

# **Part I – Approaches to Investigations Institute**

Initial Steps and  
Planning

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Monday, June 8, 2020  
1:00 – 5:15 PM EST

# Overview

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- Where authority comes from
- Key definitions
- Authority to investigate
  - Basis for access
  - What we can access
- Planning the investigation



# Basis of Authority

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- DD Act and regulations
  - 42 U.S.C. §§ 15043
  - 45 C.F.R. §§ 1326.25 - 1326.28
- PAIMI Act and regulations
  - 42 U.S.C. §§ 10805 - 10806
  - 42 C.F.R. §§ 51.41 - 51.46
- Same authority as in DD Act
  - PAIR - 29 U.S.C. § 794e(f)(2)
  - PAAT - 29 U.S.C. § 3004(a)(2)
  - PATBI - 42 U.S.C. § 300d-53(k)
  - Rep Payee – 42 U.S.C. § 405(j)(6)(C)(vi)

# Definitions: Abuse

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Act or failure to act

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[By employee of facility]

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Performed or failed to perform

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Knowing, reckless or intentional

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Caused, or may have caused, injury or death

# Inclusive Examples: Abuse

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- Harassment
- Rape or sexual assault
- Striking
- Use of excessive force to restrain
- Illegal restraint
- Practice = immediate or long-term harm
- Significant violation of legal rights

# Poll Question

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What significant rights violations have you investigated as abuse?



# Definitions: Neglect

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Negligent act or omission

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By responsible individual

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Caused or may have caused injury or death, or

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Placed at risk of injury or death

# Inclusive Examples: Neglect

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- Lack of treatment plan development or implementation
- Inadequate food, clothes or healthcare
- Unsafe environment
- Inadequate number of trained staff
- Failure to prevent self-abuse, harassment or assault





- "That's not abuse, so you can't investigate."
- "[Agency] already investigated and found nothing, so you can't investigate."

# Verification Code # 1 for Attorney CLE Credit

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## Investigation

- Provider, individuals and staff
- Records
- Relevant facility areas
- Determine whether abuse and neglect was or is happening
- Complaint or probable cause

## Monitoring

- Individuals with disabilities
- Facility areas accessible to individuals
- Provide I&R and training
- Monitor compliance with safety and rights
- Routine circumstances

# Access to Records

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- Consent
- State or no guardian
- Guardian fails or refuses to act
  - (MI) Serious and immediate jeopardy
- (DD) Serious and immediate jeopardy
- Death

# Records

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- Medical
- Financial
- Discharge planning
- Personnel records
- Video and photos
- Reports of agency charged with investigating abuse, neglect, injury, or death
  - MH/DD/SAS
  - Prison or jail
  - Education
  - Law enforcement
  - Licensing

- Access form letters
- Charts



# Complaint

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Media

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Emails and calls

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Public records

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Monitoring

# Probable cause

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- Reasonable ground
- Bases
  - Reasonable inference from experience and training
  - Monitoring
  - Media reports
- NOT 4th Amendment probable cause



# Probable cause

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- HIPAA
- FERPA
- P&A is "final arbiter" of probable cause
  - BUT...

- "Final arbiter" is actually the court – IF it chooses to be
- Confidentiality and privilege v. the need to establish probable cause
  - Initial letter
  - Pleadings, discovery, hearing
- Do you *really* need probable cause to get contact information?



# Poll Question

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What lessons have you learned about probable cause?



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# Planning the Investigation

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- Create an investigation plan
- What are we trying to determine?

## Primary Investigation

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- Direct investigation
- Concurrent with other primary

## Secondary Investigation

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- Review quality of other investigations
- May lead to primary

# More planning

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## Incident-Specific

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- Specific incident or condition
- Affects one or more people
- Specific place(s) or time(s)
- May lead to systemic

## Systemic

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- Suspected pattern or practice
- Affects more than one person
- May investigate exemplars

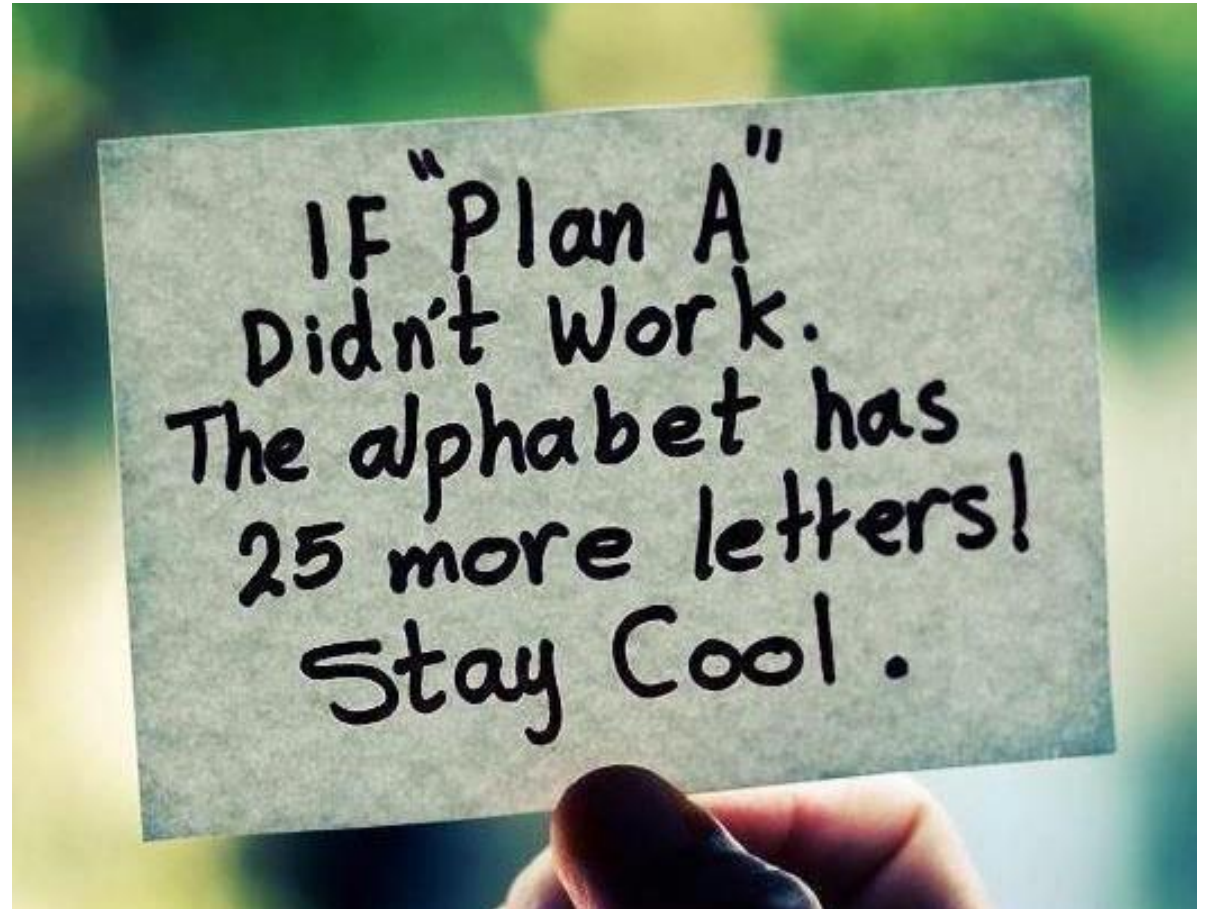
# And then, more planning

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- Complaint, probable cause, or both?
- Reports to other agencies?
- What records to request, and when
- Identifying witnesses, and when to interview
- Timing



**And  
Remember**







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