

Testimony
House Bill 1099 Department of Human Services
House Human Services Committee
Representative Robin Weisz, Chairman
January 8, 2019

Chairman Weisz, and members of the House Human Services Committee, I am Nancy Nikolas Maier, Director of the Aging Services Division with the Department of Human Services (Department). I am here today in support of House Bill 1099, which was introduced at the request of the Department and to propose an amendment based on recommendations from the North Dakota Board of Nursing.

HB 1099 is being introduced to allow for the implementation of residential habilitation and community support services in a residential setting or private residence, under the Medicaid Home and Community Based Services 1915 (c) waiver, which serves older adults and individuals with physical disabilities. A request to fund residential habilitation and community residential services was included in the Executive Budget Request. However, changes in State law governing the delegation of routine medications and the definition of adult foster care are necessary to fully implement all aspects of these services.

During this session, the Department is requesting several incremental investments in long term service and supports specifically in Home and Community Based Services. Adding residential habilitation and community residential services to the Medicaid Home and Community Based Services 1915 (c) waiver is an investment that will allow more eligible individuals to access the services they need to remain safe in their home and community. The Department believes implementing these services would be an effective way to keep more individuals at home in the least restrictive setting.

The chart below describes the services and illustrates the differences between the two.

HCBS MEDICAID WAIVER

Residential Habilitation Services

- Up to 24-hour services for eligible older adults and individuals with physical disabilities
- Must meet a nursing facility level of care, live alone, and can benefit from care coordination, **skills restoration or maintenance**, and community integration
- Could include **adaptive skill development**, assistance with activities of daily living, community inclusion, social, leisure skill development, personal care/homemaker, protective oversight and supervision
- Target population
- **Individuals with TBI, early stage dementia etc.**

Community Residential Services

- Up to 24-hour services for eligible older adults and individuals with physical disabilities
- Must meet a nursing facility level of care, live alone, and can benefit from care coordination, and community integration
- Could include assistance with activities of daily living, community inclusion, social, leisure skill development, personal care/homemaker, protective oversight and supervision
- Target population
 - **Individuals with physical disability, complex health needs etc.**

These services were modeled after the residential habilitation services currently offered to individuals enrolled in the Intellectual Disabilities/Developmental Disabilities (IID/DD) waiver. These services have been very effective in keeping people with intellectual disabilities in the least restrictive setting. Many older adults and individuals with physical disabilities could benefit from similar supports; however, this type of all-inclusive service is currently not available to recipients of the Medicaid Home and Community Based Services 1915 (c) waiver. Medicaid recipients who need this level of support should have access to these types of services regardless of their disability.

Another important aspect of these services includes assistance with routine medication and the ability for the service to be provided in a group setting. State law currently allows for the delivery of routine medication and the provision of services in a residential/group home for the IID/DD population; however, there are no such provisions for the delivery of services to older adults and individuals with physical disabilities. The only group home model currently available to older adults and individual with physical disabilities is adult foster care. Adult foster care can only be

provided in a private residence owned or operated by the service provider. There are only 14 licensed homes statewide. The family model of adult foster care would not be impacted by this bill. The bill would add a definition of “agency adult foster care” to allow an agency to purchase or rent a private residence where these services including medication administration could be provided to recipients who choose to live in a small group setting. Agency adult foster care may also benefit providers because staff could provide care to more than one individual in the same location.

The bill contains a fiscal note. The appropriation amount needed matches the Executive Budget Request. It includes one full-time equivalent request for the Department along with the additional appropriation and expenditure amount of \$6,747,565, of which \$3,365,022 are general funds. In the 2019-2021 biennium the Department estimates 15 individuals will be added to the waiver and that 156 individuals already receiving some type of home and community-based services will transition to these services because it will better meet the needs of the consumer. Although these individuals are already receiving services they are often still at risk for institutional placement because the current service model does not offer all the services they need to be fully supported at home. The current model relies heavily on family caregivers and informal supports to coordinate the care for the recipients. If someone does not have a family caregiver, or the caregiver is overwhelmed in their caregiver duties, it may be very difficult for that consumer to continue to receive the level of support they need.

The requested changes are as follows:

Section 1, page 3, lines 4 and 5 proposes to amend section 43-12.1-04 of the North Dakota Century Code to add qualified service providers who meet criteria set forth in subsection 2 of section 50-24.1-18 to the list of persons exempt from the nurse practice act. This would allow trained employees of a qualified agency to administer

routine medications to recipients of residential habilitation and community support services.

Section 2, page 3, line 10 proposes to amend section 43-12.1-04 of the North Dakota Century Code and would allow a licensed nurse to delegate the administration of routine medications to an exempt qualified service provider enrolled to provide residential habitation or community support services.

Section 3, page 3, line 15 through page 4, line 23 amends section 50-11-00.1 to add a definition of “agency foster home for adults” which would allow an agency to purchase or rent a private residence, professionally staff it, and provide residential habitation or community support services to four or fewer adults who are not related to the owner or lessee and the changes also renumbers the section accordingly.

Section 4, page 4, lines 26, 29 and 30 amends section 50-11-02.4 of the North Dakota Century Code to remove the reference to adult family foster care and add language to clarify a facility providing foster care for adults is subject to the criminal history record investigation requirements. Page 5, lines 18 through 20 clarifies the Department will cover the cost of a criminal record check for adult foster care provided in a private family home, but agency foster care providers are responsible for the cost of the criminal record checks for their employees.

Section 5, page 6, line 21 amends section 50-11-06.8 of the North Dakota Century Code to clarify the Department shall continue to pay the cost of a nationwide background check for each facility providing foster care for children. Page 6, line 29 through Page 7 lines 2 update language to account for the new proposed definition of “facility” in regards to foster care for adults.

Section 6, lines 8 and 11 amends section 50-11-06.9 of the North Dakota Century Code and includes clean up language to accommodate for the change to made

during the 2015 legislative session in Senate Bill 2091 as it removed the definition for “family foster home for adults”.

Section 7, page 7, lines 15 through 30 amends section 50-24.1-18 of the North Dakota Century Code to allow the Department to implement residential habilitation and community support services which would allow for the delegation of medication by an employee of a qualified service provider agency employing or contracting with a licensed nurse who provides supervision to trained employees. It also require the employees of a qualified service provider agency to complete a Department approved training on the administration of routine medications before they could assist clients and requires the Department to establish rules governing the provision of these services in a residential setting or private residence.

Section 8, page 8, lines 1 through 6 states the implementation of these services is contingent upon appropriation being provided. If funds are not appropriated there would be no changes made to the definition of adult foster care or the nurse practice act.

Attached to my testimony is a proposed amendment to House Bill 1099 based on recommendations made by the Board of Nursing. The amendment would remove the proposed changes to section 1, page 3, lines 4 and 5 and reinsert similar language to a new subdivision of subsection 9 of section 43-12.1-04 in section 1, page 2, after line 19 of this Bill. Based on the proposed amendment to relocate the exemption for an employee of a qualified service provider agency under subsection 9 of section 43-12.1-04, the amendment also removes the proposed changes to section 2, page 3, lines 6 through 10, as the changes are no longer needed. The amendment if adopted would also insert “registered” after “licensed” on page 7, line 24 for the language to read “licensed registered nurse”.

This concludes my testimony. I am happy to answer any questions.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1099

Page 1, line 1, remove “43-12.1-16,”

Page 2, line 15, overstrike “or”

Page 2, line 19, after “guardian” insert “; or”

Page 2, line 19, overstrike the period

Page 2, after line 19, insert:

“h. Who is an employee of a qualified service provider agency who meets the criteria set forth in subsection 2 of section 50-24.1-18.”

Page 3, remove lines 4 through 10

Page 7, line 24, after “licensed” insert “registered”

Renumber accordingly