



INCREASED ACCESS TO HOME AND COMMUNITY-BASED SERVICES (HCBS) FOR ADULTS WITH PHYSICAL DISABILITY

Interim Human Services Committee, Senator Judy Lee, Chair

April 27, 2022, Nancy Nikolas Maier, Director, ND DHS Adults and Aging Services Division

NORTH
Dakota | Human Services
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INCREASED ACCESS TO HCBS

- **Presentation Focus**

- Provide a brief summary of efforts to increase access and awareness of HCBS for older adults and adults with physical disabilities
- ND U.S. Department of Justice (USDOD) Settlement Agreement year one progress report
- Summary U.S. DOJ settlement agreement year two priorities

ND DHS AGING AND ADULT SERVICES DIVISION

ND DHS Aging & Adult Services administers the following state and federally-funded HCBS programs for older adults and adults with physical disabilities, including dementia and traumatic brain injury.

- **Service Payments to the Elderly and Disabled (SPED)**
- **Expanded Service Payments to the Elderly and Disabled (Ex-SPED)**
- **Medicaid State Plan Personal Care (MSP-PC)**
- **HCBS Medicaid waiver**
- **Older Americans Act (OAA) services**

Division team members supervise the HCBS case managers that work out of the human service zones. They are all state employees.



SETTLEMENT AGREEMENT BETWEEN U.S. DEPARTMENT OF JUSTICE & STATE OF ND

Purpose is to ensure that the state will meet the Americans with Disabilities Act (ADA) requirements by providing services, programs, and activities for individuals with physical disabilities in the most integrated setting appropriate to their needs.

Effective December 14, 2020

Agreement will terminate eight years after effective date if parties agree that the state has attained substantial compliance with all provisions and maintained that compliance for a period of one year.





U.S. Department of Justice
Civil Rights Division

Disability Rights Section – NYA 6019
950 Pennsylvania Ave. NW
Washington, DC 20530

December 2, 2015

SENT VIA EMAIL AND FEDERAL EXPRESS

Bonnie Storbakken
Attorney at Law
Office of the Governor
600 E. Boulevard Ave.
Bismarck, ND 58505-0100

Dear Ms. Storbakken,

The purpose of this letter is to inform you that the United States Department of Justice has opened an investigation in response to complaints we received which allege that the State of North Dakota fails to serve individuals in nursing facilities in the most integrated setting appropriate to their needs and puts individuals at serious risk of nursing facility placement in violation of Title II of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§ 12131-34; and the Supreme Court decision of *Olmstead v. L.C.*, 527 U.S. 581 (1999). The Department of Justice has primary authority to enforce Title II of the ADA. 42 U.S.C. §§ 12131-34; 29 U.S.C. § 794a.

Title II of the ADA incorporates by reference the remedies, procedures, and rights set forth in Title VI of the Civil Rights Act. 42 U.S.C. §§ 12133-12134. Among other obligations, Title VI regulations require “[a]ccess to sources of information” to permit the United States to ensure that all non-discrimination requirements are being met. See 28 C.F.R. §§ 42.201; 42.106(c). To assist in our investigation, we ask that you provide the documents and information specified in the attached request within thirty calendar days of the date of this letter. If the data are stored in electronic form, we ask that you provide us those data in a commonly-readable format, e.g., portable document format, Microsoft Word document, or Excel database. If the data are stored in proprietary format, please contact us to make arrangements for a usable transfer of the data. Please number each response to correspond with the number of the respective element in the data request.

We also encourage you to furnish any additional material that you think may be helpful for our investigation. Please be assured that all of the information that you provide will be carefully reviewed during our investigation.

You may send the requested information and documents to me at the following address: 950 Pennsylvania Ave, N.W. – NYA 6019, Washington, DC 20530. Please reference the Department of Justice matter number assigned to this matter, DJ No. 204-56-30, in any correspondence that you send to this office. If you have any questions, concerns, or would like to discuss this matter, you may contact me at (202) 616-2925 or Victoria.Thomas2@usdoj.gov. Thank you for your time and attention to this matter.

Sincerely,

Victoria Thomas
Trial Attorney
Disability Rights Section

NOTIFICATION FROM U.S. DOJ



...complaints we received which allege that the **State of North Dakota fails to serve** individuals in nursing facilities in the most integrated setting...



**PEOPLE OVER 65 IN
CERTIFIED NURSING
FACILITIES
HIGHEST RATE IN THE U.S.**

DECEMBER 2015

KEY TERMS | U.S. DOJ SETTLEMENT

Americans with Disabilities Act

The Americans with Disabilities Act (ADA) requires public agencies to **eliminate unnecessary segregation** of persons with disabilities and provide services in the **most integrated setting** **appropriate** to the needs of the individual.

In **1999**, the Federal Supreme Court **Olmstead** decision **affirmed** the **ADA** requirements.



KEY TERMS | U.S. DOJ SETTLEMENT

Community Integration Mandate

Public entities are required to provide **community-based services** when:

- Community-based services are **appropriate** for the individual; and
- The individual **does not oppose** community-based treatment; and
- Community-based treatment can be **reasonably accommodated**, taking into account:
 - Resources available to the entity and
 - Needs of others receiving disability services.



WHO ARE WE TRYING TO REACH?

Target population members (TPM)

Basic Eligibility

- Individuals with physical disabilities
- Over age 21
- Eligible or likely to become eligible to receive Medicaid long-term services and supports (LTSS)
- Is likely to require LTSS for at least 90 days.



IF in skilled nursing setting

- Receive Medicaid-funded nursing facility services AND
 - Likely to require long-term services and supports
- Receive nursing facility services AND
 - Likely to become eligible for Medicaid within 90 days, have submitted a Medicaid application, and have approval for a long-term nursing facility stay

IF in hospital or home setting

- Referred for a nursing facility level of care determination AND
 - Likely to need services long term
- Need services to continue living in the community AND
 - Currently have a HCBS case manager or have contacted the Aging and Disability Resource Link (ADRL)

WHO IS NOT A MEMBER OF THE “TARGET POPULATION”

- Individuals under age 21
- Individuals who are not Medicaid eligible
- Individuals who are not expected to need services for at least 90 days
- Individuals with an intellectual disability or mental illness who do not screen at a nursing facility level of care



AGREEMENT VISION



Long-term care system & supports reform



Increase access to community-based services



Increase awareness about service options

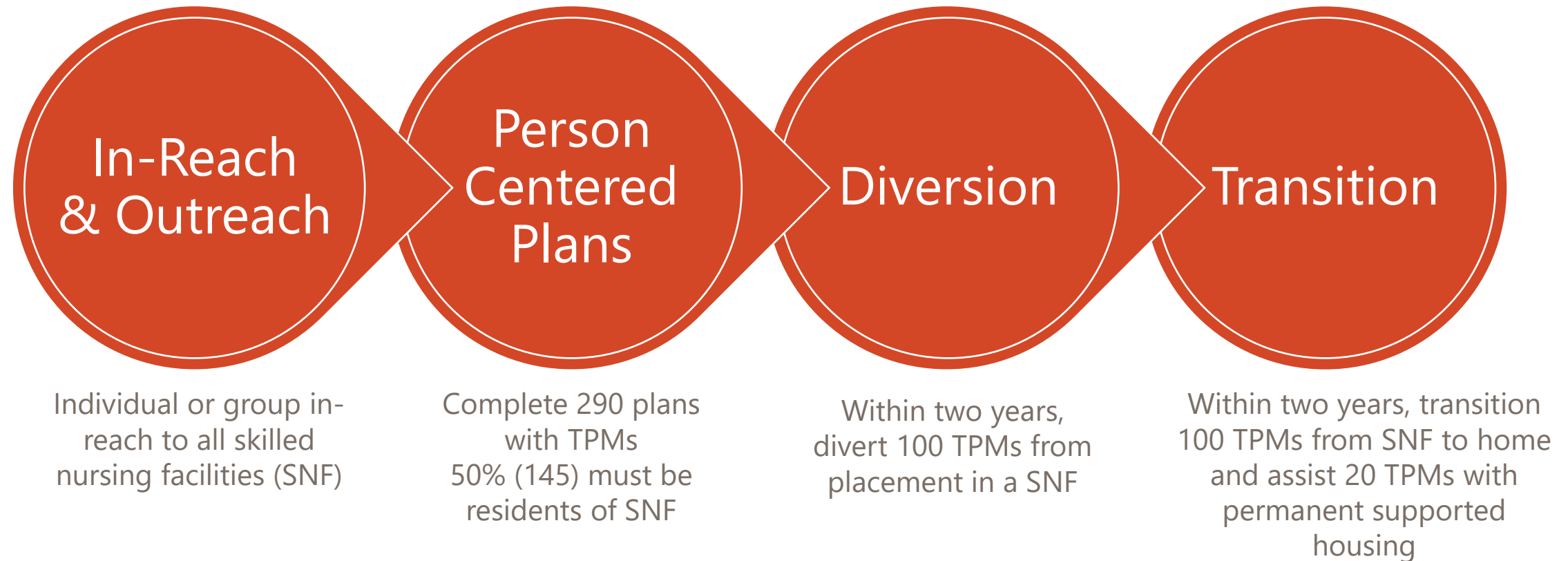


Increase provider capacity & training



Builds upon **shared goal** of improving services to citizens and providing care closer to home

AGREEMENT STRATEGY & BENCHMARKS



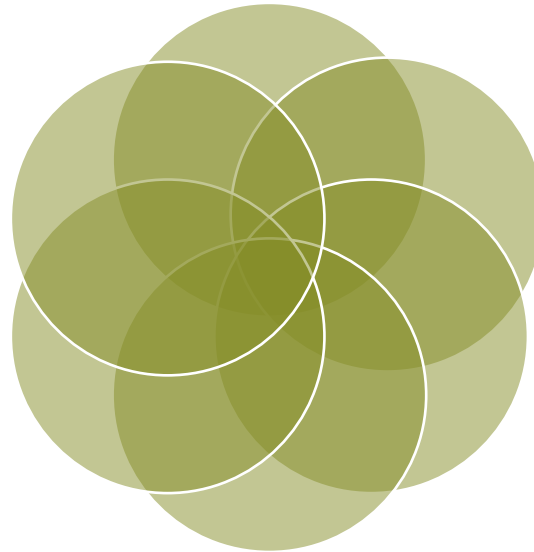
IMPLEMENTATION PLAN

Within 120 days of effective date produce draft plan

Plan approved
5.28.21

Establish a method
to address
challenges to
implementation

Assign agency and
division
responsibility for
achieving
benchmarks



Review relevant
services, capacity
and barriers

Engage stakeholders

Identify benchmarks
and timelines for
meeting agreement's
requirements

IMPLEMENTATION PLAN

- **Increase access** to community-based service options through policy, process, resources, tools, and **capacity building** efforts.
- Increase **individual awareness** about community-based service options and create **opportunities** for informed choice.
- Widen the **array of services** available, including more **robust housing-related supports**.
- Strengthen **interdisciplinary connections** between professionals who work in behavioral health, home health, housing, and home and community-based services (HCBS).
- Implement broad access to **training and professional development** that can support improved **quality** of service, highlighting practices that are **culturally-informed**, streamlined, and rooted in **person-centered** planning.
- Support **improved quality** across the array of services in all areas of the State.

U.S. DOJ FIRST YEAR SA SUMMARY

DECEMBER 14, 2020 – DECEMBER 14, 2021

Year-One Major Accomplishments

Shifted to **centralized intake** using the **Aging and Disability Resource Link (ADRL)** website and toll-free phone line linking people with disabilities to **HCBS support**.

- Provided **10,854 callers** with information and assistance about HCBS, which is an average of **905 calls** per month.
- Case managers responded to **1,744 referrals** for HCBS, which is an average of **159 referrals** per month.
- **48%** of HCBS referrals become **open cases**, which is an average of **76 new cases** per month

Diverted 268 new individuals **from a SNF** by providing necessary services and supports so they can remain at home with their family and friends.

Provided state or federally-funded **HCBS to 3,143** unduplicated adults in 2021.



U.S DOJ FIRST YEAR SA SUMMARY

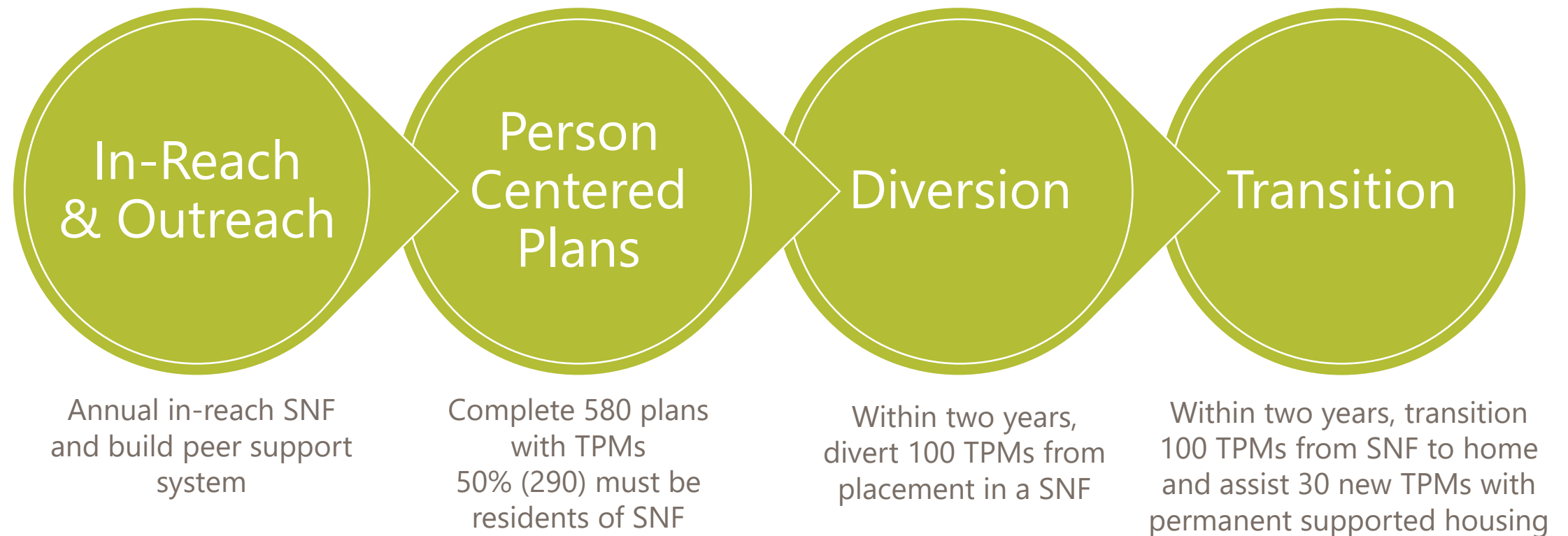
DECEMBER 14, 2020 – DECEMBER 14, 2021

Year-One Major Accomplishments

- Provided **information about HCBS** through **options counseling visits to 936 TPMs** referred for a long-term stay in SNF.
- Received **225 requests for transition support** services. **Transitioned 88 TPMs** from a SNF to integrated community housing where they can receive necessary support while enjoying the freedom and benefits of community living.
- Provided **permanent supported housing assistance to 28** TPMs who transitioned out of a SNF.
- Increased our administrative capacity to serve additional TPMs by adding **three additional full-time case managers** and **ten community outreach specialists temporary FTE** to conduct options counseling visit in hospitals and SNFs.
- **Engaged with stakeholders** to inform the strategies used to implement settlement agreement in a **person-centered** and **culturally responsive way**.



AGREEMENT STRATEGY & YEAR TWO BENCHMARKS



U.S. DOJ SA SECOND-YEAR PRIORITIES

Address need for more case management capacity to meet the increasing demand for HCBS

Address Qualified Service Provider workforce shortage

Implement the strategies outlined in the ARPRA 10% funding bill to enhance the HCBS delivery system

Streamline and simplify the QSP enrollment process



Contact Information

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DOJ Agreement Coordinator
Director, Aging and Adult Services
Division, Department of Human Services

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