North Dakota Settlement Agreement with the US Department of Justice

Report of the Subject Matter Expert

April 2024

TABLE OF CONTENTS

INTRODUCTION

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 Report, the sixth biannual Compliance Report submitted by the Subject Matter Expert, is for both the recently concluded time period (June 14, 2023 – December 13, 2023) and also marks the conclusion of the third full year of the Settlement Agreement. As such this report begins with a look back – in a section on Year Three (3) trend analysis – and ends with a look forward with a section on the Year Four (4) Implementation Plan strategic focus.

Recent SME Compliance Reports have focused on making recommendations for new actions for the State to consider to "move the needle forward" on issues of particular challenge. In this report the focus is shifted to highlighting the status of State responses to many of the recommendations the SME has made over time. This is particularly pertinent in relation to high priority and challenging issues including provider capacity, caseload management, lengthier transitions, and issues associated with data collection, analysis, and reporting. Challenges are presented and progress is noted in each of these areas, as are next steps to move strategic initiatives forward. On some topics presented in this report, such as sections on behavioral health and serving Indigenous American communities, relevant updates on the implementation of ongoing State initiatives are offered. Some issues raised in previous SME Compliance Reports have been addressed and are not included in this current report. For example, the State has made significant gains in person-centered planning. The SME will continue to monitor compliance in this area but has determined that it is unnecessary to cover this topic in every compliance report.

It is likely that most of the issues noted in this report will be the focus of SME review, analysis, and evaluation in future reports. As has been consistently the case, the State continues to be responsive to SME and USDOJ questions, feedback, and suggestions. The State is adaptable to the fluid and dynamic universe of providing home and community-based services and supports to elders and other adults living with physical disabilities.

YEAR THREE (3) TREND ANALYSIS

As of December 13, 2023, the third year of the Settlement Agreement is complete. A positive benefit of the completion of a third year is that trends are being revealed across time in a way that specific information can be gleaned and conclusions drawn from data presented. As of the writing of this report, the first quarter of the fourth year of the Agreement is complete and future data will be further utilized to make evidence-based decisions to the benefit of Target Population Members (TPMs).

Much of the data reflected below was drawn from the State's most recent submission of Data Dashboards that are included as Appendix A of the State's Biannual Report, delivered in January 2024. These dashboards are presented in two (2) sets; one for the most recently concluded year – December 14, 2022 through December 13, 2023 (https://www.hhs.nd.gov/sites/www/files/documents/COPY%20OF%20DOJ%20Report%20Dashboard%20for%202023%20-%20AS%20OF%2003.13.2024%20FINAL.pdf) and the three(3)-year (2021-2023) comparison dashboards (https://www.hhs.nd.gov/sites/www/files/documents/COPY%20OF%20DOJ%20Comparison%20Report%20Dashboard%20through%202023%20-%20AS%20OF%2003.13.2024%20FINAL.pdf). The SME has made recommendations to ensure that trend analyses can be conducted and that the notes that accompany the dashboards are aimed at explaining the most pertinent trends and any State actions that may be aimed at addressing issues that the analysis may reveal. The State has been responsive to this feedback and continues to implement alterations to the dashboards, both in structure and content, to bring greater transparency and understanding to the reporting process.

HIGHLIGHTS FROM THE THREE (3)-YEAR COMPARISON DASHBOARDS

There has been a steady and significant increase in the number of referrals for Long Term Services and Supports (LTSS) Options Counseling. An increase of nearly 1,600 referrals (an increase in excess of 47%) has occurred since the service was implemented. LTSS Options Counselors see all potential Target Population Members in every Skilled Nursing Facility (SNF) in North Dakota, assuring that individuals are aware of home and community-based living options.

Total LTSS Options Counseling visits climbed to nearly 2,900 for the three (3)-year period, with post-pandemic in-person visit totals showing a sharp and significant rise. Visits to nursing facilities showed a 35% increase from 2021 to 2022. There was, however, a similar level of decline (34%) from 2022 to 2023. This may be a result of the effectiveness of outreach at the onset of the program and the increasing number of diversions from institutions. It may also reflect that the number of individuals using SNF care remains fairly constant. Options counselors, in addition to ensuring that individuals are aware of home and community-based living opportunities also do yearly contacts with the person. This is a lower requirement for person centered planning than those for TPMs who are transitioning from SNFs or have been diverted from the SNF, who are seen four (4) times annually. This is a metric that requires continued attention in order to track and respond to shifting trends.

In review of data on monthly caseloads by program, referrals have decreased yet caseloads have increased. The State believes that some of the decrease in referral comes through the Aging and Disability Resource Link (ADRL) that is doing a better job of screening individuals. By doing so, the persons reaching home and community based services (HCBS) case management are more likely to qualify and be eligible for services. Of note is the 61.5% increase in the number of individuals served through the Medicaid Waiver (335 to 541) over the three (3)-year period, all of whom are Target Population Members. The State continues to strengthen the ADRL screening process through which HCBS referrals become eligible cases. The data reflects this as HCBS referrals have decreased by 23% over the period, while the percentage of opened cases per referral has grown from 48% to 63% – a 15% increase.

An important element of the Settlement Agreement and the provision of HCBS, is the State's growth in its capacity to divert clients from institutional settings for as long as possible. Data reflects that diversions have risen, on an annual basis, from 273 to 319 during the three (3)-year comparison period for a total of 900 individuals over three (3) years. The vast majority of these diversions (619) occur through the Medicaid Waiver.

Information and Assistance (I&A) calls through the ADRL have shown substantial growth. Unique A& I inquiries have risen by over 42.5% (from 34,487 to 49,187) since the beginning of the Settlement Agreement. Additionally, the State has been able to maintain, over a two (2)-year period, an impressive one (1) minute wait time.

As covered in more detail in "Transitions" in this report (pg. 8), a total of 330 TPMs have transitioned to a community setting during the first three (3) years of the Settlement Agreement. Relative to transitions, it is noted that transition referrals for elders has gone up by 81% over the period.

The State continues to show an increase in the number of TPMs that receive Permanent Supported Housing (https://www.hhs.nd.gov/sites/www/files/documents/COPY%20OF%20DOJ%20Comparison%20Report%20Dashboard%20through%202023%20-%20AS%20OF%2003.13.2024%20FINAL.pdf, pg. 11)). This includes meeting all Settlement Agreement designated interim benchmarks on the way to providing Permanent Supported Housing (PSH) to 237 TPMs in three (3) years. Both housing facilitation and housing modifications are also both on the increase. Additionally, as the State moves into reporting for Year Four (4), modifications have been made to ensure that data on PSH is collected and reported on for those individuals not just transitioning, but also for those who have been diverted from potential admission to the SNF.

MOVING FORWARD

The State, USDOJ, and the SME recently participated (February 2024) in a Data Summit in Bismarck. In an ongoing and coordinated manner, the Parties will continue to refine both the types of data being collected and the ways in which data is analyzed in an effort to ensure that initiatives and strategies are reviewed and evaluated at a level that suggests further investment in those that are effective and less or no investment in strategies that evidence is not

supporting. More information about that meeting and collective efforts to further refine and report information is available in the "Data Summit" section of this report, beginning on pg. 16.

KEY PERFORMANCE INDICATORS AND PERFORMANCE MEASURES

During the initial years of the Settlement Agreement, the Subject Matter Expert and the State worked in concert to develop both performance measures and Key Performance Indicators (KPIs). Many of the performance measures to date have been output measures and/or are associated with quantitative requirements of the Settlement Agreement. These measures are incorporated into the State's biannual reporting process, the most recent report which was delivered in January 2024 and finalized thereafter following review by the SME and the United States Department of Justice (https://www.hhs.nd.gov/sites/www/files/documents/ND%20DOJ%20Biannual%20Report-POSTED-Final%203.25.24_.pdf). Through Year Three (3), the number of measures being tracked had grown to 172.

During the fall of 2023, the State and the SME engaged in a detailed and comprehensive review of these performance measures to focus on the collection, analysis, and reporting of the information most essential to demonstrate the State's success in meeting the requirements of the Settlement Agreement. The review acknowledged the extensive nature of the State's reporting requirements under the agreement, the Money Follows the Person program, and Medicaid services under the jurisdiction of the Centers for Medicare and Medicaid Services (CMS). In this spirit, and in preparation for the State's submission of the Year Four (4) Implementation Plan, performance measures were reduced to 50. This significant (70%) reduction in performance measures included elimination of duplicative measures and those output measures now considered "business as usual."

Further refinements to the measures are anticipated as the Parties (with the support of the SME) dive further into prioritizing efforts aimed at targeting the most meaningful indicators of performance. There is a request for additional movement forward during the coming years to clarify information beyond reporting primarily on quantitative output measures to quality health outcome indicators that drive resource investment in home and community-based services and support strategies and initiatives.

Key Performance Indicators are essentially the highest priority performance measures and they are reported on more frequently (quarterly) than other measures. In addition to the development and refinement of performance measures, the State and the SME also worked on further refining the set of 24 Key Performance Indicators that have been used up to now. For Year Four (4), the KPIs have been reduced from 24 to 13. The current list of KPIs is as follows:

1. Referrals to HCBS.
2. Average weighted HCBS case management caseloads.
3. Number of TPMs served in a skilled nursing facility (SNF).
4. Number of TPMs served in the community.
5. Number of TPMs diverted from a SNF.

6. Number of TPMs transitioned from a SNF.
7. Average annual cost of HCBS and SNF care.
8. Average length of time from QSP application submission to enrollment.
9. QSP retention rate.
10. Number of agencies enrolled as providers.
11. Number of independent QSPs enrolled as providers.
12. Number of QSPs providing 24/7 services.
13. Number of QSPs by county; indicate tribal, rural, and frontier designations.

Several of the KPIs on the original list were retained, including these three (3):

1. Average weighted HCBS case management caseloads.
2. Average length of time from QSP application submission to enrollment.
3. Number of QSPs providing 24/7 services.

These indicators provide impetus for further and more frequent focus on those issues that require additional attention. The SME, the State, and USDOJ have had ongoing discussions about capacity. There appears to be consensus that capacity is the highest priority issue requiring further development. Capacity requires attention in terms of the external capacity of the service delivery system (Qualified Service Providers – QSPs) and in the internal capacity of the State to assure personalized case management to every TPM. We have three (3) years of data and sufficient information to see the growth in weighted caseloads among the case management staff. Since 2021, the weighted caseload grew more than 20% higher than the initial internally targeted level of 100. It was projected by the State that the seven (7) additional case management staff authorized during the 2023-2025 legislative session would begin to bring caseloads down to a more manageable level. Initial indicators show progress, with a March 2024 conversation with the State noting that the weighted caseload is currently 113. This is an example of a Key Performance Indicator that bears consistent attention as the number of individuals seeking HCBS continues to climb. (See additional information in the Staffing section on pg. 10).

The external provider capacity challenge is multi-faceted. One aspect of the challenge is enhancement of the onboarding process through which QSP providers are enrolled and revalidated. Past inefficiencies in the enrollment process curtailed the State's ability to manage the onboarding of QSPs in an efficient enough manner. To the State's credit, it has discontinued its enrollment partnership with a private entity and has implemented an enrollment portal and a process that has been brought in-house (more information about this change is noted in the "Data Summit" section of this report, pg. 16). A second aspect of the external capacity challenge is the recruitment of high-quality staff to work with TPMs that require services 24 hours a day, seven (7) days per week. There is a burden and lift on the shoulders of the State to administer HCBS programs and on the community of agency and individual Quality Service Providers to deliver effective, person-centered care every day to hundreds of vulnerable service recipients. More information is available in the "Data Summit" section of this report and in additional strategies developed by the State in the current Implementation Plan

(https://www.hhs.nd.gov/sites/www/files/documents/DHS%20Legacy/updated-nd-%20and-usdoj-sa-ip-year4.pdf).

Highlighting Key Performance Indicators is for the purpose of shining a light on those challenges most pressing for the State to continue addressing with an enhanced level of urgency and frequency. The purpose of reporting on the refined list of KPIs is to gather the necessary data to inform decisions on enhancement of successful initiatives and strategies, and potential changes in direction for those initiatives for which proven results have not been ascertained. As the State has accurately indicated after three (3) years implementing significant and forward thinking changes, the barriers that remain are the most complex and challenging.

TRANSITIONS

It is of note that Section XI, Subsection B of the Settlement Agreement requires that, "Within 18 months of the Effective Date and thereafter, transitions will occur no later than 120 days after the member chooses to pursue transition to the Most Integrated Setting." For a number of valid reasons, compliance with this requirement has proved challenging. Data reflects this as there has been a decrease (from 51% to 23%) in transitions that take place within 30 days of consent to transition, while both the number (from 11 to 37) and the percent (from 12% to 31%) of transitions taking longer than 150 days have increased. It seems that if transitions do not occur reasonably quickly, then there is a trend toward increased length. As discussed in previous reports, the reasons include but are not limited to, the establishment within the Settlement Agreement of an overly optimistic target, as well the natural delays associated with the transition of Target Population Members with long-standing, complex medical and behavioral health issues into a community challenged by both provider quality and provider capacity. An additional, and somewhat common barrier that is causing lengthy delays, is the member's choice to seek settings in a specified neighborhood that may be widely desired and where demand far outstrips supply. An approach consistent to both the US Department of Justice and the Subject Matter Expert is that rather than a focus on strict adherence to compliance with this requirement, attention has been on more effectively and consistently navigating the significant barriers that arise as fully and as efficiently as possible. It is clear from the data collected over a three (3)-year period that transitions taking longer than 150 days are on the rise. This is a trend that bears watching over time.

The State submits a "90+-Day Report" on a quarterly basis to the SME and USDOJ. The report lists TPMs that have consented to transition from a facility to the community and have been awaiting transition for at least 90 days. The report is sorted by CIL (Centers for Independent Living) region. There are four such regions in the State:

- Fargo Region – Freedom Resource CIL
- Grand Forks Region – Options Resource CIL
- Bismarck Region – Dakota CIL
- Minot Region – Independence, Inc. CIL

The Centers for Independent Living are the contracted entities of the State that provide transition coordination under the Money Follows the Person Grant in addition to their other work in advocacy, information, and referral to promote independent living for people with physical disabilities in North Dakota.

The Subject Matter Expert prioritized review of this report during the fourth quarter of 2022 and has continued such prioritization over the course of 2023. For the report submitted for this quarter (September – December 2023), a total of 52 individuals were reported as "active." At the time of the report these are TPMs who are actively seeking transition from the facility to home and community-based services. The SME reviewed reporting/activities for 33 of these 52 TPMs (63%). The Excel report also includes sheets for inactive/terminated cases and those that have successfully transitioned. The State has been responsive to SME feedback in addressing the needs of those continuing to wait for transition.

Relative to the number of days since consent, the review of the 2023 fourth quarter report showed an individual waiting as few as 90 days as well as an individual who, as of the date the report was submitted (January 10, 2024), had been awaiting transition for more than 1,000 days. A major barrier in this lengthy delay was a long-standing lack of providers in one geographic region of the State. Provider capacity is covered in more detail in a separate section of this report ("Data Summit, QSP Capacity," pg. 16 – 18). Other individuals included on the latest report reviewed have, since submission, successfully transitioned to their home communities. The State continues to work diligently with every individual who wishes to transition, regardless of length of time, to help them return home.

Highlights of the general feedback by the SME regarding delayed transitions include that many cases appear stalled for long periods of time. It can be difficult to decipher from the documentation that has been presented in the past what is happening to move transitions forward. Task assignments and associated timelines are consistently absent. Many do not include dates in the "anticipated move date" column. The sections of the report that present the most opportunity for narrative descriptions and relevant updates are in the areas that pertain to barriers and task assignments that require completion to move the transition forward. These sections have been the focus of the SME review. Both general and in-depth feedback has been provided to the State and the State, as noted, has responded to the feedback and is making suggested alterations to the report. This information will be reflected in the next report pertinent to the first quarter of 2024. It is anticipated that the SME Team will analyze and provide feedback to the State on subsequent reports in order to continually monitor progress in this area and determine if the changes being made assist in more quickly addressing tasks that have not been completed that may be delaying transition. There are times when the delay in transition is not a barrier that the State can easily address but is rather the preference of the TPM for a specific action to take place before transition is fully and safely initiated. An example of this is an individual who has waited for needed prosthetics and wishes to take time to learn to use them effectively while still in the SNF before returning to the community.

The State continues to commit to making progress on moving lengthier transitions forward in a more consistently efficient manner. It was reported by the State in March 2024 that the average number of days from consent to transition went from 139 days in the first six (6) months of 2023, to 82 days in the last six (6) months of 2023 – the latest reporting period. The individuals included on the 90+-Day Report include those whose challenges to transition are the most difficult to meet. The State should be commended for the fact that that in the first three (3) years of the Settlement Agreement, 330 Target Population Members successfully transitioned into a home and community-based setting.

Based on the feedback, highlights of which are noted below, the State has presented significant alterations to the report that will be reflected in the submission of the next report in April 2024. A completely different format, the new report includes the moving of responsibility for documentation about individual cases from the CILs to a State led team to assure that data gathered are reported consistently across fields.

The 90+-Day Report, prior to the transition noted above, has been an Excel spreadsheet with 20 columns that identify multiple important datum relevant to the transition process. These include, but are not limited to, identification of transition team members; identification of barriers (such as medical, housing, or legal) and updated descriptions of barriers to transition; an anticipated move date; methods to assure the TPM is aware of the goal, processes, and activities necessary to return to the community; assigned tasks; and the number of days since consent to transition was obtained from the TPM.

The State is in the process of acting upon the SME's recommendation to address gaps in documentation of the 90+-Day Report by improving how information is presented, including a focus on more clearly and concisely identifying barriers, action steps that need to be taken to resolve barriers, who will take such actions, and on what timelines, as has been noted above. The SME will monitor these changes and work with the State to ensure that such actions are proving helpful in decreasing the length of time it takes to address challenges and effectuate successful transitions.

STAFFING

As the awareness of HCBS options continues to grow in North Dakota, the increase in time needed from State staff to manage this program continues to grow. This crosses all areas of staffing the SME has previously noted in these reports: Case Managers, Long Term Services and Supports Options Counselors, Navigators, Housing Facilitators, and Transition Coordinators. The State has made strides in every area to not only keep pace with increased requests, but also to assure that TPMs continue to be served as efficiently as possible. The most notable change has been in case management.

CASE MANAGEMENT

There are 74 case managers in North Dakota's Adult and Aging Services Section of the Department of Health and Human Services (DHHS). The January 2024 Biannual Report (pg. 4)

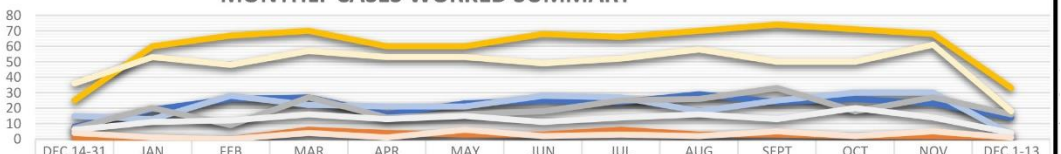
indicates that 826 referrals were received for HCBS in the last reporting period and a total of 3,005 adults were served. The State reports in the 2024 Aging Services DOJ SA Dashboard (December 14, 2022 – December 13, 2023) those numbers for all persons receiving HCBS, not just TPMs.

HCBS CASES WORKED SUMMARY

USDOJ SETTLEMENT YEAR (DECEMBER 14TH - DECEMBER 13TH)

TOTAL OPENED MSP CASES:	284	TOTAL OPENED MW CASES:	256	TOTAL OPENED SPED CASES:	792	TOTAL OPENED Ex-SPED CASES:	35
TOTAL CLOSED MSP CASES:	281	TOTAL CLOSED MW CASES:	165	TOTAL CLOSED SPED CASES:	638	TOTAL CLOSED Ex-SPED CASES:	36

MONTHLY CASES WORKED SUMMARY



	DEC 14-31	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC 1-13
MSP CASES OPENED	8	19	26	27	16	23	25	24	29	24	26	23	14
MSP CASES CLOSED	15	13	28	22	21	21	28	27	18	25	30	30	3
MW CASES OPENED	7	20	9	27	14	16	18	25	26	33	18	27	16
MW CASES CLOSED	6	11	12	16	13	15	11	14	16	13	20	14	4
SPED CASES OPENED	25	60	67	70	60	60	68	66	70	74	71	68	33
SPED CASES CLOSED	36	53	48	57	53	53	49	52	58	50	50	61	18
Ex-SPED CASES OPENED	1	1	0	6	4	3	3	6	3	3	2	2	1
Ex-SPED CASES CLOSED	4	1	0	4	1	6	2	3	2	5	2	5	1

There is a great deal of fluidity in the opening and closing of HCBS cases, much of this due to the specific population being served. 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. Much of this is being accomplished through the work of the LTSS Options Counselors assigned to the Skilled Nursing Facilities and media publicity campaigns increasing outreach to the ADRL Information and Assistance line.

In comparison to the previous reporting period the number of cases opened and closed in each category noted above has grown by greater than 50%, documenting the increased desire by individuals to remain in their home and community as an alternative to institutional care. To address this growing need, the State, in its last Executive Budget Request, asked for funding to hire additional case managers. Following appropriations and authorizations made by the North Dakota Legislature for the 2023 – 2025 biennium, Aging Services hired an additional seven (7) case managers.

Caseloads, as can be expected from the rise in the number of clients served, continued to remain high during the reporting period. The average weighted caseload (determined by the complexity of the case, distance to travel, etc.) was 120 (January 2024 Biannual Report, pg. 22), remaining similar to the previous reporting period when the weighted caseload was 121. However, as reported by the State to the Subject Matter Expert in March 2024, the current weighted caseload is 113, much closer to the targeted range of 100 to 110. In hiring the new case management positions, the State instituted 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 has reduced part of the caseload for others. Additional case managers specifically dedicated to individuals in Basic Care may be needed to further bring down caseload levels and reduce the current level of burden on existing staff.

Even with the increase in the number of case managers, however, caseloads remain higher than desired. The State continues to monitor caseloads and reports these quarterly as one of the Key Performance Indicators. Ensuring an adequate case management capacity, with caseloads growing and becoming more complex, is essential to successful implementation of the Settlement Agreement. This may well be an issue that remains high in the Aging Director's priority list for future legislative appropriations and authorizations.

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 identified and how to best partner in addressing them.

TRIBAL CONSULTATION GROUP

As relationship building is a continuous process essential to better understanding barriers that may exist which prevent more culturally relevant services from being developed, accessed, and utilized, the State developed and has been working with a Tribal Consultation Group focused directly on HCBS. This group meets monthly to gain further understanding on challenging issues and provide and hear feedback from the four (4) Tribal nations within North Dakota. The ND Department of Health and Human Services has a Medical Services Tribal Liaison who is an integral participant in these meetings. This individual has gained the respect of the different tribal entities and while she does not "speak" for the tribes, is able to help facilitate conversations with a goal of improving all aspects of care for TPMs in the tribes. The Tribal Consultation Group has expanded recently as relationship building among group members continues to assure that more voices are being heard.

Recent conversations have focused on the "type" of case management services each tribe is looking for. Are they seeking to develop case managers that are able to determine eligibility? Are they seeking to have individuals that can represent the TPM in the State system and help navigate services? As part of these discussions, conversation has focused on the potential ability to make a change to the State Medicaid waiver to create a new designation that may allow for Native "care navigators" who, while not responsible to determine eligibility, provides the ability to connect tribal TPMs with appropriate services. There has also been discussion about whether to change the qualifications of those who can act as supervisors to the individuals performing Targeted Case Management (TCM) for Indigenous Americans and if doing so could provide the flexibility for activities such as the navigation described. This would also allow other tribal organizations such as Older Americans Act Title VI providers to provide TCM to eligible tribal members.

To make progress on any of these potential initiatives, changes would need to be made to the ND State Plan Amendment, the Medicaid waiver, and may require additional resources. The State continues to work with the Tribal Consultation Group on these issues to determine which initiatives might be the most beneficial in ensuring that needed services are available to tribal members.

Indigenous Americans in North Dakota are interested, in keeping with their cultures, to have members of their own tribe provide as many services as possible rather than bringing in QSPs and case managers who are not well versed in their culture. As such, there has been conversation about tribe-to-tribe training for case managers to increase understanding. Internally, Aging Services staff have recently completed implicit bias and equity training as a further effort to increase responsiveness. Active QSP agencies within the tribes are meeting directly with current case managers to discuss processes and cases.

MEDICAL SERVICES DIVISION TRIBAL ENGAGEMENT

HCBS representatives are also involved with Medical Services Division Tribal Engagement meetings. This is a broader group of individuals and discussions range beyond HCBS and includes federal involvement (Indian Health Services). HCBS representatives attend to ensure awareness of all discussions and how different areas may affect TPMs. Of some note in these meetings has been the identification of which members speak for each specific tribe. The four (4) Tribal nations in North Dakota are distinct with their own cultures and traditions. What may feel appropriate for one may not feel the same for another. The State works diligently to acknowledge and address those differences and honor the culture of each nation.

There are also services provided to Indigenous Americans through the Older American's Act (OAA). Title VI includes statewide community programs funded through this act that directly affect sovereign nations. North Dakota uses these funds, which go directly to the tribes, for services such as nutrition assistance and home visiting. Funding is available in Title III of the act for engagement around the development of comprehensive and coordinated service systems that allow older persons to lead independent, meaningful, and dignified lives in their own homes and communities, including consumer empowerment, flexible options and more choices for high-risk individuals, and healthy lifestyles. The current funding and how it is allocated could be adjusted, if desired, by the sovereign nations and in conjunction with the State.

ADDRESSING TPM BEHAVIORAL HEALTH NEEDS

There are a number of TPMs that present (and have presented over the course of the Settlement Agreement) with behavioral health issues. The State is aware of this and is seeking solutions to assist each person. Some TPMs have identified behavioral health diagnoses while others present similar symptomatology without a confirmed diagnosis in place. This is not exclusive to the Target Populations Members in North Dakota. The behavioral health needs of individuals across the country lack enough resources to be addressed regardless of age, gender,

or socioeconomic status. States and communities have long struggled with a lack of workforce and effective attention to these issues and the provision of services to those living with behavioral health concerns. The COVID-19 pandemic only increased these concerns. The World Health Organization reported a 25% global increase in the prevalence of anxiety and depression during and post-pandemic, outlining gaps in care and the need to increase services (https://www.who.int/news/item/02-03-2022-covid-19-pandemic-triggers-25-increase-in-prevalence-of-anxiety-and-depression-worldwide). Add to that the isolation during the pandemic, particularly with individuals in SNFs, and those TPMs who may have been isolated at home without services, and it is fairly easy to see why behavioral health needs remain a focus for the State.

The broad brush of the words "behavioral health" can disguise the many issues being covered in that phrase. Behavioral health encompasses things such as the misuse of substances, depression, anxiety, violent outbursts, delusions, and the inability to engage in the societal norms of interactions with fellow human beings. The behavioral health needs of TPMs are reflective of greater societal pressures. All these concerns, and others, present challenges to the State in providing effective services to TPMs in Skilled Nursing Facilities and in the community. In response, the State has been working/is planning three (3) significant responses for TPMs living with behavioral health needs to increase their ability to succeed in the community.

HUMAN SERVICE CENTER CONSULTATION

For more than 18 months, the State has worked with the Human Service Centers (HSCs) in consultation for TPMs with significant behavioral health needs that prevent them from being successful in community living. These consultations occur through regular and scheduled meetings with Transition Teams statewide to offer extra resources, support to case managers, and information that QSPs can incorporate into care with the individual.

A significant focus of this consultation has been those individuals who have been waiting to transition for lengthy periods of time. The HSCs, much as every public system, are stretched to provide enough individual and specific consultation to address all the needs of this TPM population in addition to the other groups to whom they must also be responsive. The collaboration between the HSCs and DHHS has been increasing, but the multiple lenses through which each agency must funnel their energies is broad and diverse. To that end, the State is addressing two (2) other pathways.

EARLY AND SPECIFIC TRAINING

Of significant note when addressing behavioral health concerns of TPMs is the need for specific training. Individuals with the same diagnosis may present with very different behaviors, understanding, and symptomatology. This is challenging for QSPs, most of whom do not have professional training in the field but who are called upon to serve these individuals in the community and help ensure their safety and success. A gap in the past three (3) years that the Settlement Agreement has been in place is how to address this. The State has worked with the Money Follows the Person program to implement a vision in which the State can provide

individualized training for the TPM and the QSP to address specific needs of the individual that is transitioning. The State, with the federal MFP program, has confirmed a way in which training to the needs of the specific TPM can happen while they are still in a facility. Doing so increases the opportunity for success when returning to the community as the provider is better able to understand the needs of the TPM and address care plans specific to that person.

PEER SUPPORTS

Initially, the State had planned to put a Peer Support Center in place, in concert with the Human Service Centers, to ensure that TPMs had the opportunity to speak with other individuals who have successfully transitioned from a SNF into community living. North Dakota is currently looking at an alternative model. Building off the LTSS Options Counselors who are assigned to specific facilities, the State is exploring assigning peer support workers to each facility to be available for conversations.

Peers – those that have experienced the same issues being faced by TPMs – have been proven in many areas to "cross the bridge" to help people access care and make the necessary connections to succeed. North Dakota is considering implementing a model that will put peer support workers in facilities, as they do options counselors, so that they are available to anyone without having to make an appointment. A person to speak with, when they wish, without the pressure of a formal meeting. Making an appointment can be daunting and delay the understanding of what may be possible when addressing the other "technical" steps that must happen. The professional community has learned that peer support is professional support to creating change and can be essential to success. To engage with another human being that shares the same challenges and has similar lived experience as the TPM – housing, behavioral health, physical disabilities, etc., and has succeeded – offers hope for independence that the "professional" community may not be able to provide.

North Dakota has planned two (2) initial meetings in late April/early May 2024 with certified peer support workers currently engaged through the behavioral health system to introduce them to the needs of the physically disabled and older populations. There is a desire by the State to engage some of these workers for Target Population Members. There is a national certification available for peers who work with older adults – Certified Older Adult Peer Specialists (COAPS). The COAPS program prepares older adults in recovery to provide hope, empowerment, choices, and opportunities to other older adults through support and shared experiences. COAPS work with older adults in developing, maintaining and improving positive social supports and networks. The State would like to engage current peers certified in the behavioral health program to enhance their training in partnership to engage older adults in services, guide them through the recovery process, and help them navigate the health care and social services systems.

The SME is encouraged by these planned meetings from the State, their awareness of the current peer support worker population, and their focus on improving services to TPMs. The ability to provide COAPS in nursing facilities and communities can be a significant benefit. The SME is supportive of the State moving these ideas forward with focus and efficiency.

DATA SUMMIT

In February 2024 the USDOJ and the SME joined the State in North Dakota for a daylong discussion regarding issues of focus for USDOJ in Year Four (4) of the Settlement Agreement with North Dakota. As has been noted in the Year Four (4) Implementation Plan from the State, additional focus on new and updated strategies has been made, aimed at garnering a better understanding of and more effectively addressing critical issues such as QSP capacity, service delivery and quality, and recruitment and retention. An additional area of enhanced focus is on reducing the length of time required for safe transitions from the Skilled Nursing Facility to community living.

In order to gain a more complete picture of what data is being collected and how it could be used in multiple ways to better inform and report on these issues, an in-person meeting was held to discuss projects and processes. The following information highlights the major portions of the discussions and activities that are or will be taking place to better address gaps associated with the issues highlighted above.

The goal is to begin a process by which the most meaningful data is being gathered, that the data is consistently reviewed for validity, and to inform – in an evidence-based manner – future strategic directions. Additionally, the information gathered must be reported in a succinct, understandable, and transparent manner.

QSP CAPACITY – AUTHORIZATION AND UTILIZATION

The issue of QSP capacity has been and remains an issue for North Dakota. Many strategies are being implemented to increase the availability of providers across the State, as well as recruitment and retention strategies, which are further outlined in the ND Department of Justice Settlement Agreement, Implementation Plan December 14, 2023 – December 13, 2024 [in particular Section XIII, beginning on pg. 44). The plan is available at https://www.hhs.nd.gov/sites/www/files/documents/DHS%20Legacy/updated-nd-%20and-usdoj-sa-ip-year4.pdf. As demands for services continue to show substantial growth year over year, it is important to determine a baseline for what services are authorized and what services are utilized. Doing so will allow the State to refine or expand programming in the future as the data drives their decisions.

To that extent, the ND DHHS, in concert with the University of North Dakota, has engaged in a project that reflects what services are being authorized, which of those services are being utilized, and any geographic gaps that might become apparent from this information. The data sets are starting at the macro level, looking at all HCBS services being authorized and delivered. From that information, analyses will be done to see if there are any gaps related to specific services in specific regions. Further analysis, once this macro level data is available, will be required to determine why these gaps appear in the data. Are some services not requested in some areas? Are some services unable to be delivered in some areas for lack of available QSPs? Are some services that have been authorized being refused by TPMs? The State also indicates that there are times when more than one (1) provider is serving a TPM. In those instances the case manager authorizes the total number of units to each provider as they do not know which

of the providers will be delivering what care. How does that affect the data? Answers to all of the questions are important to understanding the data that is being captured.

This project is a significant undertaking. The Parties believe that this data can offer insights into the following areas now and can be replicated in the future to help the State address additional issues:

- Geographic trends in provider capacity,
- The shifting of supply and demand in various regions of the State, and
- Preparing for projected population changes for the next decades.

The State continues to build on its work to develop systems and information that provide the most appropriate information to secure services for every citizen that qualifies for State or federally funded HCBS. Although demographics continue to fluctuate, building this model now will allow the State to ensure that it has the necessary data to respond to and adapt to future changes.

QSP CAPACITY – RECRUITMENT AND RETENTION

QSP Survey

The State has developed systems and supports to streamline the ability to enroll QSPs and asks them annually about who they are, who they serve, and how long they have been engaged in such work. A survey that has been in place for the last two (2) years gathers information directly from QSPs – independent providers and agency providers. The survey is completed in conjunction with the QSP Resource Hub at the University of North Dakota. The survey has provided useful information about things such as length of service time, the type(s) of services the QSP offers, if the respondent is a family member, what training needs they have, and what would make it easier to become a QSP. The upcoming survey will include those questions, but also add questions that seek to gain answers, for example, to the issues of potential gaps in services in a geographic area or specific training requested in a region or by provider type. With more detail, the State can use the data gathered to create specific strategies to address identified needs. The next survey will be distributed during the summer of 2024.

Enrollment Portal

The State has launched a new enrollment portal that streamlines new provider enrollment and provider revalidation. In operation since the beginning of January 2024, the portal is producing enrollment turnaround times of several days rather than the weeks or months the paper process was taking. The potential provider works directly through the online system, with the ability to manage their application and review it anytime to know the status of the process. The portal is managed by the DHHS Medical Services Division. As the data is internal, the State has the ability to quickly run reports to obtain data, for example, on where the QSP population is located and the array of services being offered. Using this information, like the information offered through the QSP survey, allows the State to target strategies in specific areas, if needed, or toward specific services.

The State can also use portal data to further improve its processes. The portal is designed to be intuitive for the user. Information is gathered through the asking of questions rather than the listing of requirements and prompts are offered within the program for assistance. The portal can reflect if there are points in the collection process where individuals are routinely struggling to provide the correct information and modify those areas to increase the probability that enrollment can be completed more easily in the future.

Exit Survey

The State, also in conjunction with the QSP Resource Hub, is preparing an "exit survey" in an attempt to gather information on why people stop offering QSP services. It is hoped that this data will provide opportunities for the State to create strategies based on information given. There may be a way, also, to determine if the State could re-recruit these people to continue providing services, perhaps in a different capacity than what they did previously.

TRANSITION PLANNING

During the Data Summit, an important conversation was held regarding people waiting to transition from the SNF to the community, particularly for those whose wait is extensive. It has been difficult with the way information was documented and reported by the State, to determine if there are patterns in specific barriers – medical, housing, legal – that prevent the TPM from returning to the community more efficiently. It was also difficult to determine if necessary actions were being taken by assigned professionals to ensure that transition activities were taking place.

As a result of this discussion and other feedback provided by the SME that was noted earlier, the State has developed a new format for its reporting that can be available internally in real time and provided to the SME and USDOJ as scheduled in the Implementation Plan. The new format moves the information out of a spreadsheet into a viewable PDF that provides a document for each person. Data is fed into the document from the system already built and in use by the MFP Transition Team. The three categories of barriers (and the subcategories that provide more specificity) have been turned into fields to be completed. Each barrier noted has a start and end date that is to be completed.

Tasks that are identified as needing completion for the transition to occur are listed near the top of the documentation so it is obvious what is to be done and who is responsible. It also prompts the conversation at every visit with the TPM to review with them if they know why they are still waiting for transition, what the process is to get there, and if they agree that they know the reasons and understand the process. It is important the individual is an active participant in discussions. This will assist the Transition Team and the TPM in better communication and accelerated actions. Management of data input is now the responsibility of the MFP Administrative Team to enhance consistency and thoroughness in what and how information is reported. As this new formatting rolls out, there will be further opportunities to pull data from the information being gathered to inform further strategies to continually improve systems.

COMMUNICATIONS

A final note from the Data Summit. Data is most useful when it is routinely analyzed, generates effective evidence-based planning, and is strategically communicated. The State is burdened with a plethora of reporting requirements including those associated with the Settlement Agreement. The streamlining of reporting is a challenge that requires attention. In addition to efforts to reduce the quantity of reporting it is also important to enhance the quality of the reporting and the conciseness of the message that is being communicated. The State is working actively and diligently to implement the requirements of the Settlement Agreement. Oftentimes, however, the documentation of these efforts is not in alignment with the efforts themselves. Specifically the documentation, at times, struggles to communicate how the information currently being reported affects the decisions being made for future iterations of programming. Conversations with lead staff in the department about work being done and how it was developed have not as easily transferred to written communications provided by the State to USDOJ, the SME, and the public. Further discussions on ways to enhance this will be explored.

YEAR FOUR (4) IMPLEMENTATION PLAN STRATEGIC FOCUS

Annually, the State is required to update the Implementation Plan that indicates how the State will focus on targeted areas to meet the requirements of the Settlement Agreement. During the first three (3) years, the State focused on refining systems, creating new ones, enhancing person-centered planning and plan documentation, and adding services to the array available for Target Population Members at home and in the community. Focus has been paid to the development of new services such as residential habilitation and community supports and the implementation of LTSS Options Counseling in SNFs to increase awareness of community living options.

The State created a new structure for transition teams that includes not just the transition coordinator, but also involves a housing facilitator and an HCBS case manager. When necessary, other consultants – such as behavioral health providers – also join the transition team to address specific needs of a TPM. The State created and implemented a new enrollment portal (see additional information under “Data Summit,” (pg. 17), and hired additional case managers to address growth in the program. The State increased targeted technical assistance to the Centers for Independent Living (CILs) who serve as the contracted vendor for transitioning individuals back to the community from SNFs. They have increased training for effective critical incident reporting and enhanced the ability, through the use of navigators, to assist TPMs and case managers in securing service providers.

A FOCUS ON QSPs

There are two sections of the Implementation Plan that focus specifically on Qualified Service Providers – their engagement, retention, service delivery, and capacity. Those are sections IX and XIII of the Plan (https://www.hhs.nd.gov/sites/www/files/documents/DHS%20Legacy/updated-nd-%20and-usdoj-sa-ip-year4.pdf). While the State has been attentive to the QSP workforce and the need to increase quality and capacity, they have opted to place an even higher emphasis in this area in Year Four (4). As has been noted in the Data Summit section of this report (pg. 17) the State has invested considerable time and resources to build an effective and efficient enrollment and revalidation system. This new system, managed by DHHS Medical Services, provides for a simpler and more efficient way to engage QSPs to serve the target population. North Dakota has also worked to ensure that family members are an integral part of the formal system delivery as they endeavor to keep more individuals with physical disabilities at home, including older adults.

The SME refers the reader to both sections of the Implementation Plan noted above for more complete details on the efforts that the State has been making and continues to make. With that said, there are several strategies that the SME would like to highlight in this report that speak to such efforts and the attempts of the Department to ensure that any TPM who desires to remain in or return to the community has the ability to do so.

SECTON IX – ACCESS TO COMMUNITY BASED SERVICES

As part of its service array, the State uses the Community Aging in Place, Advanced Better Living for Elders (CAPABLE) program. CAPABLE is a person-directed, home-based program that addresses both function and healthcare expenses. The program integrates services from an occupational therapist, a registered nurse, and a handy worker who work together with the older adult to set goals and direct action plans that change behaviors to improve health, independence, and safety. Participants learn new skills, exercises, and how to work with additional tools/equipment/home modifications to improve function and safety. CAPABLE focuses on prevention and problem-solving, building skills that participants can use in the future. The State is considering requesting that CAPABLE be added to the HCBS waiver.

The State continues to recruit residential habilitation and community support providers. This service is often authorized for those individuals transitioning from a SNF with significant needs. These services offer up to 24-hour support and community integration opportunities for TPMs. As noted in the North Dakota Biannual Report: June 14 – December 13, 2023 (pg. 10 -11), there are 37 community support and residential habilitation providers and 275 agency or individual companionship providers. This is an increase from the previous reporting period where 19 community support and residential habilitation providers and 245 companionship providers were noted.

SECTION XIII – COMMUNITY PROVIDER CAPACITY AND TRAINING

The USDOJ Settlement Agreement requires, in Section XIII (pg. 21), that "the State will take steps necessary 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 consistent with their Informed Choice and needs." Without a sufficient and effective workforce, the State would be unable to increase home and community-based services to assist TPMs in remaining in the community for as long as possible or returning from Skilled Nursing Facilities.

The State has developed a significant number of new strategies to increase the probability that the workforce is able to meet the needs of QSPs. There are staff shortages in parts of the State which have delayed the return of TPMs to the community. There are also individuals who have intermittent needs which can be challenging to serve because the need for care/assistance exists for a short period of time several times a day, rather than providing service for a continuous number of hours. The State is aware of these needs and others and has developed new strategies to better address concerns that have been noted (Year Four [4] Implementation Plan, pgs. 44 – 49.).

Retaining Family QSPs

The State indicates through Biannual Reports and data dashboards that the number of individuals enrolled in HCBS has increased 43% since early 2021. This dramatic growth requires significant attention to the workforce. Qualified Service Providers in North Dakota are independent contractors, not employees of the State. The workforce fluctuates frequently. Many individual QSPs come into the field because they have a family member or a significant person in their life who needs care. When that person needs to move to a higher level of care or passes away, the family member generally stops delivering services as a QSP. The State is looking to retain some of these caregivers and see if they would be willing to serve other individuals in their communities needing assistance. With the new enrollment portal complete, State staff will work with the QSP Resource Hub to design an effective outreach campaign to those QSPs who have disenrolled in the last six (6) – nine (9) months to encourage their continued participation.

Enhancing QSP Visibility

Following completion of the new enrollment portal, the State is also focusing on enhancing the visibility of providers. In connection with ADvancing States, North Dakota has implemented a new QSP matching portal to replace the QSP online searchable database. The State has made specific modifications to a national website called Connect to Care. This new matching portal will significantly improve the capacity of TPMs in need of community services to evaluate and select individual and agency QSPs with the skills that best match their support needs. Connect to Care will allow QSPs to include information about the type of services they provide, hours of work availability, schedule availability, and any languages spoken. By including a greater variety of information, TPMs and navigators will be more easily able to find an appropriate provider in a timely fashion. The QSP will have control of their profile and it can be updated at any time so that information is current in real time. The State will work with the QSP Resource Hub to hold training sessions to help providers develop their online profiles and increase their marketing skills to better advertise themselves to potential clients. Enrollment staff (located in DHHS Medical Services) will manage the Connect to Care platform.

Developing Partnerships

Engaging younger people in the field will help ensure that North Dakota can meet the ever-growing need for HCBS. The State plans to develop partnerships with high school and college career counseling services to discuss the possibility of placing individuals working on a Certified Nursing Assistant (CNA) certification or those studying to be a registered nurse, occupational or physical therapist, etc., with QSP agencies to gain experience and coursework credits while providing HCBS. Students could complete a placement in the community, moving from such opportunities currently only offered in an institutional setting. These experiences, in addition to providing work toward degree credit hours, could also lead to future employment.

Recruitment

The State has been and continues to work with the QSP Resource Hub to conduct marketing events to make more people aware of the field and engage them in the provision of services to TPMs. North Dakota is using a dual approach in this strategy. Several times a year, the State shares videos from the Aging and Disabilities Resource Link about home and community-based services that include information about being a provider. When these campaigns have run in the past there has been increased awareness of the ADRL and greater outreach. The State is also planning more pop-up events in targeted areas to further engage individuals that may be potential QSPs. Such pop-up events, hosted by the QSP Resource Hub, will allow individuals to ask questions about the work or how to enroll to receive hands on help. As the State continues these strategies, they are refining efforts and strategizing for future outreaches.

Easier Enrollment

As has been noted, the State has developed a new enrollment portal that replaces the previous paper enrollment system and moves all processes away from a third-party vendor and into the department. The new enrollment system includes short video tutorials and “tool tips” as the applicant moves through the process. The State feels that this is especially important for individuals desiring to provide such services who are New Americans and where English is not their first language. The outreach and interest from New Americans in providing caregiving services is high, but the challenges are sometimes greater in the processes required to be completed to become a provider. By addressing some of these through the new enrollment portal the State has the possibility of expanding its workforce.

Financial Incentives for Specific Providers

Using feedback from QSP Agency and Native American QSP stakeholder meetings, the State is planning to offer financial incentives for the provision of services to TPMs. There are three specific foci in this initiative. The State has implemented a pilot program that will allow for a different scope of services to address TPMs with high care needs and those individuals whose need for care is intermittent. The scope could cover requesting payment for employee travel, training, and wait time between serving individuals. There could also be requests for “retainer payments” (this is included in the HCBS Medicaid Waiver) to help keep staff when there is turnover in 24-hour cases. Other provisions might include incentives for providers to seek additional training for staff in the areas of dementia, traumatic brain injury, and behavioral health issues. Additionally, (funds were included in the 2023-2025 ND DHHS Budget) the State

has the ability pay a stipend to agency QSPs who are willing to designate on-call staff that would be available to assist TPMs in the event of an emergency or if the regularly scheduled provider is unable to complete their shift. The State will work through the procurement process to request proposals from agency QSPs interested in creating or sustaining an on-call QSP system in their organization.

INCREASING INFRASTRUCTURE

To support the increased growth in the number of individuals wishing to use home and community-based services, the State needs to evaluate its infrastructure and administrative capacity to manage extended needs. While the State has increased the number of case managers available to serve TPMs, there continues to be a growing need for administrative support and data management internally. The State has requested additional staff to address TPM complaints/responses (a growing need as a result of more people served and an increase in training on what is required to be reported) and to enhance the administrative capacity of the department to address reporting requirements. The State has done well in assuring that needs of TPMs are being met and in responding to concerns. They have streamlined processes to ensure that their attention is always focused on the best manner in which to serve individuals. To continue at this level and quality, the State will likely require additional resources in order to enhance the administrative capacity and manage the implementation of a multitude of initiatives.

CONCLUSION

The State of North Dakota has worked diligently to bring about the changes necessary to meet both the letter and the spirit of the Settlement Agreement and to implement its vision for enhanced options and access to high quality home and community-based services and supports. Though significant progress has been made, the work is not finished. What is clear is that there are a handful of challenging issues that will require the State's best efforts and attention to effectively navigate and address in the coming years.

This report represents a presentation of this handful of complex issues and the status of the State's efforts to develop and implement strategic initiatives that further address barriers to successful community living. Addressing issues such as provider capacity, case management capacity, lengthy transitions, enhanced use of data analysis, and reporting is of paramount importance. Progress on these issues is not only the subject of this report but are also likely to be issues of primary focus in the coming years.