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

COPY TO: Regional Administrators, HDS
NAPAS

Deborah L. McFadden
Commissioner
Administration on Developmental
Disabilities