



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

September 16, 2021

NORTH  
**Dakota**

Be Legendary.™

# 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

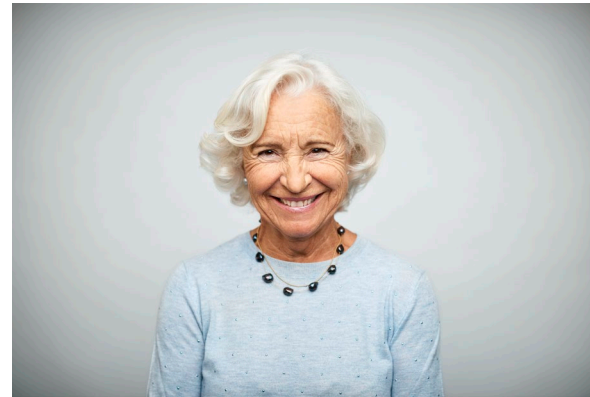


# ND DHS AGING SERVICES DIVISION

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.



# ADRL CENTRALIZED INTAKE

How do you apply or get more information about HCBS?

**1-855-462-5465**

Website: [carechoice@nd.assistguide.net](mailto:carechoice@nd.assistguide.net)

Email: [Carechoice@nd.gov](mailto:Carechoice@nd.gov)

Relay ND TTY at **1-800-366-6888** or **711**



# SETTLEMENT AGREEMENT BETWEEN U.S. DOJ & STATE OF ND

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.*





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 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.**

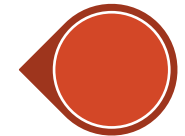
DECEMBER 2015

# 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



# KEY TERMS | 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 | 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*

### 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

# KEY TERMS | DOJ SETTLEMENT

## Physical Disability

“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

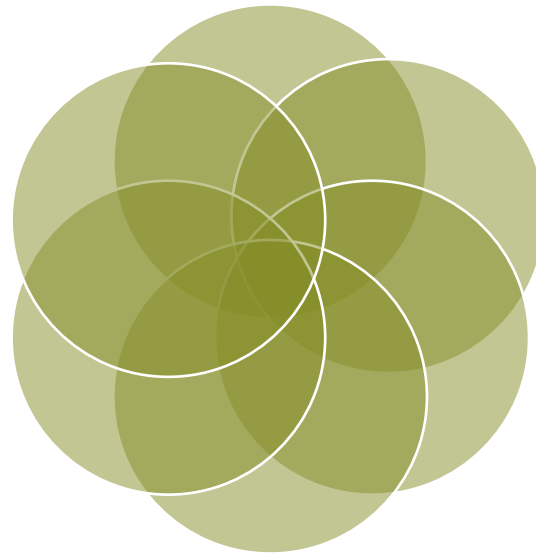


# IMPLEMENTATION PLAN

**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



Review relevant  
services, capacity  
and barriers

Engage Stakeholders

Identify benchmarks  
and timelines for  
meeting Agreement's  
requirements

State received  
approval from  
DOJ to extend  
deadline 45 days.

Plan submitted  
5.28.21 and final  
revisions have  
been approved

# IMPLEMENTATION PLAN UPDATE

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 \(nd.gov\)](#)

# IMPLEMENTATION PLAN UPDATE

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)**



# SME 6-MONTH REPORT

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.

- Review 12.14.20- 6.14.21 SME Report posted here:  
<https://www.nd.gov/dhs/services/adultsaging/docs/nd-doj-settlement-agreement-sme-report-2021-08.pdf>



# 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.



**YOUR  
OPINION  
MATTERS**

# 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.



**YOUR  
OPINION  
MATTERS**

# 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](mailto: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

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



# PROVIDER CAPACITY & TRAINING

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- What can the State do to attract more Qualified Service Providers?





## 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  
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Toll-Free Aging & Disability Resource LINK: 1-  
855-462-5465  
E-mail: [carechoice@nd.gov](mailto:carechoice@nd.gov)

