STAKEHOLDER MEETING AGENDA

• Welcome / Introductions
• Draft Settlement Agreement Implementation Plan Update
• Implementation Plan Workgroups
• Subject Matter Expert 6-month Report Summary
• HCBS Policy Updates

• Stakeholder Listening Session
• Other Business
• Adjourn
ND DHS AGING SERVICES DIVISION

ND DHS Aging Services administers the following state and federally funded HCBS programs for older adults and adults with physical disability 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**

Aging Services staff supervise the HCBS Case Managers that work out of the Human Service Zones. They are all state employees.
How do you apply or get more information about HCBS?

1-855-462-5465

Website: carechoice@nd.assistguide.net

Email: Carechoice@nd.gov

Relay ND TTY at 1-800-366-6888 or 711
Purpose is to ensure that the State will meet the 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.
NOTIFICATION FROM DOJ

December 2, 2015

Sent Via Email and Federal Express

Victor Davis
Attorney at Law
Office of the Governor
600 E. Boulevard Ave.
Bismarck, ND 58503-0000

Dear Mr. Scott:

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 a manner consistent with their needs and pays individuals at a lower rate than appropriate to their needs and pays 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 Obergefell v. Hodges, 576 U.S. 558 (2016). The Department of Justice has primary authority to enforce Title II of the ADA. 42 U.S.C. §§ 12132-34, 29 U.S.C. § 796a.

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. §§ 2000d-2000e-13. Among other obligations, Title VI regulations require “[p]roviders of services to persons who are entitled to federal assistance under any Federal program to take affirmative steps to ensure that they do not discriminate on the basis of race, color, or national origin.” See 42 U.S.C. § 2000d-1(b) (1988). To assist in our investigation, we would appreciate it if you could provide us with information specified in the attached request for data. If the data are stored in electronic form, we ask that you provide us with the data on a portable electronic 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.

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 held in confidence during our investigation.

You may send the requested information and documents to me at the following address: 100 Pennsylvania Ave., N.W. — NYA, Room 819, Washington, D.C. 20530. Please reference the Department of Justice matter number assigned to this matter: 08-59240. In any correspondence that you send to this office, if you have any questions, comments, or would like to discuss this matter, you may contact me at (202) 514-2670 or Victoria.Tomasz2@usdoj.gov. Thank you for your time and attention to this matter.

Sincerely,

[Signature]

Victoria Thomas
Trial Attorney
Civil Rights Division

HIGHEST RATE IN THE U.S.

VARIETY OF CONCERNS

EXAMPLES PROVIDED BY DOJ

Unnecessary segregation of disabled individuals in skilled nursing facilities

Adults in skilled nursing facilities who would rather be in their community

Imbalance of funds to skilled nursing facilities and community-based services

Lack of awareness about existing transition services and available tools
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.
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

Basic Eligibility

- Individual with physical disability
- 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 ADRL
“Physical Disability” – means an impairment that substantially limits major life activity, including one or more major bodily functions, see 42 U.S.C 12102: 28 C.F.R 33.108 such that the individuals meets ND’s Nursing Facility Level of Care (LOC) by requiring for example, assistance with activities of daily living such as toileting, eating, or mobility.

ND Admin code 75-02-09, as may be amended.
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
Within 120 days of effective date produce draft plan

- Establish a method to address challenges to implementation
- Assign agency and division responsibility for achieving benchmarks
- Identify benchmarks and timelines for meeting Agreement’s requirements
- Review relevant services, capacity and barriers
- Engage Stakeholders

State received approval from DOJ to extend deadline 45 days.
Plan submitted 5.28.21 and final revisions have been approved
North Dakota is actively working to transform the home and community-based services experience for Target Population Members, making sure it is streamlined, effective, culturally-informed and a viable alternative to institutional living.

The overarching vision that guides the State’s efforts under the Settlement Agreement is to take actions that support the ability of a Target Population Member to make an informed choice about where they want to live and how they want to receive needed services and supports.

For this vision to be realized, we need to transform people’s ability to access home and community-based services and housing supports and enable reforms in the hospital discharge and long-term care delivery systems in North Dakota.

- State is finalizing the document and will post it here:
  - U.S. Department of Justice Settlement Agreement: Department of Human Services: State of North Dakota (nd.gov)
To make this vision possible, the strategies contained in the Implementation Plan focus on the need to:

- 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.
IMPLEMENTATION PLAN WORKGROUPS

- Establish workgroups to evaluate and make recommendations on policy and practice in all key areas of system transformation:
  - Case Management Assignment (Establish 11.1.21/ Recommendations Complete 3.1.21)
  - Environmental Modifications (Establish 10.1.21/ Recommendations Complete 4.1.22)
  - Health Care Accommodations (Establish 11.1.21/ Recommendations Complete 3.1.21)
  - Housing Services (Establish 4.1.21/ Recommendations Complete 12.14.21)
  - Informed Choice (Establish 10.1.21/ Recommendations Complete 4.1.21)
  - Service Delivery (Establish 11.1.21/ Recommendations Complete 3.1.21)
  - Skilled Nursing Facility Level of Care (Establish 12.1.21/ Recommendations Complete 5.1.21)
  - Quality Improvement (QI) (Establish 10.1.21/ Recommendations Complete 12.1.21)

- All meetings are open to the public, but DHS will also invite key stakeholders to ensure diverse representation. (Dates are an estimate)
At least every six months, the Expert will draft and submit to the Parties a comprehensive public report on the State’s compliance including recommendations, if any, to facilitate or sustain compliance.

HCBS POLICY UPDATES

Implemented July 1, 2021

HCBS policy will be updated

- Chore services do not allow lawn care which can create housing problems for TPM. HCBS policy now allows lawn care under chore services.

- The definition of an individual who is obligated to provide care is unclear and needs to be further defined as a legal spouse.

- It was not well understood that the 24-hour cap on overnight respite services allow for the rural differential (RD) rate, so policy was clarified.

- The unit cap for homemaker services provided by an agency is too low and was increased to 70 units.
HCBS POLICY UPDATES

Proposed Implemented January 1, 2022

A waiver amendment will be submitted 10.1.21, and administrative code will be updated to:

- Increase rates for supervision, non-medical transportation, non-medical transportation escort, and family personal care which are too low to attract QSPs. (Rate increase was approved in the 21-23 DHS budget)

- Definition of family for family personal care is too restrictive and will be expanded to build family provider capacity.

- Live alone eligibility requirements for residential habilitation and community-support services are too restrictive and will be removed to allow more TPMs to access services.

- TPMs who live with family are not eligible to receive supervision; this requirement will be removed.

- The rule that Environmental Modification can only be provided when a TPM owns the home is too restrictive and will be expanded to allow modifications of rental property.

- The RD rate cannot be authorized for transition support services, supervision, and companionship which restricts access for TPMs residing in rural areas.
LISTENING SESSION

Stakeholder Engagement

Additional listening sessions will be held quarterly **during** the USDOJ Settlement Agreement stakeholder meetings for the first two years of the Settlement Agreement.

The State will educate stakeholders on the home and community-based service array, receive input on ways to improve the service delivery system, and receive feedback about the implementation of the Settlement Agreement.
LISTENING SESSION

Stakeholder Engagement

Public input, questions or concerns can be submitted at anytime.

Email: carechoice@nd.gov

Phone: 1-855-462-5465 or 711 (TTY)

Mail: North Dakota Department of Human Services
Attn: Aging Services Division/HCBS
1237 W. Divide Ave., Suite 6
Bismarck, ND 58501
ACCESS TO COMMUNITY-BASED SERVICES

- What makes it difficult for people to get community-based services? (Barriers)

- What is working well?
What can the State do to attract more Qualified Service Providers?
Contact Information

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DOJ Agreement Coordinator

Director, Aging and Adult Services Division, Department of Human Services

1237 W Divide Ave, Suite 6
Bismarck, North Dakota 58501-1208
Phone: 701-328-4601
Toll-Free Aging & Disability Resource LINK: 1-855-462-5465
E-mail: carechoice@nd.gov