DOJ SETTLEMENT
AGREEMENT STAKEHOLDER MEETING &
DHS AGING SERVICES DIVISION LISTENING SESSION

June 09, 2022
STAKEHOLDER MEETING AGENDA

• Welcome / introductions
• Settlement Agreement Biannual Report update
• 18 mo - Settlement Implementation Plan update
• Home and Community Based Services update
• Resource Hub – Rural Health Center
• Stakeholder Listening Session
• Other Business
• Adjourn
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

Brett Stoltzmann
Assistant Attorney General
Of the Office of the Governor
699 L Street, Suite 600
Lincoln, NE 68501

Dear Mr. Stoltzmann,

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 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. § 12101 et seq., and the Supreme Court decisions of O’Connor v. L.C. 527 U.S. 684 (1999). The Department of Justice has primary authority to enforce Title II of the ADA, 42 U.S.C. §§ 12131 et seq., and § 504.

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 et seq. Among other obligations, Title VI requires "[t]he use of any source of assistance in the United States that provides assistance with respect to the construction, renovation, or purchase of a building for the construction, renovation, or purchase of a building for the use of any person with a disability for the purpose of affording that person a wheelchair-accessible building...shall be conducted in a manner which is consistent with the requirements of this part." 42 U.S.C. § 2000d-1. The purpose of this letter is to inform you that the Department of Justice has opened an investigation into your state's use of any source of assistance in the United States that provides assistance with respect to the construction, renovation, or purchase of a building for the use of any person with a disability for the purpose of affording that person a wheelchair-accessible building...

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: 900 Pennsylvania Ave, N.W. - NYA, 6019, Washington, DC 20530. Please reference the Department of Justice matter number assigned to this matter: DE-110-16. If you have any questions, concerns, or would like to discuss this matter, you may contact me at (202) 267-6933 or Victoria.Thomass@usdoj.gov. Thank you for your time and attention to this matter.

Sincerely,

Victoria Thomas
Trial Attorney
Disability Rights Section

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PER 1000

PEOPLE OVER 65 IN CERTIFIED NURSING FACILITIES
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 42U.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 approved 5.28.21
The strategies contained in the 18-mo update to 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.
Third Year Requirements: 12.14.22-12.13.23

• Provide permanent supported housing to 60 target population members

• Within 4 years of the effective date transition 60% of TPMs requesting services in the community

• Divert 150 at risk TPMs

• Annual individual or group in-reach to every nursing home

• Within 4 years provide individual in-reach to at least 1000 TPMs

Posted here upon approval:

U.S. Department of Justice Settlement Agreement: Department of Human Services: State of North Dakota (nd.gov)

Dashboard data also online
12.14.22 - Additional 290 TPMs receive **person-centered planning**
   ✓ Fully compliant SFN 1265 person centered plan

12.14.22 - All **screening and evaluations** for nursing facility services included in the PCP
   ✓ Aging staff have access to the NFLoC

12.14.22 - Require **annual nursing facility level of care** (NFLoC) screening for **all TPMs** living in a **nursing facility**

12.14.22 - **Transition 100 TPMs** from SNFs (currently at 137)
   ✓ 88 Transitioned from 12.14.20-12.13.22
   ✓ 49 Transitioned from 12.14.22 - to date

12.14.22 - **Divert 100 at risk TPMs** from SNFs to HCBS (currently at 383)
   ✓ 272 Diverted from 12.14.20-12.13.22
   ✓ 111 Diverted from 12.14.22 - to date
HCBS POLICY UPDATES

Stakeholder Feedback:

“Enrollment to be a QSP is cumbersome and complicated” “We need more QSPs”

“Providers don’t know where to go to get help and information”

- DHS internal workgroup to improve the QSP enrollment process work assigned to the transformation manager
- Rule making project to remove the requirement for a SFN 433 child abuse and neglect background inquiry effective 10.1.22 if approved by Legislative rule making committee
  - Paperwork for this check was slowing down enrollment
  - In the last year there were six (6) “hits” out of hundreds of forms submitted
- Complete and distribute another round of incentive grants to enhance QSP capacity.
Stakeholder Feedback: “Individuals need services to start sooner” “HCBS care plans can’t be backdated if the individual hasn’t been found eligible for Medicaid yet and home and community-based services need to start right away.”

- Rule making project to allow the department to grant a variance to the three months extension and one-time additional extension to exceed the monthly SPED service cap if a written application showing good cause is provided to the department and the variance does not endanger the health or safety of the client.
- Can be used if a SPED consumer needs more service while waiting for their Medicaid eligibility determination.
QSP Provider retention and recruitment incentive funds

The North Dakota Department of Human Services is offering workforce retention and recruitment incentives to qualifying agency providers of home and community-based services. The retention incentive will provide up to $2100 and the recruitment incentive will provide up to $750 to agency staff who deliver direct caregiving support.

Working on process for individual QSPs- guidance coming soon

<table>
<thead>
<tr>
<th>QSP Agency Retention</th>
<th>QSP Agency Recruitment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Allocated: $499,800</td>
<td>Allocated: $87,625</td>
</tr>
<tr>
<td>Total Paid: $153,198</td>
<td>Total Paid: $45,750</td>
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<tr>
<td>Remaining balance:  $346,602</td>
<td>Remaining balance: $41,875</td>
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</tbody>
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Webinars – HCBS Spotlight on Services

JOIN BY PHONE OR ONLINE

June 23, 2022 - Supported Employment, Transitional Living Services and Adult Residential Services, 12 - 12:30 p.m. CT

July 7, 2022, -Adult Foster Care and Adult Day Care

- Idea came from the original DOJ stakeholder listening sessions where many people expressed that they do not understand HCBS or what type of assistance is currently available

- All webinar recordings available online
Presentation QSP Hub - Rebecca Quinn

- QSP survey results
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.
ACCESS TO COMMUNITY-BASED SERVICES

- What are the biggest issues agency and individual QSPs are facing today?
- What can we do to help?
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
2022 DOJ STAKEHOLDER MEETING DATES

- September 15, 2022, 1-3:00 pm
- December 8, 2022, 1-3:00 pm
Contact Information

Nancy Nikolas Maier
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
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