

# **North Dakota Settlement Agreement with the US Department of Justice**



**Report of the Subject Matter Expert**

**October 2023**

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## **EXECUTIVE SUMMARY**

In December 2020 the State of North Dakota entered into a Settlement Agreement with the United States Department of Justice (USDOJ) resolving complaints alleging that the State failed to administer long-term services and supports to people with physical disabilities in the Most Integrated Setting appropriate, in violation of the Americans with Disabilities Act. The Settlement Agreement required the development of Implementation Plans to identify benchmarks and timelines for meeting requirements, biannual data and progress reports by the State, and biannual reports from the Subject Matter Expert (SME). This is the SME's fifth report on progress being made by North Dakota, coming at two and one-half years into the Settlement Agreement.

## **PROGRESS TOWARD MEETING REQUIREMENTS**

The State has worked diligently and in good faith on every component of the Settlement Agreement. Strategies are in place in the current iteration of the Implementation Plan for Year three (3), with further revisions to the plan due by December 14, 2023, for Year four (4) of the Settlement Agreement. The SME is encouraged by the work of the State in achieving not only the benchmarks outlined in the initial plan, but, most importantly, in the changes to the systems that allow more North Dakotans to remain in the Most Integrated Setting that they choose as long as possible.

The State has dedicated substantial resources to assuring that this happens. As is apparent throughout the body of this report, significant attention and detail has been paid to diversions (keeping Target Population Members [TPMs] in the community) and transitions (returning TPMs to their community of choice), case management involvement, long-term services and supports options counseling, housing, data collection and its use to refine systems, and person-centered planning. The State has focused on each of these areas as they work to improve the lives of North Dakotans.

## **REPORT CONTENTS**

Included in the body of this report are a number of recommendations that the State, in addition to the changes they have made or are making, can address in efforts to further improve their work with TPMs. It is the privilege of the SME and his team to work alongside the State in these efforts, providing technical assistance and building a working relationship that marries the expertise of both entities to achieve necessary goals.

Additionally, the reader will find current information regarding each of the reporting requirements from the State to USDOJ. While there are issues that remain, every indication is that the State is working to address each component of system development and service delivery to address issues of concern and move forward to assure that their citizens are aware of and are receiving the services they want that allow them to live their lives in the settings they desire with the services they require.

There is a significant focus by the State and in this report on the priority area of provider capacity to further enable Target Population Members (TPMs) to receive the services they require to live in the Most Integrated Setting of their choosing. The State is working diligently to improve the enrollment process and is preparing to launch new tools in January 2024. In addition, the State has contracted with *ConnectToCareJobs*, a portal which will allow Qualified Service Providers (QSPs) to share more information about themselves and their availability to provide care directly to Target Population Members. More detail about these activities and others addressing the priority focus of provider capacity are found in the next section of this report.

### RECOMMENDATIONS

The Subject Matter Expert's overall perspective, in both the review of the State's most recent Biannual Report/Data Dashboards (June 2023) and in the writing of this report, is to focus on "what comes next." In practical terms, this is the State's Year 4 Implementation Plan (IP). The SME has suggested as an aspect of the review of the Biannual Report, and is suggesting in this report, new and refined strategies in the next IP to address service gaps. While recommendations are included in each section of the report, a few highlights are as follows:

- Refine the set of performance measures for which data is being collected to ensure it is both reliable and meaningful, align biannual reporting periods, and streamline reporting.
- Further trending of two and one-half years (five [5] six [6]-month reporting periods) of data that has been collected to determine future needs and to inform what must come next to continue to create system change. Implementation Plan strategies need to be, in part, data based.

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## QUALIFIED SERVICE PROVIDER (QSP) CAPACITY

Section XIII.A of the Settlement Agreement requires that the State take necessary steps to ensure an adequate supply of qualified, trained community providers to enable Target Population Members to transition to and live in the Most Integrated Setting. Growing the capacity of Qualified Service Providers is the most significant need in North Dakota. The number of individuals who wish to be served through Home and Community-Based Services (HCBS) has continued to increase throughout the term of the Settlement Agreement, creating greater demand for QSPs.

The total number of QSPs (agency and individual) is subject to frequent fluctuations. A high number of the total enrolled QSPs are individuals. The June 2023 Biannual Report (pg. 10) indicated that there were 1,058 individual QSPs and 152 agencies currently enrolled to provide HCBS, with 116 of the individual QSPs being new and 17 agency QSPs being new. That is an increase of 94 individual QSPs and 13 agency QSPs over the last reporting period. There were 22 individuals and four (4) agencies who stopped providing services.

The average length of time a QSP remains enrolled to provide services is 4.78 years (June 2023 Biannual Report, pg. 10). The State notes that the first effective QSP date is October 1, 1983. The State further notes the number of QSPs by length of service as follows:

ND DHHS 2023 QSP Access Database	
Years of Service	Number of QSPs
0-11 months	323
1-5	540
6-10	165
11-15	87
16-20	37
21-25	17
26+	32

Some of the fluctuation in numbers each reporting period comes from those QSPs who are serving a family member or close friend. When that person dies or needs to seek a higher level of care (e.g. the Skilled Nursing Facility) the family member/friend that had been providing QSP services stops doing so. The State has been in planning discussions to determine what actions they might take to keep some of those individuals enrolled to provide similar services to other TPMs. The State has indicated planning for an outreach campaign in January 2024 for individuals who have stopped providing services in the last six (6) months. Discussions and planning are also being held with the QSP Resource Hub (noted in a subsequent section of this report) about additional activities that may increase the recruitment and retention of providers.

The lack of providers in communities delays transitions and extends Skilled Nursing Facility (SNF) stays. Two communities where this is noted are Jamestown and Dickinson. The last round of incentive grants provided to increase QSP services resulted in 23 grant awards (December 2022 Biannual Report). Three (3) recipients of these grants speak specifically to increasing services in Stutsman County where Jamestown is located and one (1) in Stark County where Dickinson is located. The results of grant effectiveness in expanding QSP services in these areas will be included in the next biannual report by the State. The State also continues to provide a rural differential rate for QSPs who may not live in those (and other) areas but are willing to travel to work.

### **QSP RESOURCE HUB**

The QSP Resource Hub provides a number of activities related to enrollment, recruitment, and training to assist the State. The QSP Resource Hub operates as part of the Center for Rural Health, University of North Dakota School of Medicine. The State and QSP Resource Hub staff meet on a bi-weekly basis to discuss progress on contract requirements and emerging issues.

In 2022, the QSP Resource Hub completed an individual and agency QSP survey to gain information about QSPs, their concerns, length of work, enrollment, and other demographic information. The QSP Resource Hub has deployed a second survey to gain additional information that builds on the first survey and will provide further data about the people and agencies who provide these services, their reasons for doing so, and the barriers they may be encountering.

QSP Resource Hub staff continue to support individuals and agencies that are interested in becoming a QSP or who are already an enrolled provider. As awareness of the Hub continues to increase and call volume rises, the QSP Resource Hub is developing further training and orientation materials for QSPs (June 2023 Biannual Report, pgs. 37 – 38). The QSP Resource Hub has initiated a Building Connections group where agency QSPs come together monthly to discuss issues and learn from one another to support the important work that they do. The QSP Resource Hub completes a quarterly report that is shared with the State and the SME. A link to those reports is included in the June 2023 Biannual Report (pg. 38) for stakeholder review.

The QSP Resource Hub also completes a variety of outreach activities for QSPs and potential QSPs. A number of trainings have been developed and are available on demand or as scheduled webinars. The Hub has recently completed its first “pop up” recruiting event in the Jamestown area. Hub staff hosted a booth for two (2) days in Jamestown to share information about becoming a QSP and assisting interested parties in enrollment. The event was designed to help individuals complete the current enrollment packet in its entirety in an attempt to avoid delays in becoming eligible to provide services. Additionally, the Hub worked with the State to develop an informational postcard in the Jamestown area. One side of the postcard includes information about services and the other side includes an outreach to interested individuals with a QR code included to access additional information. It remains to be seen about how successful these activities might be. If there is a positive response, the State and the Resource Hub plan to replicate these activities in other areas.

## RESOURCES

The Department of Health and Human Services, as part of its 2023 – 2025 Executive Budget Request, made several requests that will have an impact on home and community-based services. While not all proposals were funded, appropriations included the following (June 2023 Biannual Report, pg. 46):

- \$351,000 to pay QSPs to provide on call staff to be available in case of emergency or if the regularly scheduled provider is unable to complete their shift(s).
- \$138,150 to pay for two (2) home delivered meals per day under the HCBS Medicaid waiver, SPED, and Ex-SPED.
- \$280,000 to add companionship services to SPED and Ex-SPED.
- \$182,910 to allow bed hold days for community support and residential habilitation paid through the HCBS Medicaid waiver.
- \$6,337,174 to increase individual adult foster care maximum rate from \$96.18 per day to \$150.00 per day and to increase the family home care rate from \$48.12 per day to \$72.50 per day.
- Authority to create a personal care with supervision service in the HCBS Medicaid waiver and switch Medicaid state plan personal care recipients who have supervision needs to the HCBS waiver. This service is budget neutral as an estimated \$13 million will be shifted from the Medicaid state plan personal care to the HCBS Medicaid waiver.

The North Dakota Legislature did not make an appropriation to increase the base rate for the first hour of Personal Care Services to ensure provider access for those TPMs who only need a few hours of care each week, nor did they provide funding for a higher acuity rate for services to TPMs who present with significantly greater needs. The Legislature did make an appropriation for a three (3) percent inflationary rate increase for QSPs beginning July 1, 2023, and an additional inflationary increase of three (3) percent for QSPs beginning July 1, 2024.

During 2022, the State offered QSPs funds for recruitment and retention bonuses to help recruit and retain qualified individuals who provide direct support to TPMs. In the December 2022 Biannual Report (pg. 86) there were 33 agencies and 398 individual QSPs who participated. Myers & Stauffer conducted a review of these bonuses and their impact on QSPs. The effectiveness of the workforce incentive payments for retention and recruitment received mixed feedback from respondents. For retention, 14 respondents saw some benefit, nine (9) saw a major benefit, while five (5) reported no impact and two (2) reported a negative impact. Overall, a higher number of eligible agencies report some or major benefit for retention incentives. For recruitment, 12 respondents reported no impacts while nine (9) reported some benefit and seven (7) reported a major benefit. Only two (2) respondents reported a negative impact of recruitment workforce incentive payments. (North Dakota Department of Health and Human Services Medical Services Division, Workforce Retention and Recruitment Evaluation, June 30, 2023, Myers and Stauffer, LC).

## MEDICAID ENROLLMENT

QSPs are required to enroll as Medicaid providers and, as such, the efficient processing of applications is paramount to building the available workforce. The simplification of the enrollment process and the renewal of applications for QSPs to continue services has been subject to delays and is not yet operating in an optimal manner. The State is taking the following actions to improve these processes. Both the State and the SME believe this is a high-priority area for the State.

1. In 2022 North Dakota's Medical Services Division entered into a contract with Noridian Healthcare Solutions to manage QSP applications for Aging Services. The contract was designed to work through the backlog of renewal applications that had developed during the pandemic and to address new applications.

There have been some challenges with the Noridian contract: staffing to ensure that applications are addressed, an understanding of all of the requirements that need to be completed, and the best way to move those forward. Meetings between the State and Noridian leadership have occurred over the last several months in an effort to improve the capacity to complete these tasks in a more effective and efficient manner. In September 2023, the State reported to the SME that 123 applications for renewal remained incomplete. Though they have been "processed," there is insufficient information about how many of those applications include all of the required information.

2. In addition to revising the enrollment forms for individual and agency QSPs in the previous reporting period (December 2022 Biannual Report) to streamline the way providers can select all the services they wish to offer in groupings as opposed to one at a time, the State has opted to contract with a vendor to complete a new provider portal for enrollment. Currently, all of the necessary information to enroll is completed on "paper" forms which must then be submitted to Noridian for qualification. If there is missing (or unclear) information in those forms electronic dialogue between Noridian and the provider ensues, creating backlogs and delays.

Beginning in August 2023 the State has been working with a vendor to develop an electronic portal for the provider. This portal will be designed to be more intuitive and ensure that information is inputted directly into the system through the completion of "questionnaires" and the uploading of required documents so that all information necessary is gathered in sequence. The system does not allow the potential provider to move forward until all information is gathered. It also allows the individual to begin the application and save it for completion at a later time if necessary. Once the new application process is completed and submitted, the information will be sent to Noridian for verification. The planned launch for the new portal is November 2023.

3. The State has also altered processes and timelines for application renewals. The re-enrollment period for providers has changed from every two (2) years to every five (5)

years. Individual QSPs, though they do not have to submit full documentation, are required to reauthorize their certification every 30 months. This action required changes to North Dakota's regulatory code, the Medicaid Waiver, and the State Plan Amendment. The State should be commended for completing this process.

4. As part of the new portal and increasing the visibility of QSPs moving forward, the State, through ADvancing States, has contracted with *ConnectToCareJobs* to create a platform for QSPs and TPMs that allows better information to flow between providers and service recipients. The platform is designed to replace the static list of provider names and phone numbers with an interactive platform. This platform will also launch in January 2024 in conjunction with the new enrollment portal. This platform will enable providers to share more detailed information about themselves, the services they provide, availability, and locations. *ConnectToCareJobs* will be searchable by consumers and State service navigators to assist in the matching of QSPs to consumers, including those TPMs who are self-directing care. Additionally, the platform will allow agency providers who are seeking additional staff to place information about potential work opportunities in their areas to the greater QSP community.

The State will ensure that when the platform is ready all active QSPs are initially loaded into the system and will provide training on how QSPs can enhance their profile. The new system will allow the State to gather better data on where services are available, assisting in determining any shortage areas that may exist.

## UNDERSTANDING AUTHORIZATIONS AND UTILIZATION

In order to understand where gaps may exist in the delivery of services it is critical that the State drill down into the data, especially when it pertains to the level and types of services being authorized and utilized. In the June 2023 Biannual Report, Appendix E, the State provides a graph that shows the number of TPMs, QSPs, and services utilized by the county for the reporting period. What the graph does not indicate is which specific services are being authorized and utilized.

It is important to understand the gaps that may exist in services in different areas and/or by service type. As this is not information easily gathered from one reporting system, it will require effort and planning on the part of the State and presents a number of challenges. The SME, USDOJ, and the State have initiated discussions on the importance of implementing a methodology for gathering this information while also acknowledging the associated challenges. The State has been clear on the importance of not only looking at the data, but also the individual circumstances and reasons why authorized services are un- or underutilized. One such methodology is a sampling methodology as follows:

- Select two (2) distinct services (e.g. personal care and homemaker services).
- Select three (3) or four (4) different counties, rural and urban.
- Determine the levels of services authorized and those utilized for a set period of time (e.g. quarter-year).
- Create a report of those findings.

- Where there are discrepancies (greater than 15%) review whatever information is necessary to determine why those discrepancies exist.
- Develop a brief report of findings that includes any noted trends in the data.

Gaining a better understanding of what services are being delivered and where, through identifying trends, can assist the State in targeting activities to improve services for TPMs so they can remain in the community. The State may have some of this information already accessible through the findings of analyses completed by CBIZ Optumas in 2022. *Deliverable 6.0: Report on Findings on Initial HCBS Rate Methodology Analysis* includes overviews of some of this data that may serve as an appropriate starting point.

### **PROVIDER MODELS AND SELF-DIRECTION**

Formal self-directed service options are part of most Medicaid funded HCBS in the US. States can collect a federal medical assistance percentage (FMAP) for self-directed services if approved by the Centers for Medicare and Medicaid Services (CMS). In North Dakota, however, most of the in-home services provided to eligible individuals are funded under the State's Service Payments to the Elderly and Disabled (SPED) program which, based on the State's analysis, would require additional State general fund appropriations if formal self-direction was put in place. An Agency with Choice model, where the agency and service recipient share employer responsibilities may alleviate recruitment, hiring, and retention of QSPs. The agency can assist with administrative tasks such as training, payroll, and providing benefits to the QSP. The service recipient maintains control and choice because they select, help train, schedule, manage, and dismiss the QSP. The State is currently weighing the potential benefits of formal self-direction, such as alleviating administrative/financial burdens to the service recipient vs. the potential costs to the State's general fund. It is of note that other State's, such as Pennsylvania and New Mexico, have implemented self-directed services for similar populations supported by state general fund programs without an accompanying increase in costs. Self-directed programs have also proven effective in addressing workforce shortages in rural states. Although the State has not implemented formal self-direction, it has implemented flexibilities for families that are consistent with self-directed principles.

The State has indicated that it will take all factors into consideration when determining what, if any, new provider models are needed to ensure TPMs can live in the most integrated setting appropriate to their needs. The State will determine the feasibility of a variety of provider models including the co-employer/agency with choice model and a QSP rural cooperative.

Included in the June 2023 Biannual Report (pg. 39) is a strategy outlining plans to conduct and complete a feasibility study of a variety of provider models including the co-employer/agency with choice model and a QSP rural cooperative. Pending thorough analysis by Aging and Adult Services and the Department of Health and Human Services, any additional costs associated with the implementation of these or other models may be considered as part of the next Executive Budget Request in the 2025 – 2027 biennium.

## QSP CAPACITY RECOMMENDATIONS

In 2021 and included in the original Implementation Plan from North Dakota to address requirements in the Settlement Agreement, a Capacity Plan drafted by the SME and in coordination with the State included a plethora of recommendations to improve capacity to serve TPMs. The State has implemented many of those suggestions and is in the process of implementing additional recommendations. Much of that work is delineated in the June 2023 Biannual Report and this report from the SME. The SME suggests the following be considered for priority focus:

- In conjunction with the QSP Resource Hub develop and implement a comprehensive communication and recruitment plan for QSPs.
- Further explore how to deliver training for QSPs that is individualized to the unique needs of individual service recipients.
- Create incentives to assist QSPs in serving TPMs with high/complex needs, perhaps through another round of competitive grants focused specifically to this issue.
- Develop and communicate the process for providers who are struggling with billing issues to obtain consistent support.
- Highlight key strategies for further provider capacity building given its prominence as the highest priority issue the State faces. Ensure that these strategies are actionable, sustainable, and included in the Year 4 Implementation Plan (November 2023).
- The SME encourages further analysis and consideration of self-directed programs.
- Further address issues associated with delayed enrollment processing and approval. If it is determined that the current system cannot be improved, consider alternative options.

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## SERVING THE INDIGENOUS AMERICAN COMMUNITIES

The State continues efforts to engage with Tribal communities to provide case management, QSP services, and determine the needs that are being noted and how to address them. In part, the State works with Tribal liaisons in the DHHS Office of Healthy and Safe Communities to engage in community conversations during other planned activities on the reservations. As relationship building is a continuous process essential to better understanding barriers that may exist which prevent more services from being developed, available, and used, during this reporting period (and moving forward) the State developed and has been working with a Tribal Consultation Group. This group meets monthly to gain understanding and feedback from the four (4) Tribal nations within North Dakota. Those discussions have focused on providing services, accessing Tribe-appropriate training, and the continuation of relationship building. The State has, intentionally taken “a step back” and invited tribal representatives to take the lead in informing the State about what is needed to better serve indigenous Target Population Members.

## SERVICE PROVISION

The State continues to support the development and success of Tribal entities who enroll as QSPs to provide HCBS in reservation communities by gathering feedback to improve processes, provide technical assistance, and staffing cases to ensure TPMs have the services they need to live in the most integrated settings appropriate, including funding support. The following Tribes are currently providing home and community-based services within their lands.

- Turtle Mountain Tribal Aging Agency (Currently serving 21 HCBS recipients)
- Spirit Lake Okiciyapi (Currently serving 36 HCBS recipients)

It has been shared in discussions with the State and the SME that caregivers for a majority of the individuals receiving services in Indian Country are family members, in keeping with Indigenous American traditions and desires.

While still being implemented, the State awarded 23 additional incentive grants in a second round of awards to support start-up and enrollment activity costs for new or existing QSPs to establish or expand their business to provide HCBS. The June 2023 Biannual Report (pg. 82) indicates that nine (9) of those awards include the expansion of QSP services to Tribal and rural/frontier communities. Activities and progress from those grants will be included in the next reporting period.

## TRAINING

The previous expert who trained case managers and State staff in cultural awareness for Indigenous Americans has departed the State. Prior North Dakota Biannual Reports and Reports of the Subject Matter Expert have included extensive information about those trainings, including self-reported data from case managers on their learning and collective growth, much of which has been significant. As part of the work of the Tribal Consultation Group, determinations on how best to move forward with these essential trainings are under

discussion. Those conversations have included bringing in speakers from the Tribes and considering the creation of trainings specific for each Tribal nation to assist case managers and other QSPs to best support Indigenous peoples.

The SME is supportive of the work the State has been doing to enhance relationships and increase services with Tribal nations. The State is showing progress in understanding and addressing, in partnership, the unique barriers that have been encountered, and working to achieve solutions.

#### **INDIGENOUS AMERICAN COMMUNITY RECOMMENDATIONS**

- Ensure the sustainability of Tribal Consultation Group meetings.
- Further analyze case management and transition coordinator capacity in impacted Tribal regions throughout the State to determine sufficiency and adequacy of State support.

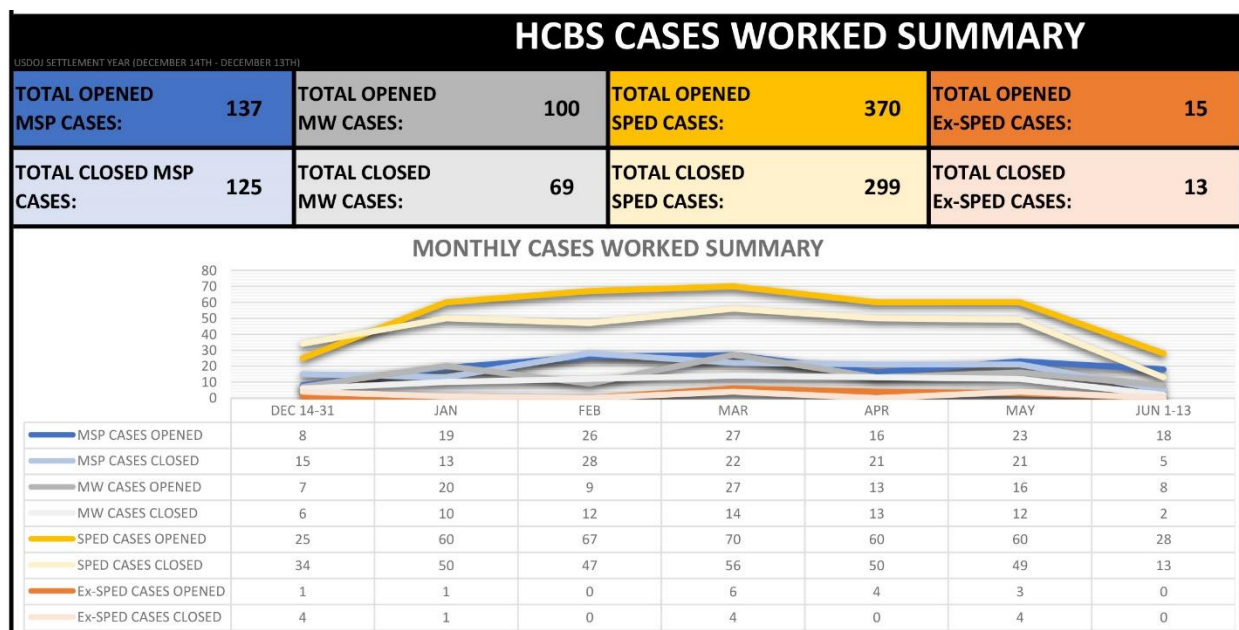
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## STAFFING

There are a variety of State personnel who work with TPMs and QSPs. They consist of Case Managers, Long Term Services and Supports (LTSS) Options Counselors, Transition Coordinators through the Centers for Independent Living (CILs), an Aging Generalist, Navigators, Community Service Coordinators, Medical Services Division staff, and Money Follows the Person (MFP) staff.

## CASE MANAGERS

There are 67 case managers in North Dakota's in the Adult and Aging Services Section of the Department. The June 2023 Biannual Report (pg. 4) indicates that 744 referrals were received for HCBS in the last reporting period and a total of 2,886 adults were served. There is a great deal of fluidity in the opening and closing of HCBS cases. The State reports in the 2023 Aging Services DOJ SA Dashboard (Dec 14, 2022 – June 13, 2023) the number of cases opened and closed for all persons receiving HCBS, not just TPMs.



The State indicates that there are several reasons for the high number of closures each year. Most notable is that many people have unstable medical conditions or are near the end of life. The State continues to strategize about how it can reach Target Population Members more quickly. It is hoped that in the future more of the individuals being served will not be as close to the end of life as what the State is currently experiencing.

Caseloads, as can be expected from the rise in the number of clients served, have continued to grow. The average weighted caseload (determined by the complexity of the case, distance to travel, etc.) has increased to 121 (June 2023 Biannual Report, pg. 21) from the previous reporting period of 117. The State would like this number to be closer to 100. To address the growing need for case managers, the State in its Executive Budget Request asked for funding to

hire an additional 10 case managers. Following appropriations made by the North Dakota Legislature for the 2023 – 2025 biennium, Aging Services will hire an additional seven (7) case managers. As of this writing, all of those positions have been filled.

In hiring the new case management positions, the State has determined that they will institute a “tiering” of case managers by assigning three (3) of the new positions to clients receiving Basic Care services (approximately 700 individuals). Those individuals require less assistance and fewer care plans. Covering this population with three (3) case managers will reduce part of the caseload for others. Even with the increase in the number of case managers, however, there is concern that caseloads will remain higher than desired by the growing number of individuals seeking home and community-based services.

### **LTSS OPTIONS COUNSELORS**

There are 10 LTSS options counselors who provide services in North Dakota. The responsibility of the options counselor is to meet people in the hospital and the Skilled Nursing Facilities to ensure they are aware of the availability of HCBS and, if they are interested in returning to the community, to ensure referral is made to the Money Follows the Person Program and transition coordinators as well as to HCBS.

Referrals to LTSS options counseling are made for every Target Population Member who is referred for a long-term stay in the SNF. Five hundred forty-two (542) referrals were sent by LTSS options counselors to communities across the state. Of those, options counselors contacted 437 unduplicated individuals. Of those 437, 101 asked to be referred to MFP and/or HCBS. (2023 Aging Services DOJ SA Dashboard (Dec 14, 2022 – June 13, 2023)).

In addition to providing information about home and community-based services, options counselors are also responsible for completing Person Centered Plans (PCPs) with those individuals who choose to remain in the SNF. In the June 2023 Biannual Report (pg. 20), North Dakota reported the following:

- There are 2,367 current Medicaid recipients residing in SNFs.
- There were 367 unduplicated individual in-reach visits.
- They were combined with 917 unduplicated annual LTSS options counseling visits that included completion of a PCP and risk assessment.
- This results in 54% of all Medicaid recipients residing in a SNF that received an individual in-reach visit.

### **AGING SERVICES GENERALIST**

Following the appropriations and authorizations made by the North Dakota Legislature for the 2023 – 2025 biennium, the status of the aging services generalist position was changed (June 2023 Biannual Report pg. 20) from temporary to permanent. This individual has a comprehensive and detailed understanding of all programs and services within the Department. This can include such things as transportation, home-delivered meals, and senior activities. This person also serves as a half-time case manager for HCBS.

## NAVIGATORS

As with the aging services generalist position, the two navigators who work within Aging Services have also been funded by the North Dakota Legislature in the 2023 – 2025 biennium appropriation. Navigators work with Qualified Service Providers to help connect QSPs with TPMs who are seeking care (2023 June Biannual Report, pg. 20). As a new registry is being created for QSPs (*ConnectToCareJobs*) where providers will be able to share more information about their work and their availability, navigators have been working to get to know QSPs – both individuals and agencies – to determine availability and match them with clients. The tracking of the navigator’s work began on May 4, 2023. Between that date and June 13, 2023, there were 135 individuals who were assisted by a navigator (June 2023 Biannual Report, pg. 17).

## TRANSITION COORDINATORS – CIL STAFF

Transition coordinators are employed through contracts with the Centers for Independent Living (CILs) of which there are four in the State. Transition coordinators work with those individuals currently residing in Skilled Nursing Facilities who desire to return to community living. Most of the referrals for their services come from the LTSS options counselors, but recently the State has started seeing more referrals coming directly from the SNFs.

The work of a transition coordinator begins in the SNF setting, but once the individual has transitioned, the coordinator stays involved with them for the first year of residence in the community. The MFP program has in place a tiered transition coordination schedule:

### **“Ongoing Visitation/Follow-up by MFP Transition Coordinator:**

#### **First week:**

Contact will be based on the adjustment needs/preferences of the Individual. This will range from just the day of transition to daily contact.

#### **Ongoing contact:**

Home visits will be based on the needs and preferences of the individual and as identified by the MFP Transition Coordinator with the individual and their team with a minimum of monthly contact. (3 attempts will be made to schedule a monthly visit).

#### **Routine Scheduled Contacts:**

**First Month:** At least weekly contact

**Second and Third Months:** Minimum of one contact every two weeks

**Months four through twelve:** Minimum of monthly contacts

**Sixth month visit:** If possible, coordinate with HCBS and complete the visit/meeting together due to the potential for a change in services/supports.

The provision of the above outlined services will be provided in accordance with the current Nursing Facility Transition Process Guidelines. These Process Guidelines may be adjusted and modified as needed by the MFP Grant Program Administrator...”

The State has made funds available to hire assistant coordinators, who assist the transition coordinators in each location. The assistant coordinator is able to help with establishing the residence for the individual and assuring that needed home furnishings, food, etc. are available before the client leaves the SNF. Though funding is available, not all of the CILs have elected to pursue this position (2023 June Biannual Report, pg. 56). The State has reported that the Freedom CIL will be adding an assistant coordinator in the coming months.

- Dakota CIL (Bismark) – five (5) full-time transition coordinators and one full-time assistant coordinator.
- Independence CIL (Minot) – three (3) full-time and one (1) half-time transition coordinators.
- Freedom CIL (Fargo) – three (3) full-time transition coordinators.
- Options CIL (Grand Forks) – four (4) full-time transition coordinators.

There has been turnover in leadership in the Freedom and Options CILs (located in the eastern part of the State) since the last report as well as a turnover in transition coordinators. Amidst these changes there is a loss in experience and expertise, but also opportunities for improvement, such as in the production of more consistent and comprehensive Person Centered Plans. According to multiple reports, there is growth in the number of individuals transitioning to the Fargo area as necessary QSP services may be more readily available. It is incumbent on the State to analyze transition coordinator capacity in Fargo just as it is in the other CIL regions to ensure that there are sufficient resources to effectively serve TPMs that are transitioning. If there are gaps, it seems there is adequate resource flexibility (human and budgetary) to address these gaps.

### **ADDITIONAL STAFF**

In addition to the staff previously noted, the State has worked over the course of the Settlement Agreement to enlist a number of other positions within its purview to better serve TPMs and to be able to report on the work of Aging Services as it seeks to help the citizens of North Dakota to live in the most integrated setting appropriate and desired. These positions include:

- Referral Specialists – two (2), one in the MFP program and one through the Aging and Disability Resource Link
- Data Analyst
- ADRL Program Administrator

The State has worked to expand staffing in ways that provide, most importantly, services to TPMs, and secondly, to assure that citizens of North Dakota are aware of options available to them if they are seeking assistance. The ADRL, designed during the COVID-19 pandemic and staffed throughout the course of the Settlement Agreement, has been a large part of this focus. As reported in the 2023 Aging Services DOJ SA Dashboard (Dec 14, 2022 – June 13, 2023), tens of thousands of individuals continue to make contact through ADRL options.

USDOJ SETTLEMENT YEAR (DECEMBER 14TH - DECEMBER 13TH)																																	
<b>TOTAL UNIQUE ADRL I &amp; A INQUIRIES:</b>	<b>21,931</b>																																
<b>ADRL I &amp; A CALLS:</b>	<b>7,308</b>																																
<b>ADRL WEBSITE HITS:</b>	<b>17,058</b>																																
<b>ADRL UNIQUE WEBSITE HITS:</b>	<b>14,623</b>																																
<b>ADRL I &amp; A INQUIRIES PER USDOJ SA MONTH</b>																																	
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<b>AVERAGE ADRL I &amp; A CALL WAIT TIME (IN MINUTES):</b>	<b>1</b>																																
<b>WEB REFERRALS:</b>	<b>724</b>																																

### MEDICAL SERVICES DIVISION

The final area of staffing noted in this report is that of the Medical Services Division, a division within the ND Department of Health and Human Services that also addresses needs for TPMs. Medical Services is responsible for the approval and subsequent revalidation of individual and agency QSPs.

There has been turnover in the Medical Services Division, including the departure of the division director. A new director for the division was on boarded in this reporting period and a number of activities are taking place to reduce the length of time it takes to assure that providers are enrolled and eligible to assist TPMs. Currently, enrollment activities have been contracted to Noridian Healthcare Services to ensure that applications are received, processed timely, and renewed as necessary. There have been challenges that have resulted in undue inefficiencies in the processing/approval of enrollment applications. During the last several

months and at the State’s direction, Noridian has implemented corrective actions to address workflow barriers and reduce unnecessarily long delays in enrollment processing.

The State is also in the midst of creating a new provider portal – more intuitive to the individual or agency who wishes to enroll and a streamlined system that is electronic in nature. It will provide the applicant an opportunity to begin, save, and restart the application as needed to ensure its completion and has markers along the way to ensure that all necessary information is being gathered. The QSP Resource Hub (discussed in detail in the QSP Capacity section of this report) will also have staff that can assist applicants in completing the necessary tasks. The new portal is expected to launch in November 2023.

### **STAFFING RECOMMENDATIONS**

- As the Department received “block” (lump sum) funding and FTE authorization, consider authorizing additional case managers in order to reduce caseloads, such as the three (3) requested that were not “formally” funded/authorized by the legislature.
- No longer allow the CILs the option to refuse additional budgetary and human resources. Determine if transition coordinator/assistant coordinator capacity is sufficient and address identified gaps.
- Given the impending conclusion of the availability of grant funds such as those from the American Rescue Plan Act (ARPA), ensure continued funding/authorization for key positions that have been filled through these expiring resources.
- Since the beginning of the pandemic, Aging Services staff have been working remotely, rarely having the opportunity to meet for dialogue and brainstorming. The State could benefit from scheduling routine gatherings of program administrators and other leadership staff to address issues and consider potential solutions with a larger group in person.

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## TRANSITIONS & DIVERSIONS

### TRANSITIONS

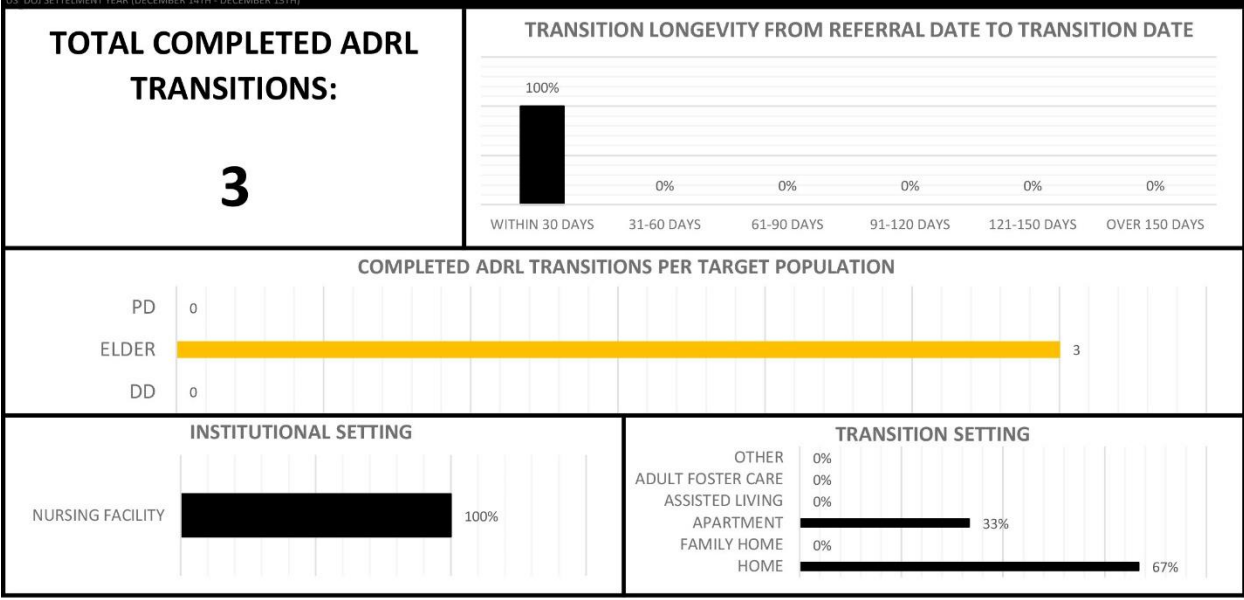
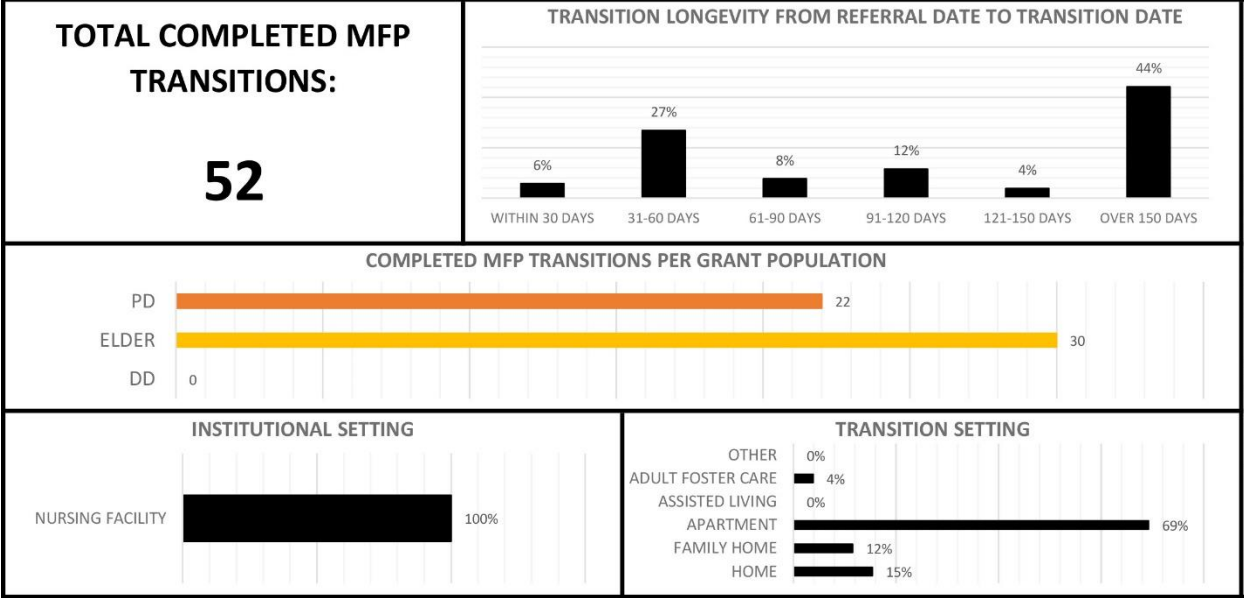
Section XI.E.2.a of the Settlement Agreement requires that within two (2) years of the effective date of the Settlement Agreement, the State, "...consistent with the member's choice, as appropriate to the member's needs transition at least 100 Nursing Facility Target Population members." As reported in the December 2022 Biannual Report and the April 2023 Report of the Subject Matter Expert, the State far exceeded that requirement by completing 212 transitions. During the current reporting period 121 transition referrals were received and 55 transitions completed with TPMs (January 2023 Biannual Report, pg. 61). The number of transitions completed by each of the CILs during the current reporting period is:

- Freedom (Fargo) – 16
- Dakota (Bismarck) – 20
- Independence (Minot) – 14
- Options (Grand Forks) – 5

The Settlement Agreement further indicates in Section XI.E.2.b that "...within four years of the Effective Date the State will...transition at least 60% of Nursing Facility Target Population members..." that request and are referred for transition services. The rate of transitions (55) as a percentage of referrals (121) during this reporting period is 45%.

Section XI.B of the Settlement Agreement indicates, in part, that "...transitions will occur no later than 120 days after the member chooses to pursue transition..." As reported by the State, there are multiple factors that impact the length of transitions. These can include medical case complexity, behavioral health challenges, shifting health conditions, housing, provider capacity barriers, and individual choices to delay transitions. Other barriers can also present themselves in the transition space. There are times when an individual wishes to move to the community but doesn't have the support of a guardian or family members. There have also been reports that some SNFs discourage transition, telling individuals they cannot be successful in the community.

The State has not yet met the benchmark to transition individuals within 120 days, with this reporting period showing that 48% of transitions occurred after 120 days, which is a significant increase from 2022. It must be noted that the State continues to work with individuals throughout and helps navigate challenges and barriers that arise to ensure individuals can eventually return to the community. The 2023 Aging Services DOJ SA Dashboard (Dec 14, 2022 – June 13, 2023) reports both the length of time for transitions through the MFP program and the transitions that occurred through ADRL.



Section B further requires, in part, that “...The State will identify any member whose transition has been pending more than 100 days to the SME and US...” The reports are submitted quarterly by the State. As noted in a previous report, the State developed a transition team model where transitions taking 90 days or more are staffed regionally to identify action steps that can be taken to successfully navigate longstanding and complex barriers. Transition teams include the HCBS case manager, transition coordinator, and housing facilitator at a minimum. If other expertise is needed the team model is enhanced, for example, by support from the Human Service Centers (to help address behavioral health needs) or including the paratransit system (or agency QSPs who can provide this support) regarding transportation needs. The State also offers the opportunity for weekly staffing by teams who are addressing more

complex cases. The reports submitted to the SME and USDOJ show evidence of activities that are regularly taking place as people seek to transition.

The quarterly report includes Target Population Members who are in facilities and have been waiting, for 100 days or more (from the time of referral to HCBS), to transition home or to the community. Included in this report are relevant updates on the individual's medical situation as well as action steps that need to occur to navigate barriers such as housing or QSP availability and move transitions forward.

A SME review of the recently submitted quarterly report (also known as the 100+ Day List) for the second quarter of 2023, showed a total of 29 TPMs. It is noted that the report is a point-in-time "snapshot" of what is a dynamic and fluid process. For example, some of the individuals on this list as of June 30, 2023, have surely transitioned by now (October 2023). As of June 30, 2023, those 29 individuals had been awaiting transition for an average of 305 days. The State has indicated that some of the individuals who, according to this report, have been awaiting transition for hundreds of days, may not have formally consented to transition. The 120-day requirement in the Settlement Agreement (Section XI.B) is based on when "...the member chooses to pursue transition..." This State's process has changed such that written consent to pursue transition will document the starting date of the transition. Prior to the alteration of this process, the counting of days began upon referral. In some of these cases, from the State's perspective, the initiation of the counting of days was premature.

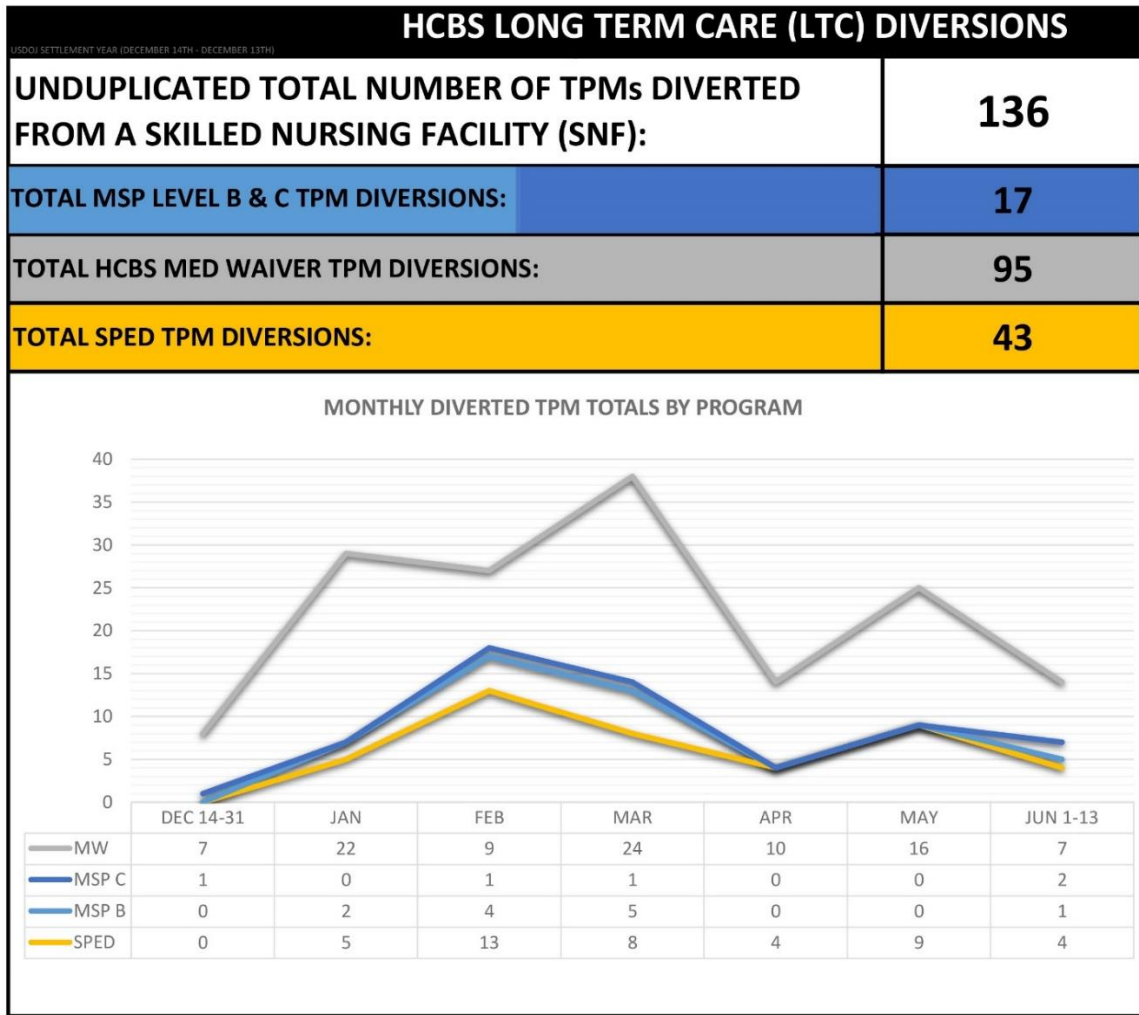
It is important to continue to shine a light on this data as it pertains to issues associated with the 120-day transition requirement contained in the Settlement Agreement. The Parties, with the support of the SME, will engage further on this issue. It is important to look at this data in terms of further development of the forward-looking initiatives of diagnosing and analyzing the reasons for lengthier transitions, and developing implementable strategies for addressing complex and long-standing barriers in a more efficient manner.

## **DIVERSIONS**

Target Population Members (the At-Risk Population) are considered "diverted" when the member screens at a Nursing Facility Level of Care (NFLoC), is on Medicaid or at risk of Medicaid, and receives the necessary home and community-based services to prevent institutional placement.

Section XI.E.2.a of the Settlement Agreement indicates, in part, that within two (2) years "...the State will...divert at least 100 Target Population Members...from nursing facilities to Community-Based Services." As reported in the December 2022 Biannual Report and the April 2023 Report of the Subject Matter Expert (SME), the State far exceeded that requirement by completing 581 diversions. Section XI.E.2.b of the Settlement Agreement indicates, in part, that "...within four years of the Effective Date...the State will...divert at least an additional 150 At-Risk Target Population Members..." The 2023 Aging Services DOJ SA Dashboard (Dec 14, 2022 – June 13, 2023) shows the continued success the State is having in helping people remain at

home and in their communities instead of an institutional setting, indicating 136 diversions in the current reporting period.



As is evident from the chart, most TPMs receive diversion services through the HCBS Medicaid waiver which has been consistent through the period of the Settlement Agreement. The June 2023 Biannual Report (pg. 21) indicates that there are currently 801 TPMs living in the community that have been assigned to a case manager. It is apparent that the State is doing the work necessary to provide HCBS to as many at-risk TPMs as possible with a goal of mitigating risks to delay or prevent long-term facility stays.

### TRANSITION & DIVERSION RECOMMENDATIONS

- Further analyze trends in lengthier transitions and develop additional strategies to address them. Ensure these strategies are incorporated into the Year 4 Implementation Plan.
- Ensure that the quarterly transition report is continually updated with tasks achieved and a timeframe for completion of remaining necessary action steps.

## **PERSON-CENTERED PLANNING AND PLANS**

The Subject Matter Expert's approach to working with North Dakota on person-centered planning is multi-pronged.

Firstly, there is the matter of compliance with interim benchmarks noted in Section VIII.I.3 of the Settlement Agreement. Compliance with Year 1 and 2 interim benchmarks are discussed below. There is no interim benchmark requirement specific to Year 3 (the current reporting period). The next interim benchmark is to provide person-centered planning to an additional 650 Target Population Members by the end of Year 4 (December 2024).

Secondly, the SME review is conducted from a technical assistance perspective, provided with intended outcomes that go beyond adherence to Settlement Agreement required benchmarks. This feedback is aimed at further quality improvement, strengthening the Person Centered Plans (PCPs) to better align with the needs of individual service recipients.

Plans are reviewed from diverse geographical regions of the state and represent members of the target population residing in Skilled Nursing Facilities and those living in the community.

### **YEARS 1 & 2 – COMPLIANCE BENCHMARK**

The Settlement Agreement, in Section VIII.I.3a-3b, sets a person centered planning benchmark for 580 Target Population Members to be completed within two (2) years of the effective date (by December 2022). Additionally, VIII.I.3.g indicates that "...at least half of the Target Population members who receive Person Centered Planning each year will be Nursing Facility Target Population members." As agreed to by the Parties, this interim benchmark is a combination of Year 1 (290 PCPs) and Year 2 (290 PCPS).

During the initial two years (December 2020 – December 2022) of the Settlement Agreement, multiple sets of PCPs have been reviewed by the Subject Matter Expert Team and the US Department of Justice. In all, 133 plans were reviewed and it was determined that 116 were compliant with the Settlement Agreement requirements contained in Section XIII.C.1 – 8. This represents a compliance rate of 87.2%. It is of note that over the two year-period the compliance rate has shown a continuous upward trend. Of the most recent 72 plans reviewed, 71 were determined compliant, a 98.6% compliance rate. Given that a representative sample has been reviewed, the 133 plans reviewed represent 22.9% of the 580 plans required by the Settlement Agreement, it is the SME's opinion that the State is in compliance with Year 1 & 2 interim benchmarks.

### **YEAR 4 – COMPLIANCE BENCHMARK**

Recently the SME Team analyzed, evaluated, and provided feedback to the State on an additional 22 PCPs submitted during the new reporting period. These reviews pertain to Settlement Agreement requirements contained in Section VIII.I.3.c that require person-centered planning to at least 650 target population numbers by the end of Year 4 (December 2024). All 22 (100%) of these plans were determined to be compliant.

### **PCPS SUBMITTED DURING THIS REPORTING PERIOD**

There were 2,367 Medicaid recipients residing in SNFs during this reporting period. The State reports that 917 PCPs and risk assessments have been completed for TPMs. This represents a 39% completion rate for TPMs remaining in Skilled Nursing Facilities (June 23 Biannual Report, pgs. 28, 34). Additionally, the State reports that 795 approved PCPs were completed with TPMs living in the community during this reporting period (December 14, 2022 – June 13, 2023). This is a total of 1,712 unduplicated TPMs (795 in the community and 917 in SNFs) that have received person-centered planning and have completed PCPs. A total of 1,480 PCPs were completed during the previous reporting period (June 2022 – December 2022). The PCP completion rate increased by 232 PCPs, an increase of 15.7%.

### **TECHNICAL ASSISTANCE**

For more than 30 months, the Subject Matter Expert and the State have been working collaboratively on implementing alterations aimed at improving the person-centered planning process. Overall and over time, risk identification is more comprehensive and mitigation plans have improved. The most common element for improvement was the need for the plan to better reflect health, safety, and other risk factors (such as behavioral health conditions) and strategies to address them. This includes contingency plans designed to avoid unnecessary institutionalization. It is important for the State to continue this progress, with a particular focus on risk identification and mitigation, contingency planning, and further development of individualized goals and action steps.

### **PCP RECOMMENDATIONS**

- Continue to provide training to case managers/transition coordinators for the further development of individualized goals and action steps, their implementation and updates, parties responsible for effectively meeting challenges, efficiently addressing barriers, and achieving desired outcomes.
- Strengthen plans to better address issues of behavioral health/mental illness.
- Bring additional focus to contingency planning if a provider is unavailable or a risk event occurs.

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## HOUSING

Section XII of the Settlement Agreement provides the requirements for housing supports and Permanent Supported Housing (PSH) for Target Population Members. The North Dakota Department of Health and Human Services works closely with the State Housing Authority to assure that TPMs needing some level of housing supports can be adequately served. As is prevalent across the nation in most jurisdictions, the State has noted that accessible and affordable housing units are scarce in North Dakota. Feedback shared by housing facilitators indicates that any number of individuals at any given time are looking for the same kinds of settings and that demand far outstrips supply.

During the current reporting period, 55 TPMs transitioned from a nursing facility to the community. Thirty (30) received PSH/rental assistance, 23 were provided home modifications, and 32 received some type of housing assistance from a housing facilitator (2023 Aging Services DOJ SA Dashboard (Dec 14, 2022 – June 13, 2023)).

It is noted that current numbers reported in the housing data relate only to those Target Population Members transitioning from an institutional setting. The State does, however, also provide housing supports and home modifications for individuals living in the community, believing that early investment in home modifications and assistive technology will help keep people at home for longer periods of time; it is a primary activity to assure that more people can live in the most integrated setting for as long as possible. The State has created a method in the case management system to gather information about housing activities with TPMs in the community and will be able to better report on those actions in the future.

## PERMANENT SUPPORTED HOUSING

Permanent Supported Housing refers to affordable, permanent housing coupled with housing supports and other community-based services. The State continues to meet benchmarks associated with providing permanent supported housing to TPMs. The Year 3 benchmark calls for the State to provide PSH to 60 Target Population Members by December 13, 2023. Six (6) months into the year, the State reports having provided PSH to 30 TPMs previously residing in institutions. The State has indicated that during the first two and one-half years of the Settlement Agreement, permanent supported housing has been provided to 157 Target Population Members (December 2022 Biannual Report).



## HOUSING FACILITATION

Housing facilitation/supports provide the individual with the necessary tools to secure appropriate housing. It might consist of rental application assistance, locating an appropriate residence, securing furniture, affordability, accessibility, etc. Each individual transitioning back to the community is offered housing facilitation. The housing facilitator is part of the TPM's team which also includes the transition coordinator and case manager.

The availability of a dedicated housing workforce has grown since the initiation of the Settlement Agreement. The MFP program added both housing facilitator and transition coordinator capacity, as did ND Rent Help. Both efforts grew capacity by contracting with community-based organizations (June 2023 Biannual Report, pgs. 66 – 67).

	MFP		ND Rent Help (NDRH)	
	Start of Year 1	Through 6/13/23	Start of Year 1	Through 6/13/23
Housing Facilitator	3 (via MFP contract with Minot State)	9 (via MFP contract with Minot State) 3 across the state for ADRL in 1/23-3/25	0	63 via contracts with 6 agencies, 17 State staff facilitators (Household Engagement Coaches)
Transition Coordinator	6.5 via MFP (contract with 4 CILS)	15 via MFP (contract with 4 CILS) 3 ADRL across the state	0	0 *Note: While not true "transition coordinators," ND Rent Help added follow-up support to all existing housing facilitator contracts for individuals who needed additional assistance maintaining housing stability.

As there are a number of different entities providing housing facilitation, coordination is essential to assure that TPMs receive the services they need and that efforts are not disjointed or duplicative. The organizations with which the State engages to provide housing facilitation do not all use the same reporting tools, increasing the difficulty in gathering and comparing information.

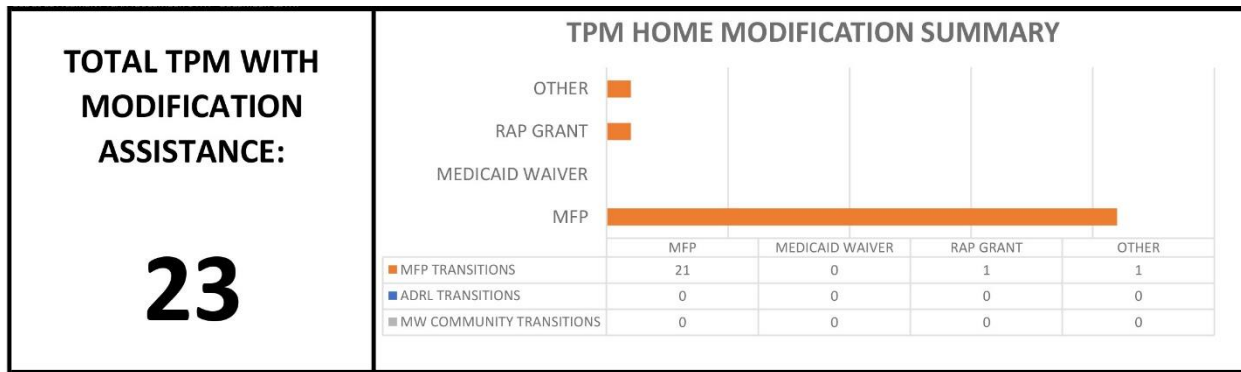
There are two (2) notes in the case management system that are used to track housing information. The first is an assessment where the need for housing assistance is identified and the second is a case note that identifies the outcomes of the housing assistance referral. The housing case note is relatively new to the platform, being implemented on June 14, 2023. The State indicates that it should prove a better tool to gather information about housing activities going forward. In addition to the housing case note, under development is the creation of an

auditing process to address quality assurance in housing facilitation. The SME encourages the State to take more of a leadership role relative to coordinating the work of the various entities that provide housing facilitation.

### ENVIRONMENTAL MODIFICATIONS

*“Getting modifications done is a big deal.”*

The State is working on multiple fronts to both expand and coordinate resources relative to the completion of home modifications and working with developers and builders to ensure these happen more quickly. The State is proposing to increase the resources available in the Housing Incentive Fund as part of this process. The State is also working with a new contractor (to them) out of Minnesota called Next Day Access and continues involvement with North Dakota Assistive which provides technology first initiatives. There is a significant and steady upward trend in the completion of home modification projects. Twenty-three (23) projects have been completed in the current six-month reporting period, so the State is on track to achieve 46 in the current (2023) one-year period, more than quadrupling the 11 completed in 2021 and nearly doubling (91.7% increase) the 24 projects completed in 2022.



As in many places, in addition to funding for home modifications, there remains a workforce issue of finding enough individuals with whom to contract to complete necessary work. The State is considering an approach to Next Day Access to provide a lunch and learn opportunity for contractors who may be interested in joining this space. Additionally, there is conversation and planning among housing professionals to develop a presence at trade shows that cater to the contracting and building industries to engage them in working for TPMs. The State has also reached out to their CMS representative to request to utilize a phase project funding stream. For example, the State would pay a contractor a percentage deposit or pay for materials and work performed before the completion of the project. This payment method may encourage more contractors to work with HCBS. Any new payment method would also need to be designed to meet state procurement laws to take effect, so further meetings with executive leadership are being established before a plan is finalized.

## CURRENT HOUSING ACTIVITY REPORTS

- On May 1, 2023, the State launched a housing facilitator service to assist in housing related matters that are not tied to funding. The intent is to help individuals stay in their home or have resources as it relates to housing such as reasonable accommodations, service animals, porting vouchers, and applying for additional assistance or braided funding.
- The MFP Housing Facilitation team continues to work with multiple partners and updates the MFP housing database to keep individuals aware of accessible units across the State. The new housing developments funded through the ND Housing Finance Agency include a certain percentage of units that are accessible. These continue to be added to the database as they are ready for occupancy.
- The State has memorialized the collection of information related to housing needs as part of the LTSS Options Counseling visits. In the current reporting period 542 LTSS referrals were conducted using the updated form that assesses housing needs (2023 Aging Services DOJ SA Dashboard (Dec 14, 2022 – June 13, 2023)).
- A performance measure in the State’s Biannual Report (June 2023) includes the number of TPMs who successfully maintain their housing in the community during a stay in the Skilled Nursing Facility. During this period, four (4) individuals maintained their housing in the community during a SNF stay. No TPMs lost their housing and MFP continues to pay the rent as long as necessary to allow for a safe transition plan to be established.
- The State is considering a Medicaid Waiver Amendment in the next biennium to include a handyman service to increase the likelihood of home modifications to be considered as well as home repairs that could be completed to enable individuals to maintain a safer level of housing allowing them to remain in the community.

## HOUSING RECOMMENDATIONS

- It is suggested that the State take an enhanced leadership role in the coordination and collaboration of the many entities that provide housing facilitation.
- Similar to the successful benefits of HCBS navigators to connect TPMs to Qualified Service Providers, the State could consider a position of a “home modification navigator” to manage efforts between individuals that require assistance and potential contractors to engage in work.
- Utilize ARPA funding to sponsor assistive technology training. The areas of North Dakota where “assistive technology ambassadors” are in place have seen an increase in making use of technology to keep people in their homes.

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## QUALITY ASSURANCE, RISK MANAGEMENT, DATA COLLECTION & REPORTING

### CRITICAL INCIDENT REPORTS

Section XVI.B in the Settlement Agreement lists the following incidents that, “...will trigger reporting to the Agreement Coordinator, United States, and Subject Matter Expert within 7 days of the incident:

- Deaths;
- Life-threatening illnesses or injuries;
- Alleged instances of abuse, neglect, or exploitation;
- Changes in health or behavior that may jeopardize continued services;
- Serious medication errors;
- Illnesses or injuries that resulted from unsafe or unsanitary conditions; or,
- Any other critical incident that is required to be reported by state law or policy.”

According to data provided by North Dakota, 380 critical incidents were reported by the State to the SME and USDOJ during the most recent six (6)-month period (June 2023 Biannual Report, pg. 113). The 380 incidents reported during this period is an 18% increase over the 322 submitted during the last reporting period. During the last year (July 2022 – June 2023), the State has submitted and the Subject Matter Expert has reviewed over 700 such incidents. Sets of these incident reports are reviewed on a weekly basis as the State has a seven (7) day reporting requirement. The State reports that out of the 380 incidents involving TPMs, 376 (99%) were reviewed within the State’s internal requirement that submitted incidents are reviewed within one (1) business day. Three hundred twenty-nine (329) of the 380 CIRs (86.6%) reported required some level of remediation. The remediation action steps are included in the reports. Out of the 380 incidents involving TPMs, 264 (69%) were reported by providers on a timely basis. While the 69% reporting rate for providers is an increase over the 62% reported in the previous period, the high level of late reporting is an issue addressed in the recommendation section below.

The SME has reviewed in excess of 1,500 CIRs during the first two and one-half years of the Settlement Agreement. The SME reviews these on a weekly basis and meets with the State quarterly to discuss questions and/or concerns that may be noted on submitted Critical Incident Reports to suggest further actions, receive updates on investigations being conducted, and/or request additional information.

The State is continuing to make progress, including regular reporting of relevant updates to previous incidents. It is apparent to the SME that the State is responding appropriately, effectively, and consistently to critical incidents. Additionally, during this reporting period, The State achieved a 100% compliance rate relative to reporting within seven days of becoming aware of the incident.

CIR reports are generated by providers, submitted to the State, and the State sends them to USDOJ and the SME. The State is fully compliant with reporting (to the SME and USDOJ) within seven (7) days relative to when it becomes aware of the incident (Settlement Agreement,

Section XVI.B). However, 69% of providers are reporting critical incidents in a timely manner to the State. To address this, the State has increased its level of education and re-education with providers on the importance of timely reporting including one-on-one training for those providers struggling with this issue. CIR reporting requirements are an ongoing training need given the high level of provider turnover.

**Implemented Recommendations**

The Subject Matter Expert has, previously, recommended alterations to the Critical Incident Report structure in order to be more fully in alignment with the following Settlement Agreement requirement.

Section XVI.C indicates that: “All reports of the above incidents, with the exception of death by natural causes, will include a remediation plan designed to mitigate harm to the TPM and a timeline to complete the plan.” The State has implemented and is fully utilizing the new reporting structure that focuses on remediation action steps and timelines.

Consistent with a previous recommendation of the SME, the State has also implemented a process by which relevant updates and follow-up actions on investigations being led by other entities, such as law enforcement, the Medicaid Fraud Control Unit (MFCU), or the Medical Services Division, can be captured so that the record for the TPM is complete and Aging Services is aware of outcomes of those activities.

**COMPLAINTS**

Section XVI.F requires the State to create a complaint process related to the provision of home and community-based services that can be used by Target Population Members. The State includes in each Biannual Report complaints received and the resulting actions from those complaints. Appendix B of the June 2023 Biannual Report (pgs. 118-122) provides the following information about the 66 complaints received in the reporting period. This is a similar number of complaints noted in the previous reporting period (December 2022 Biannual Report) that indicated 61 complaints involving a TPM. Data from Appendix B follows for reference. Greater detail about the individual complaints is available in Appendix B.

Complaint Type	# by Type	Pending Outcome	Unsubstantiated	Substantiated	Remediation provided
Absenteeism	14	6	3	5	The substantiated complaints resulted in technical assistance and remediation plans.
Abuse/Neglect/Exploitation	7	1	5	1	Care was terminated with the provider following substantiation.
Care Unacceptable to the Department	27	13	7	7	Technical assistance, re-education, the removal of one (1) employee from an agency, and the termination of another agency were results of the substantiated complaints.

Criminal History/Activity	1	0	0	1	Technical assistance was provided.
Theft	6	1	1	4	In individual cases employees were terminated, remediation and oversight plans were put in place to assure screening of employees was satisfactory.
Inappropriate Billing	4	1	1	2	An agency was terminated due to a pattern of poor care and inappropriate billing. These issues were referred to the Medicaid Fraud Control Unit.
QSP Damage Recipient Property	1	0	0	1	An employee damaged a consumer's bed. The agency reimbursed the consumer.
QSP under the influence of Drugs/Alcohol	2	0	1	1	One employee was terminated.
<b>Total complaints associated with TPM</b>	<b>66</b>	<b>24</b>	<b>20</b>	<b>22</b>	

### AGENCY QUALITY IMPROVEMENT (QI) PROGRAMS

Agency QSP enrollment standards require licensed agencies or entities employing non-family community providers to have a Quality Improvement program that identifies, addresses, and mitigates harm to TPMs they serve. This includes the development of an individualized safety plan. The QI Plan will be provided to the State upon enrollment and re-enrollment as an agency QSP. There are a number of types of QSPs that are not required to develop a QI plan. Those include providers of home-delivered meals, provision of environmental modifications, emergency medical response, and durable medical equipment providers. Agencies that serve as QSPs who are accredited by the Council on Quality and Leadership (CQL) are not required to complete an additional QI Plan for the State. North Dakota has assisted 16 providers with accessing CQL accreditation and nine (9) others are pending as they work through the processes (June 2023 Biannual Report (pg. 45). Of those additional providers required to have a QI Plan in place, the State reports 38 QSP agencies with a quality improvement plan in place (June 2023 Biannual Report pg. 112).

### KEY PERFORMANCE INDICATORS

On Pg. 109 of the June 2023 Biannual Report, the State indicates the Key Performance Indicators (KPIs) that it is reporting on in addition to the performance measures otherwise included in the Biannual Reports and Appendix A, the Data Dashboards. Key Performance Indicators are reported on quarterly, while performance measures in the Biannual Report are reported every six months with differing reporting periods. The State and the Subject Matter Expert continue to refine performance measure reporting, such that data collection and reporting are focused on the most meaningful measures. As of this writing, two (2) quarters (2023) of KPIs have been gathered and shared, marking a total of six (6) months of data. The

complete report can be found on the Settlement Agreement page of the North Dakota DHHS website at <https://www.hhs.nd.gov/adults-and-aging/us-department-justice-settlement-agreement>. Aging Services report on 23 specific KPIs. The complete list follows.

- Referrals to HCBS
- Average weighted HCBS case management caseloads
- Unique inquires to the aging and disability resource link (ADRL)
- Number of TPMs served in a skilled nursing facility (SNF)
- Number of individuals served under all HCBS funding sources
- Number of TPMs diverted from a SNF
- Number of TPMs transitioned from a SNF
- Number of long-term service and supports options counseling (LTSS OC) visits that resulted in a TPM transitioning to the community
- Number of home modifications completed
- Number of TPMs who accessed rental assistance
- Number of TPMs that received permanent supported housing
- Average annual cost of HCBS and SNF care
- Number of TPMs that maintained their housing during a SNF stay
- Number of person centered-plans (PCPs) that are completed with TPMs in the community and TPMs in a SNF
- Number of new QSPs enrolled
- Number of QSP applications processed within 14 calendar days
- Number of QSPs who received enrollment assistance from the QSP Hub
- Number of QSPs who expanded their service array
- Number of new QSP agencies serving tribal and other underserved communities
- Number of QSPs by county
- Number of TPM complaints responded to within the required timeframe
- Percent of provider CIRs reporting within the required timeframe
- Percent of remediation plans completed

### DATA VERIFICATION PROCESSES & REPORTING

The State continues to work diligently to meet all reporting requirements noted in Section XV of the Settlement Agreement. A DHHS Business Analyst worked with the case management system vendor to design specific reports to meet the requirements of the Settlement Agreement. The following reports are available for use by the State:

Case Management System Reports
Medicaid Waiver Quality Assurance Report
Medicaid Waiver Recipients with Narratives
Medicaid Waiver Goals and Assurance
Monthly Cost by Funding Source
Rural Differential SFN 212 and Rate
Count of Care Plans Completed with TPM

HCBS Cases Worked Summary
HCBS Care Plans by Service Support
HCBS Care Plans by Funding Source
Aging NCIAD Report
I&R Module Report
Housing Facilitator Transition Plan Report
Housing Services Referral Assessment Report
MFP Referrals
MFP Transitions
Financial Assessment
Informed Choice LTSS Options Counseling
Risk Assessment and Safety Plan
Participant Assessment
DOJ Complaints Assessment Report

The State continues in weekly meetings with the vendor to address ongoing priorities and additional changes that may need to be made to the system to allow them to continue to meet the requirements of the Settlement Agreement and other needs throughout the Department. It appears that the relationship between the two (2) parties is constructive.

There is one (1) limitation to the technology system that continues to present a persistent challenge in analyzing and reporting data. It has been reported by the State, that the data sets that must be manipulated to achieve the reporting requirements of the Settlement Agreement are “massive.” Many of the reports that are run require the data to be downloaded into Microsoft Excel so that they can be seen in their entirety, sorted, and scaled as necessary. Due to the way the system captures data there are times that State staff invest many hours in the labor-intensive task of parsing data through the elimination of duplicate records or pivot tables to gain the information that is needed. The SME notes, however, that much of what used to be done manually is now collected in the system.

Aging Services hired a data analyst in late 2022 who has made significant strides in data collection and reporting for the MFP program and is also assisting other areas to streamline as many data reporting processes as possible. It must be noted, however, that with the variety of funding streams and regulations that Aging Services must respond to, it is not possible for everything to be automated. The SME commends the work of the State as it continues to improve data reporting and looks forward to additional improvements in the coming year.

**QA, RISK MANAGEMENT, AND DATA RECOMMENDATIONS**

- Create a pilot project to begin to gather raw data regarding units authorized versus units delivered for specific services to ascertain more relevant service provision and gap data so that the reasons behind discrepancies, if they appear across a service and/or in a specific region, can be further analyzed to determine reasons for those discrepancies.

- Ensure that Key Performance Indicators/Performance Measures are aligned and reflect year-to-year trends and that the narrative captures the core points that the trends reveal.
- Enhance trend analysis capabilities. The Department now has five (5) six (6)-month reporting periods of data and is just months away from having access to a full three (3) years of data. Initial trend analysis was conducted by the SME and feedback was provided to the State as part of the review of Appendix A (Data Dashboards) of the Biannual Report.
- Be more proactive in establishing and enforcing “progressive” communications and, potentially, consequences for repeated failure to report critical incidents on a timely basis. Consider implementing more stringent corrective action plans for those agencies and facilities that are repeatedly tardy in reporting critical incidents.
- Grow the connection between behavioral health issues identified through critical incidents with both crisis response and on-going treatment.
- Separate reporting that is made by family QSPs and reports made by Agency QSPs and facilities.
- The SME concurs with the USDOJ suggestion that a Data Analysis Team be established to augment and enhance the State’s expertise in data analysis and reporting, bring added capacity to analyze trends that the data reveals, and reconcile data contained in reporting documents.
- Streamline reporting such that it is only done on the most meaningful and required measures.

## CONCLUSION

North Dakota continues to make significant progress in meeting both the spirit and the letter of the Settlement Agreement during the almost three (3) years since its inception. As reflected throughout this report the State is meeting its interim benchmarks or has “...largely met the benchmark and demonstrated significant efforts to reach the actual benchmarks...”.

There remains work to be done on important issues that require the State’s continued focus. Most importantly, perhaps, is enhancing provider capacity. Additionally, the State can focus on addressing behavioral health issues within the target population, continue efforts on home accessibility, data collection refinement, trend analysis enhancement, and streamlined reporting.