



Health & Human Services



# DOJ SA STAKEHOLDER MEETING

Nancy Nikolas Maier Director, Agreement Coordinator ND DHHS Aging Services Section

December 14, 2023

# STAKEHOLDER MEETING AGENDA

- Welcome / Introductions attendance poll
- DOJ Settlement Agreement Year 3 – end of year data
- DOJ Settlement Agreement Implementation Plan –Year 4 update
- QSP Hub update and results QSP survey – Daniall Deis
- ADRL Transition and Diversion program updates – Jake Reuter
- Universal design/accessibly consideration in upcoming funding applications
- MFP Supplement Services – Kayla Trzpuc
- ND 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

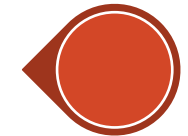
Sources: Henry J Kaiser Foundation, US Census Bureau (2016)

# 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

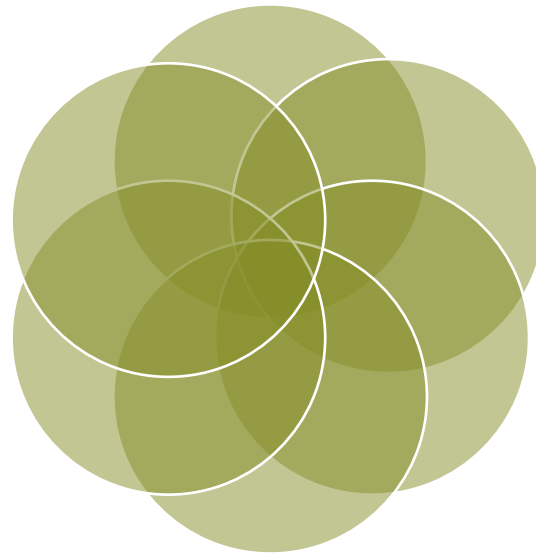


# IMPLEMENTATION PLAN

**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.

Year 4 Plan approved 5.14.23

# YEAR THREE (3) IMPLEMENTATION PLAN UPDATE

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.



YEAR 3-4  
SA  
REQUIREMENTS

### Year 3

**June 15, 2023**

- Submit an **updated IP** for **Year Four** of the SA
- Submit a **biannual data report** to the USDOJ and SME. (**Extended to 10.01.23**)

**December 14, 2023**

- Provide permanent **supported housing** to at least 60 TPMs with an identified need for these services.
- Submit a **biannual data report** to the USDOJ and SME.

### Year 4

**June 14, 2024**

- Submit an updated IP for **Year Five**
- Submit a **biannual data report** to the USDOJ and SME.

**December 14, 2024**

- Transition 60% of TPMs who are requesting transition from skilled nursing facilities.
- Continue to ensure they occur **no later than 120 days** after the member chooses to pursue transition to the community.
- **Divert an additional 150 at-risk TPMs** from SNFs to HCBS.
- Provide **permanent supported housing** to TPMs based on aggregate need.
- Conduct individual **in-reach to 1,000 TPMs** residing in SNFs.
- Submit a **biannual data report** to the USDOJ and SME.
- Additional **650 TPMs receive PCP. Half need to be TPMs residing in a SNF.**
- Updated IP addresses **allocating resources** sufficient to **assist with permanent supported housing.**

# DOJ SA YEAR 3

## Preliminary Numbers

### LTSS OC visits (Hospital & Nursing Homes)

- 645 initial visits, 1400 visits to current SNF residents for person-centered planning, 885 people attended annual SNF in-person presentations at 77 facilities

### HCBS referrals to HCBS from ADRL intake staff

- 1,406 individual referred to HCBS Case Management
- 63% of referrals open as a case
- Average weighted caseload 122

### HCBS Diversion from nursing facility

- 299 people avoided SNF placement and received care at home/community

### ADRL Contacts

- 14,857 calls

### Unduplicated people getting HCBS

- 3,312 (not all TPMs)

### Number transitioned from nursing facility to community

- 102 individuals (91 MFP & 11 ADRL)

### Permanent supported housing

- 47 some form of rental assistance



# QSP HUB UPDATE



# ADRL TRANSITION & DIVERSION

## Preliminary Numbers & Program Update

- ADRL Transition/Diversion referrals – 757
- ADRL Transitions – 183
- ADRL Diversions – 98



# LISTENING SESSION

## Stakeholder Engagement

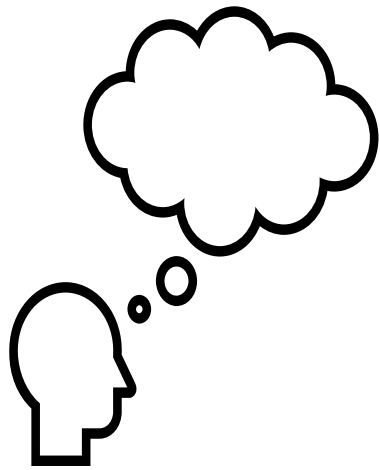
Additional listening sessions will be held quarterly **during** the USDOJ Settlement Agreement stakeholder meetings for the first two years of the Settlement Agreement.

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



# STAKEHOLDER INPUT

What should be a priority in 2024?



# 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





# 2024 DOJ STAKEHOLDER MEETING DATES

- March 21, 2024
- June 20, 2024
- September 19, 2024
- December 12, 2024



## 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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