

HB 1014
Protection & Advocacy Project (P&A)
House Appropriations/Human Resources Division
Testimony of Teresa Larsen, Executive Director
January 8, 2021

There is a protection & advocacy (P&A) agency for individuals with disabilities in every U.S. state and territory. While most are private, non-profit entities, in ND the P&A is an independent state agency with a seven-member governing board. The overall purpose of the P&A is to protect, and advocate for, individuals of all ages with all types of disabilities.

In ND, P&A is statutorily authorized under NDCC § 25-01.3 with sections for definitions, the governing board, reporting of alleged abuse & neglect, P&A authority, access, investigations, and confidential information. Accompanying rules are in NDAC Title 65.5 specific to organization of the governing board, relevant definitions, access to records, authority of P&A, grievance procedures, and public inquiries. There are also federal laws and regulations that apply to each of the federal grants.

I. PROGRAM OVERVIEW – FUNDING

P&A continues to receive eight grants from the federal government. These grants come through the:

- U.S. Department of Health & Human Services: Developmental Disabilities (DD), Mental Health (MH), Assistive Technology (AT), Help America Vote Act (HAVA), Traumatic Brain Injury (TBI);
- U.S. Department of Education: Individual Rights (PAIR);
- Social Security Administration: Beneficiaries of Social Security (PABSS), Strengthening Protections for Social Security Beneficiaries (Rep Payee).

ND is a minimum allotment state for federal grants. As you can see from the chart that follows, funding has been mostly stagnant for these grants.

NINE YEAR HISTORY OF FEDERAL GRANT FUNDING									
	2012	2013	2014	2015	2016	2017	2018	2019	2020
DD	384,693	362,881	362,881	362,881	384,693	390,405	404,556	404,556	405,053
MH	429,100	406,700	428,000	428,000	428,000	428,000	428,000	428,000	428,000
PAIR	175,632	166,132	171,598	171,598	171,598	171,598	171,598	171,598	171,598
AT	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000
PABSS	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000
TBI	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000
HAVA	70,000	70,000	70,000	70,000	70,000	70,000	98,209	98,209	105,261
REP PAYEE							60,000	62,137	62,667
TOTAL	1,259,425	1,205,713	1,232,479	1,232,479	1,254,291	1,260,003	1,362,363	1,364,500	1,372,579

NOTE: Federal grants are based on the fiscal year running from October – September with the exception of the Rep Payee grant which runs from August – July.

P&A continues to be the recipient of a contract from the ND Department of Human Services/Vocational Rehabilitation Division to implement the Client Assistance Program (CAP). This is a federally funded grant designed to assist individuals with disabilities to address challenges they may experience with federally funded rehabilitation programs (Vocational Rehabilitation, Centers for Independent Living, and Tribal Vocational Rehabilitation). The service agreement for the upcoming biennium is budgeted at \$263,834.

P&A was audited by the Office of the State Auditor in 2019 for the two-year period ending June 30, 2018. There were no findings.

II. SERVICES

P&A services include information & referral, education & training, advocacy, protective services, legal representation, and systems advocacy. Over the last two federal fiscal years, P&A provided advocacy, legal representation, & protective services investigations for 1,970 clients (1,100 in FY 2019 and 870 in FY 2020). The previous two years totaled 2,321.

While there was a decrease in cases due to the pandemic, information and referral services totaled 5,652 for these same fiscal years, an increase of 961 from the previous two years. 3,355 individuals participated in education & training activities in these two years as compared with 5,773 for the previous two years. Again, the pandemic had an impact as education & training activities had generally been provided in-person and were “shut down” when the pandemic started. P&A has been able to begin using TEAMS or ZOOM to successfully execute these activities.

Each federal fiscal year, as required by federal grantors, P&A develops or revises its priorities after receiving public input. For federal fiscal years 2019 & 2020, service requests/reports were specific to the following priorities:

	<u>FY 2019</u>	<u>FY 2020</u>
Protective Services (a/n/e)	64.8%	64.4%
Education	20.6%	19.8%
Employment	2.0%	1.4%
Community Inclusion	10.0%	11.3%
Healthcare	1.4%	1.3%
Criminal Justice	0.6%	1.6%
Other, including accessibility	0.6%	0.2%

The statistics continue to show a consistent trend over the years with protective services making up close to 2/3 of the casework. In these situations, P&A’s role is to conduct objective investigations or to review investigations completed by providers. P&A addresses identified problems such as a change in guardianship.

It is important to note that P&A uses the least intrusive method in its casework. In other words, litigation is a last resort. While there really is no typical case, I have provided some examples in **Attachment A**.

P&A is focused on exercising the rights of its clients and is dedicated to working with its clients until their issues are resolved. Of the closed service requests in FY 2019 and FY 2020, over 90% were fully or partially resolved in the clients' favor. In July 2020, 478 clients (or their parents/guardians) were sent surveys and asked about their satisfaction with services provided by P&A. 118 (26.22%) responded with 92 answering the relevant question. Of those, 87 (94%) checked that they were satisfied with the help they received from P&A.

P&A is working with developmental disabilities providers, along with the DHS/DD Division, to identify ways to make the quality assurance system less onerous on everyone. This includes responses to reports of alleged abuse, neglect, or exploitation. We all believe there are areas for improvement. P&A also collaborates with the DD Division to systemically implement training and monitoring activities for service providers.

P&A provides its services through ten offices around the State – one in each of the eight “major cities” as well as in Belcourt and Grafton. The Grafton office is at the Life Skills & Transition Center, the Devils Lake office is at the School for the Deaf, and the Jamestown office is located at the State Hospital.

P&A is staffed with 28.5 FTE's. This includes seventeen advocates, two program directors, a director of policy & operations, three attorneys, a half-time legal assistant, a fiscal manager, an executive director, and two full-time administrative assistants. This model works well for our geographically large state, allowing staff to engage personally with clients, families, and other stakeholders. Last Session, the Legislature added an additional attorney position to staff the Olmstead Commission. The newly hired Director of Policy & Operations is not attorney while the individual who retired was one. P&A has

been employing a temporary staff person to provide work under the Help America Vote Act (HAVA) grant. An organizational chart is attached.

III. 2019 – 2021 BIENNIUM

Besides General Funds, P&A's estimated income is from the eight federal grants and the contract with DHS for CAP. P&A also receives Medicaid funds through DHS as it serves as an independent screener of mandated reports of serious events concerning individuals with developmental disabilities. These are categorically defined with examples to include broken bones or sexual assault. The Center for Medicare & Medicaid Services (CMS) encouraged this arrangement a number of years ago. For the current biennium, P&A has budgeted approximately \$210,000. As federally required, these monies are matched 100% with State General Funds.

For the current biennium, P&A has spent approximately 62% of its total appropriated budget through November 30, 2020. All projected unspent federal funds from the 2019 – 2021 biennium are budgeted for the 2021 – 2023 biennium.

P&A is experiencing retirements of a significant number of long-term employees in the current biennium. Last Session P&A requested, and received, authorization to include one-time retirement pay-outs in its budget for the 19-21 biennium. With a total of \$132,550, this includes \$68,000 in Federal Funds and \$64,550 in General Funds. Operationally, this makes a significant difference in allowing the agency to fill vacant positions in a timely way vs. holding vacancies open to allow for a roll-up of funds. Approximately 1/3 third of these funds have been spent to-date. It appears P&A will spend the balance of these funds on planned retirements yet this biennium.

The other one-time item included in the current biennium budget is \$8,000 in General Funds for a replacement Polycom system. ND Information Technology (NDIT) was able to use federal monies for purchase of this equipment. The \$8,000 will be returned to the State.

When P&A was asked about the need for COVID-19 money by OMB, P&A responded that it would cover the costs within its existing budget. From March – December, P&A spent approximately \$21,000 for supplies (masks, hand sanitizer), for IT equipment for staff to work at home (headsets, webcams), pandemic-related systemic advocacy work, and COVID-related leave.

IV. 2021 – 2023 BIENNIUM

For the next biennium, P&A submitted its budget to OMB with the 5% decrease in General Funds totaling \$162,001 after one-time funding was removed. P&A is not requesting any new FTE's. Salaries and benefits are somewhat reduced for positions for long-term employees who have, or are, retiring.

In the current biennium, operating monies are included only for the Olmstead Coordinator. Operating funds are added for the next biennium for the Olmstead Commission itself. For example, there is currently no funding in place for Commission members' travel to/from meetings. This in the budget for 21-23.

The operating budget is increased by \$207,229. This includes an increase of \$255,299 in federal funds and a decrease of \$48,070 in General Funds to help meet the 5% reduction. An additional \$3,635 is included for the increased costs for Microsoft Office 365 licensing.

In summary, here is a comparison for the base level budget to the Governor's recommended budget:

	General Fund	Federal Funds	TOTAL
2021-23 Governor's Budget	3,155,580	4,285,459	7,441,039
Base Level (less one-time \$)	3,240,015	3,926,135	7,166,150
Increase	(84,435)	359,324	274,889

Grant amounts beyond federal fiscal year 2020 are estimated at a maintenance level. Federal grant dollars that are projected to not be spent during the current biennium (carry-over funds) are tracked carefully and budgeted into 2021-2023.

The budget recommended by Governor Burgum is the same as the one submitted by P&A to OMB with the exception of changes made for all State agencies for salaries and benefits.

SB 2134, just introduced, relates to the duties of P&A. It does not appear to have a fiscal impact.

I'm happy to answer any questions and prepare additional information. Thank you.

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Case #1

Joe is ten years old. He lives with his family in rural ND. He has diagnoses which include ADHD, Autism, and an Intellectual Disability. P&A services were requested by the child's parents to provide advocacy for their son as the rural school district was struggling to provide for Joe's needs. Joe was exhibiting behaviors that were impacting himself and others in the school. P&A assisted the school district with bringing in outside specialists that could consult with the Joe's educational team. The school was educated on best practices when working with a student with Joe's needs, including creating an environment that would decrease Joe's anxiety. The specialists also supported Joe's team to develop interventions and effective learning goals so that he would engage and benefit from his education.

Case #2

Advocacy services were requested by a 47-year-old female's husband, who was her guardian, to address a recent denial of coverage by their private health insurer. Ten years earlier, the woman experienced a stroke that resulted in her requiring total care for all aspects of her life. Her family has been able to provide care for her within their family home with the support of nursing services, which was funded by the family's health insurance provider. Upon request for continued payment, the agency who was providing the nursing services was informed that payment would no longer be provided as the insurance company had determined that it was no longer a covered service. P&A provided legal representation to the client to negotiate an outcome for continued coverage of nursing services within the family home. These efforts were successful and funding for the nursing services was approved. Ultimately, this allowed the woman to remain living in her family home vs. moving to a skilled nursing facility.

Case #3

Fred is a 14-year-old student attending a public middle school. He has diagnoses that include depression, anxiety and a significant learning disorder. Advocacy services were requested by Fred's parents to address the school district's response to their son's behavior, which at times was physical in nature. At the time of referral, the school district was having the School Resource Officer (SRO) respond to the student's behavior, which in turn resulted in Fred's behavior escalating and becoming more physically aggressive. The SRO issued citations which resulted in the juvenile court officer getting involved. Juvenile court staff encouraged the parents to contact P&A as the use of the juvenile justice system to address disability-related behavior within the school was not effective. In addition, it resulted in Fred being removed from the school setting when what he needed were behavioral supports and interventions. P&A provided advocacy services for Fred, working with the school to address the need to develop positive behavioral supports that did not involve the use of law enforcement or the SRO. As a result of these efforts, Fred is doing very well in school and there have been no behavioral concerns for an extensive period of time.

NORTH DAKOTA PROTECTION AND ADVOCACY PROJECT

