardian cannot be reached after a reasonable number of attempts, the facility shall send a letter (possibly registered or certified mail, if appropriate). If the RDDPA is not available, the consumer's DD case manager will be notified of the allegation. For notification to P&A, a message may be left on the answering machine if the regional advocate is not available. For emergency situations when the advocate is not available: During business hours: 1-800-472-2670 or after business hours: 1-800-642-6694. These contacts should be made only if: a) the regional advocate is not available; and b) the allegation requires immediate attention; or c) the provider requires immediate technical assistance.

"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 Judgement" - 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 Judgement 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 individuals.

“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 individual(s). If a facility fails to do so, they may be neglectful. If staff across programs are informed, then it would be a repeat occurrence no matter where (what home/program) the new incident occurred.

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

Example 2: Staff in Program A was involved in an incident and it was addressed with Program B staff as well, as they also work with the individual. If a similar incident

occurred in Program B after they were informed of the recommendations, then it would be a repeat occurrence, even though this was the first time the incident occurred with Program B.

“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 individual(s) 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, an individual 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 Disability Services Division - DD Unit, regional DD Case 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; consumer rights; or other issues.

“Unsubstantiated Report” is a report in which the resulting investigation does not produce a “preponderance of evidence” that abuse, neglect, or exploitation has occurred.

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