



U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Administration on Developmental Disabilities

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Developmental Disabilities

4. Key Word: Federal Access
to P&A Records

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PROGRAM INSTRUCTION

TO: Directors, State Protection and Advocacy Systems

SUBJECT: Access by the Department or Other Authorized
Federal Officials to Client Records or
Other Records of the Protection and Advocacy
Systems (P&As)

LEGAL AND
RELATED

REFERENCES: Developmental Disabilities Assistance and Bill of
Rights Act, as amended, 42 USC 6000, et. seq.

45 CFR Part 1386 amended November 20, 1989
(54 FR 47982)

45 CFR Parts 74.24 (nongovernments) and 92.42(e)
(governments)

CONTENT: This instruction provides guidance to States on
the requirements for the P&As to allow authorized
representatives of the Department of Health and
Human Services or other authorized Federal
officials access to client records or other
records of the P&As. Section 104 of the
Developmental Disabilities Assistance and Bill of
Rights Act (the Act) requires that each recipient
of assistance under this title (which includes the
P&As), shall keep such records as the Secretary
shall prescribe. It further requires that duly
authorized representatives of the Secretary of
Health and Human Services and the Comptroller
General of the United States shall have access for
the purpose of audit and examination to any books,
documents, papers, and the records of the
recipients of assistance under this title that are
pertinent to such assistance. The final rule,
Part 1386, Section 1386.21(b)(1) prescribes: "The
client's record is the property of the P&As which
must protect it from loss, damage, tampering, or

use by unauthorized individuals. The P&As must:
(1) keep confidential all information contained in a client's records including information contained in an automated data bank; this requirement in no way limits or restricts access by the Department or other authorized Federal officials to the client's records or other records of the protection and advocacy system for purposes of carrying out the responsibilities of their offices. It also does not limit access by parents or legal guardians of minors unless prohibited by State law, court order or the rules of attorney-client privilege."

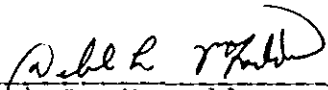
INSTRUCTION: States and P&A grantees are advised that in order to be in compliance with the Act, P&A client records and other program records must be made available to authorized Federal representatives who are performing the monitoring responsibilities of the Administration on Developmental Disabilities. These responsibilities include conducting Program Administrative Reviews (PARs). While performing PARs, Federal officials are subject to the same requirements as the P&As regarding the protection of client's records from loss, damage, tampering, use by unauthorized individuals and confidentiality of information contained in these records.

EFFECTIVE
DATE:

Date of Issuance

INQUIRIES
TO:

Regional Administrators, HDS



Deborah L. McFadden
Commissioner
Administration on Developmental
Disabilities

COPY TO: Regional Administrators, HDS
NAPAS