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North Dakota Settlement Agreement with the US Department of Justice

Report of the Subject Matter Expert

April 2026

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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 and scheduled revisions of an Implementation Plan 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 tenth biannual Compliance Report submitted by the SME, is for the recently concluded period (June 14, 2025 – December 13, 2025).

This report focuses on multiple priority areas including Case Management (Section VII of the Settlement Agreement), Transitions (Section XI), and Qualified Service Providers (Sections IX and XIII). The USDOJ and the State of North Dakota are currently in the process of discussing a potential "narrowing" of the Settlement Agreement. Although the USDOJ review has not been completed, issues being discussed include a reduction in the term of the agreement and a primary focus on transitions, case management, and qualified service providers, areas where there is agreement that a continued focus is of value. Several other sections, such as Person-Centered Planning (Section VIII) and Information, Screening, and Diversion (Section X) and subsections of the agreement are being discussed relative to potential determinations of substantial compliance.

One aspect of the Subject Matter Expert's responsibility (Section V.C.3) "…is to assess the quality and sufficiency of Community-Based Services…" The SME approaches this report and our continuing work with the State through a "sufficiency" lens. Sufficiency, to some extent, is about quantity and capacity, but it is also about quality and capability. A determination of sufficiency is pertinent to both today and many tomorrows. As an example, in considering a proposal for additional case managers for the next legislative request, the State is projecting a need three (3) years into the future.

There continues to be an increase in the number of North Dakotans seeking Home and Community Based Services (HCBS). The trend is expected to continue. The ND State Data Center has indicated a projected growth in the state's 65+ age population as the Baby Boomer generation continues to age. Currently, approximately 18% of North Dakotans are 65+. The US Census Bureau (https://www.census.gov/programs-surveys/popproj.html) projects changes in population demographics on a continuous basis. Recent indications are that adults aged 65 and older are expected to make up about 20% to 23% of North Dakota's total population by 2030. At the same time, there is a nine (9) percent decrease in the number of older residents who are living in Skilled Nursing Facilities (SNFs) in North Dakota since the start of the Settlement Agreement. In 2021, the State reported that 2,376 Medicaid individuals were receiving care in nursing facilities. In 2025, that number is 2,168 (*North Dakota – Department of Justice Settlement Agreement Biannual Report, June 14, 2025 – December 13, 2025, pg. 7)*. At the same time, through the intensive Residential

Habilitation and Community Support Services offered through HCBS, the State is providing 24-hour care to 112 individuals in the community with complex physical and behavioral health needs.

The State continues to work on – and has improved – enrollment of Qualified Service Providers (QSPs) and their retention and provision of services over the long term. There remain very rural areas of the State where it can still be difficult to find community providers, and the State has continued efforts for recruitment in those areas. The State has implemented several strategies and has several more underway that will take them through the next year (Year 6) of the agreement and with additional upcoming revisions to the Implementation Plan. The State is also focusing on the quality of services by QSPs. Later in this report, the Subject Matter Expert speaks to these foci, the work of the State, and makes recommendations for continued efforts to be included in the next Implementation Plan.

Transitions continue, though at a lesser pace in this reporting period. Outlined later in this document are thoughts from the SME and the State on why that may be happening. Some transitions continue to take longer periods of time. Major sources of delay include long-term medical challenges, housing, and issues of co-occurring behavioral health and physical health concerns.

There is concern regarding the sustainability and durability of case management over time. While the State has been able, to date, to meet all requirements and ensure that a case manager is assigned in a timely fashion to every Target Population Member (TPM), the caseload numbers continue to increase. This is despite the State's increase of case managers by almost 24% over the life of the Settlement Agreement. More discussion of this concern is noted in the section of this report immediately following.

The State has had the ability over the course of the Settlement Agreement to have additional funding through the American Rescue Plan Act (ARPA) of 2021 and has made use of the Money Follows the Person (MFP) Capacity Fund to build and enhance services and make system changes during the agreement. This has included system changes to case management and enrollment as well as the ability to use a rate augmentation fund. Rate augmentation funds have been used to pay for extra support that falls outside of the service parameter. For example, HCBS Non-medical Transportation allows for the conveyance of a Target Population Member to necessary appointments. There have been times when more than one (1) individual is needed to assist the TPM in being successful in accessing those appointments. The rate augmentation fund has been used to pay for a second individual to accompany the TPM. During 2026 those extra funds will have been expended. The State has ensured its ability to continue the system changes that have been put in place. There is a desire, if permitted by regulation, to utilize MFP rebalancing funds to continue rate augmentation services.

There has been continued review of Critical Incident Reports (CIRs) by the Subject Matter Expert and USDOJ throughout this reporting period. That review continues with the focus less on compliance with timely reporting (which is sufficient) and more on trends that appear in such reports. Those trends enable the State to further refine its strategies in addressing areas where more frequent incidents are occurring. These trends include reports received for TPMs that have a co-occurring behavioral health concern (mental health or substance use diagnoses) and those with Traumatic Brain Injuries. The Adult Agency Foster Care (AAFC) settings serve several individuals with these concerns, resulting in a trend of seeing multiple reports from those settings. A further trend has been noted that there are times when an incident occurs in the community that results in the TPM going to the ER. This can be followed by a hospital admission and rapidly lead to a SNF admission for rehab services. As Critical Incident Reports must be made within seven (7) days, often the TPM has moved from the ER through to rehab before the State is aware that there has been a change in condition and setting.

Through the thousands of CIRs that have been reviewed by the SME over the course of the Settlement Agreement, it is clear the State is efficiently responding to these incidents and seeking solutions focused on trends that they are seeing. The State and USDOJ are discussing the potential of lessening the current weekly reporting requirement to focus more on trends instead of the review of every report.

The State of North Dakota has made and continues to make significant progress in meeting both the spirit and the letter of the Settlement Agreement with the USDOJ over the past five (5) years. While some challenges remain, there are hundreds of individual success stories. These success stories speak to the enhanced level of teamwork involved in supporting an unprecedented number of TPMs in North Dakota, many with increasingly complex barriers, to navigate the transition process and/or remain in the most integrated setting of their choosing while receiving adequate and high-quality services and supports. In the last five (5) years, the State has diverted more than 1,500 at-risk TPMs from entering a Skilled Nursing Facility in addition to providing significant and quality transition assistance.

CASE MANAGEMENT

Section VII of the Settlement Agreement is focused on the provision of case management to meet this requirement in Section VII.C.: “The State will provide a sufficient number of Case Managers to enable Case Managers to provide all necessary services listed in a member’s Person Centered Plan, including discussing Community-Based Service options, meeting face-to-face regularly with Target Population Members, as dictated by individual needs, and completing Person Centered Planning when the person is identified as a Target Population member.”

At the inception of the Settlement Agreement, the State employed 64 Home and Community Based Services (HCBS) case managers. Over the course of the agreement the

number of case managers has risen to 79, the most recent four (4) beginning employment for the State in January 2026. Despite the increase in staff available to serve HCBS clients, the weighted caseload for case managers has risen from 110 in January 2021 to 124 in January 2026, an increase of 12.7%. The weighted caseload is determined by complexity of the clients' needs and the distance the case manager must travel to provide services.

The primary reason for the increase in the weighted caseload is the continued increase in North Dakotans referred for HCBS services. The latest report from the State (*2025 Aging Services DOJ SA Dashboard DEC 14, 2024 - DEC 13, 2025*) indicates the following related to referrals in Year 5 of the Settlement Agreement:

HCBS CASE MANAGEMENT REFERRALS CALENDAR YEAR (JAN-DEC)	
TOTAL HCBS REFERRALS:	1,881
AVERAGE HCBS REFERRALS PER MONTH:	157
TOTAL OPENED HCBS CASES:	950
AVERAGE OPENED HCBS CASES PER MONTH:	79
ANNUAL PERCENTAGE OF TOTAL OPENED CASES PER REFERRAL:	51%
TOTAL RUNNING UNDUPLICATED PENDING HCBS CASES:	208

All individuals referred to case management through the Aging and Disability Resource Link (ADRL) are seen for an assessment by a case manager, in keeping with requirements of the Settlement Agreement and the Centers for Medicare and Medicaid Services (CMS). A lengthy assessment is completed by the case manager that meets all requirements of the Settlement Agreement and those of CMS under which such services are licensed. As is noted above, slightly more than half of referrals result in an open HCBS case following the assessment. The State has reported a 54% increase in the number of individuals receiving HCBS from 2020 – 2025. In January, there were 3,364 individuals (944 who are TPMs) receiving HCBS.

The State took a significant initial step in transitioning the case management system from one that was county-based to one that is State–based in the year prior to the signing of the Settlement Agreement. This move enhanced the level of consistency and integrity in the effective management of cases during the initial years of the agreement. As Year 6 of the agreement commences, multiple factors are working against the State on the issue of the durability and sustainability of case management services. This includes an increasing and increasingly complex caseload of TPMs seeking HCBS, a growing number of whom require services seven (7) days a week and 24 hours per day. Additionally, although the Executive and Legislature have been generous in funding 15 additional case managers over the past five (5) years, weighted caseloads have ballooned by double digits. The limits of the competent cadre of case managers are strained and the diligent and dedicated work they do, in the opinion of the SME, is not sustainable. There are an insufficient number of case managers and reinforcements are needed.

It is for these reasons the SME recommends that the North Dakota Department of Health and Human Services explore, during the current legislative biennium, internal mechanisms for position creation, including funding to enhance case management capacity. It is also suggested that the Department further analyze the projected need for case managers going forward as efficiently as possible for submission to the Governor for consideration in the next Executive request.

The number of potential clients continues to grow in North Dakota as the Baby Boomer population desiring assistance increases. More of those individuals are seeking services outside of a SNF when they require care – and seeking services earlier to remain in their homes. The State must be commended for their work on diverting this at-risk population over the course of the Settlement Agreement. As reported in the *North Dakota – Department of Justice Settlement Agreement Biannual Report, June 14, 2025 – December 13, 2025, pg. 96*, an additional 312 at-risk individuals were diverted from nursing home care in the reporting period and remain living in the community. Over the course of the Settlement Agreement, more than 1,500 individuals have been diverted. Those individuals receive HCBS and are served by case managers.

Of additional concern in the ability to sustain an appropriate number of case managers is the potential burnout of seasoned staff as the work continues to intensify. It is not just the number of individuals receiving HCBS, it is also the increasing complexity of needs. Many individuals being served in the community require the highest levels of care for their physical and/or co-occurring behavioral disabilities.

In 2022, approximately five (5) percent of older adults and 33% of persons with physical disabilities in North Dakota reported frequent mental distress, issues including both mental wellness and substance use disorders, with the studied belief that this percentage would increase yearly as it had in the previous decade (https://www.americashealthrankings.org/publications/reports/2022-senior-report/findings-behavioral-health). This is evident in data tracked by North Dakota regarding TPMs. This complexity of needs requires extensive time and skills of case managers and providers for those TPMs to be able to transition to and/or remain living successfully in the community. Additionally, hiring new case managers involves extensive training and results in other case managers temporarily having higher caseloads while onboarding is underway.

The State is piloting a project in the northwest region to focus positions in an administrative assistance role to relieve some of the burden on case managers. The State is working with two (2) individuals to help manage mail and documentation needs of case managers. These individuals successfully provide the same resource to other sections/divisions in DHHS in the same capacity. If the pilot is successful and reduces case management burden, North Dakota will move to offer the same assistance statewide.

TRANSITION SERVICES

TRANSITION REPORTING

The State continues to work with TPMs who wish to transition from Skilled Nursing Facilities to the community with HCBS supports. The number of transitions has fluctuated year over year, but had been increasing through 2024. In 2025, there was a 44% decrease in transitions from the previous year (*2025 Aging Services DOJ SA Dashboard DEC 14, 2024 - DEC 13, 2025*). In early January 2026, the State noted to the SME that transition referrals and requests have again started to rise. Subsequently, in early March 2026, the State indicated that there are currently 65 individuals actively involved in the transition process and a further 12 individuals who indicate a desire to still seek transition, but at a slower pace.

TPM COMPLETED TRANSITIONS SUMMARY

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

DOJ YEAR	PROGRAM	TOTAL COMPLETED TRANSITIONS	TRANSITION LONGEVITY SUMMARY					
			WITHIN 30 DAYS	31-60 DAYS	61-90 DAYS	91-120 DAYS	121-150 DAYS	OVER 150 DAYS
2021:	MFP	64	24	14	5	8	2	11
	T&D PROGRAM	26	22	2	2	0	0	0
	HCBS MW	1	0	1	0	0	0	0
	TOTAL:	91	46 51%	17 19%	7 8%	8 9%	2 2%	11 12%
2022:	MFP	105	19	29	12	11	5	29
	T&D PROGRAM	16	16	0	0	0	0	0
	HCBS MW	0	0	0	0	0	0	0
	TOTAL:	121 ↑ 33%	35 29%	29 24%	12 10%	11 9%	5 4%	29 24%
2023:	MFP	105	15	26	9	10	8	37
	T&D PROGRAM	13	12	1	0	0	0	0
	HCBS MW	0	0	0	0	0	0	0
	TOTAL:	118 ↓ 2%	27 23%	27 23%	9 8%	10 8%	8 7%	37 31%
2024:	MFP	110	29	17	16	11	8	29
	T&D PROGRAM	29	29	0	0	0	0	0
	HCBS MW	0	0	0	0	0	0	0
	TOTAL:	139 ↑ 18%	58 42%	17 12%	16 12%	11 8%	8 6%	29 21%
2025:	MFP	66	12	7	8	13	7	19
	T&D PROGRAM	12	10	1	0	0	0	1
	HCBS MW	0	0	0	0	0	0	0
	TOTAL:	78 ↓ 44%	22 28%	8 10%	8 10%	13 17%	7 9%	20 26%

It has been noted by the State that transitions are taking longer periods of time for several reasons, including the medical and co-occurring behavioral health complexity of individuals wishing to transition and the desire of many of those TPMs to remain in the facility while they address medical delays. There are also those who experience a delay in finding appropriate housing in the community in which they wish to reside and those for whom there is a wait for durable medical equipment (DME). The availability of housing vouchers in North Dakota has changed over the past 18 months as will be discussed later in this report. The State also indicates that there are some seasonal-related patterns in transitions, with winter months being a time when fewer individuals wish to move due to

holidays and the colder weather. Transition Coordinators continue their work with all TPMs, despite delays, and seek to assist in all necessary steps to move the process forward for each person. As noted in the Introduction to this report, there has also been significant gains in the number of individuals who are diverted from SNFs, receiving services in the community that allow them to remain at home and not need higher levels of institutional care.

THE 90+-DAY TRANSITION REPORT

The State maintains two (2) lists of TPMs who want to transition. These lists are part of the 90+Day Transition Report that provide information to the SME and USDOJ about those waiting to transition longer than 90 days and are likely to wait more than 120 days as outlined in the Settlement Agreement. In the latest quarterly reporting, there were 26 individuals on the Active List. These are TPMs who are working closely with Transition Teams to return to the community.

There are several reasons for delays with those TPMs on the Active List. These include, among others, difficulty in coordinating with family supports or families who are unsure of the transition, individuals who have become less responsive to meeting with the Transition Team and completing activities to move forward, housing delays often due to poor back rent history and the need to find all applicable identification documents to enroll in public housing, and communication with appointed guardians. At times, there are family members who can become a barrier to the individual wishing to transition from the SNF to the community. For example, there have been instances where a family member will not provide necessary financial information required for housing assistance or create significant delays/refusal to entertain the home modifications necessary for a TPM to return to the community. The State is to be commended in ensuring that the TPM's decisions remain central, despite these challenges, in returning to the community by ensuring that the TPM is aware of all options. It must be noted that this list is very fluid. By the time review is completed by the SME and USDOJ each quarter, some of those on the Active List that were just reviewed will have transitioned and others will have been added.

The second list is the Pending List. The State characterizes the individuals on this list as TPMs who have indicated they would like to transition but are "not yet ready" for one reason or another. There may be a health delay, an uncertainty and indecisiveness about successful living in the community, or the need to wait for information about federal benefits to support them. Individuals who are on the Pending List have indicated they still wish to be involved with transition services, but at a different pace. Some are visited every six (6) months, some quarterly. As concerns are resolved, these individuals can move toward more active transition. All TPMs, including those in SNFs, are visited at least annually even if they have not stated a desire to transition.

An additional reporting list is the Closed List. Individuals on the Closed List are those who have previously signed consent indicating they wanted to transition, but transition did not

occur. The Closed List is a tracking device for those TPMs whose involvement with the transition process through the Money Follows the Person (MFP) program ends. Some individuals passed away before they could transition, and others changed their mind and self-selected closure. In some instances, cases have been closed when the State did not feel as if they could guarantee the health, safety, and welfare of the person through community living. The decision has been made for the time being that transition activities, aside from an annual visit, will pause. What remains, always, is the ability of a TPM to re-engage with MFP if they once again desire to transition. There are TPMs who have come back to MFP and successfully returned to community living.

The State has and continues to work with TPMs for as long as necessary to ensure their ability to transition to community living as efficiently and safely as possible and should be commended for their willingness to do so. It is important not only that everything is in place with housing and QSP support prior to transition, but also that the State can comfortably ensure that the TPM can maintain health and safety in the community. As is noted in the graph above, the number of individuals who require longer periods of time (beyond 120 days) to complete transition falls between 21 – 31% over a five (5) year period.

TRANSITION AND DIVERSION PROGRAM

In the 2025 – 2027 ND Legislative Session, the Transition & Diversion Pilot Program was made a permanent service and is now simply referred to as the Transition & Diversion Program (TDP). This program works with those individuals who may not meet all the requirements for an MFP transition, especially those with shorter lengths of stay in the nursing facility. The State, through TDP, can assist individuals to transition more quickly. As noted in the chart on Page 8, 96 Target Population Members have transitioned through this service since the onset of the Settlement Agreement. Of all the individuals who have used this program over the years, only one (1) has taken longer than 60 days to transition through TDP, and the vast majority are able to transition within 30 days of engagement.

HOUSING

The nationwide shortage of affordable and accessible housing is well known in every major community. North Dakota, as in most states, is making every effort to utilize available resources to continue to improve housing opportunities for TPMs.

There have been funding reductions from the US Housing and Urban Development (HUD) program. Instead of anticipated increases in the coming years' budget, states are being told they are capped at less than what has currently been received, a decline of 10% from the previous year's budget. One change resulting from this is the inability to access more vouchers to provide rental assistance. Those individuals who do have vouchers are likely the only ones able to be served through that program at this time. North Dakota had the ability to port vouchers across communities and they were available to meet the need in multiple places. That is no longer possible as determined by federal regulations issued by

HUD. There are those individuals who do have vouchers allocated to them, but who still have difficulty finding a place to live, particularly in the current rental market. Because of that, those vouchers that are allocated can be held for a longer time to try and meet the goal of securing a place to live. Frequent extensions are offered by the local Housing Authorities to those seeking a suitable place to live. If the search results in housing not being secured or something happening so that the individual is no longer seeking housing by the end of the final deadline, the voucher will become available again, but this does not happen quickly. In a recent meeting with DHHS Adult and Aging Services and the ND Housing Finance Agency several items of note were shared with the SME.

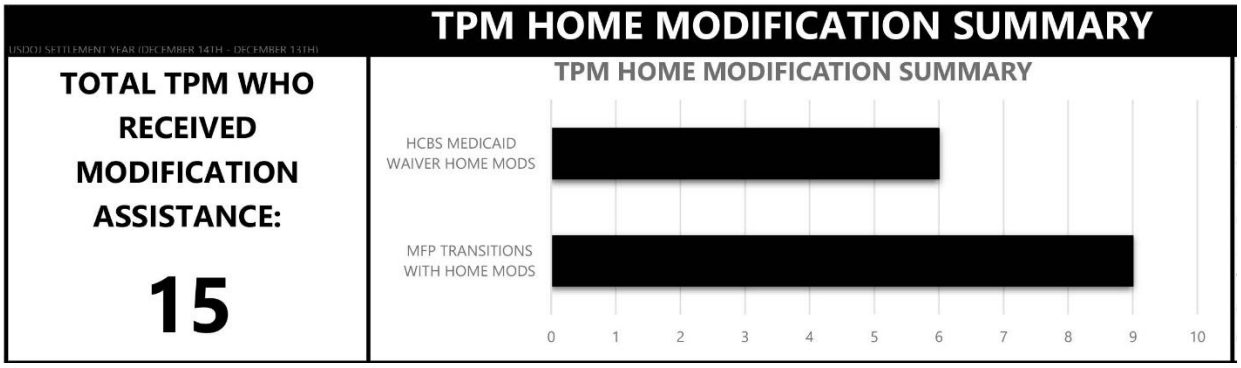
- There is a 0.2% vacancy rate in rental housing. This means when a unit becomes available for rent, that unit is filled in less than 30 days. An average and workable rate to assist more people is 7%.
- There are 15 individuals in Cass County who currently hold allocated vouchers who are unable to find a place to live. Extensions have been granted on these vouchers (more than once) as people continue to seek a suitable place to live.
- The waiting list for a voucher in Fargo is 3-5 years.
- There is an 18-month waiting list for a voucher in Minot.
- Bismarck has closed its waiting list.

In an effort to provide further assistance, the ND Legislature allocated $300,000 to Adult and Aging Services for rental assistance in the current budget. The State has also requested approval from the Centers for Medicare and Medicaid Services to provide rental assistance for six (6) months for individuals seeking transition. They are awaiting final notification of such approval.

Each year, the ND Housing Finance Agency (HFA) allocates funding to communities for the development of new or rehabbed units. In 2025, HFA received 23 applications for such assistance. The amount of funding available was $4.1 million. Application requests totaled $19 million. HFA was able to fund seven (7) of the projects. Once funds are allocated, the process to get to “breaking ground” is approximately two (2) years due to the regulatory requirements that must be met. The HFA noted that those projects funded in 2024 are moving forward and ground has been broken on two (2).

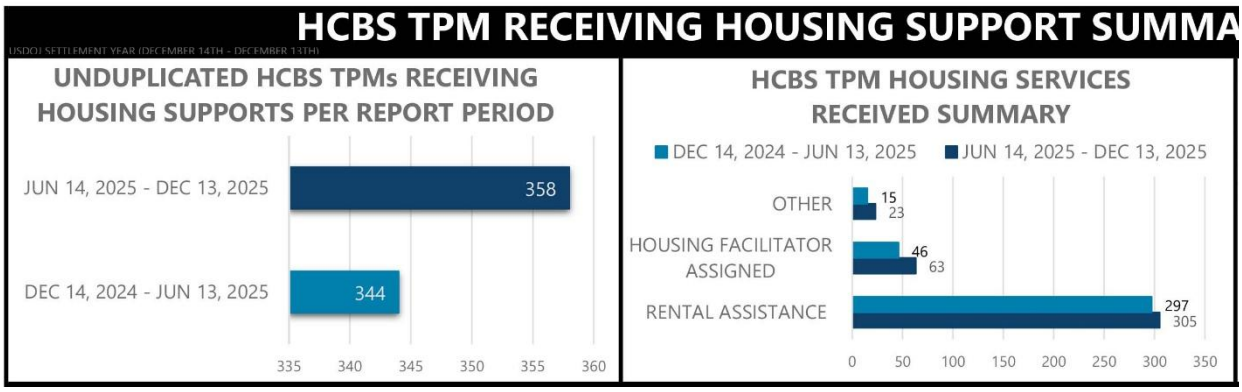
HOUSING FACILITATION

The State also continues its efforts in providing housing facilitation, permanent supported housing, and home modifications. In 2025, the State reported the ability to assist with 15 home modifications (*2025 Aging Services DOJ SA Dashboard DEC 14, 2024 - DEC 13, 2025*).



Home modifications are available to those who are transitioning as well as to those who receive HCBS and reside in the community. The provision of home modifications in the community can prevent or delay the need for higher levels of care in SNFs. Many of these modifications are very expensive, running in the tens of thousands of dollars, for example, to make bathrooms accessible for those requiring equipment. The State has assisted in 109 home modifications over the course of the Settlement Agreement (*2025 Adult and Aging Services DOJ Settlement Agreement [SA] Comparison Dashboard)*.

In keeping with that, it is also important to note the number of those living in the community receiving HCBS and also accessing housing supports. The *2025 Aging Services DOJ SA Dashboard DEC 14, 2024 - DEC 13, 2025,* reports the following:



As stated earlier and noted here, the largest category of service provision is in rental assistance. Housing Facilitators in some of these instances may be working to help a person in the community find a more accessible apartment, such as a ground floor unit, or are looking for alternative living arrangements but doing so independently. Housing Facilitation is available to all TPMs seeking to transition and to all TPMs and others receiving HCBS in the community.

QUALIFIED SERVICE PROVIDERS (QSPs)

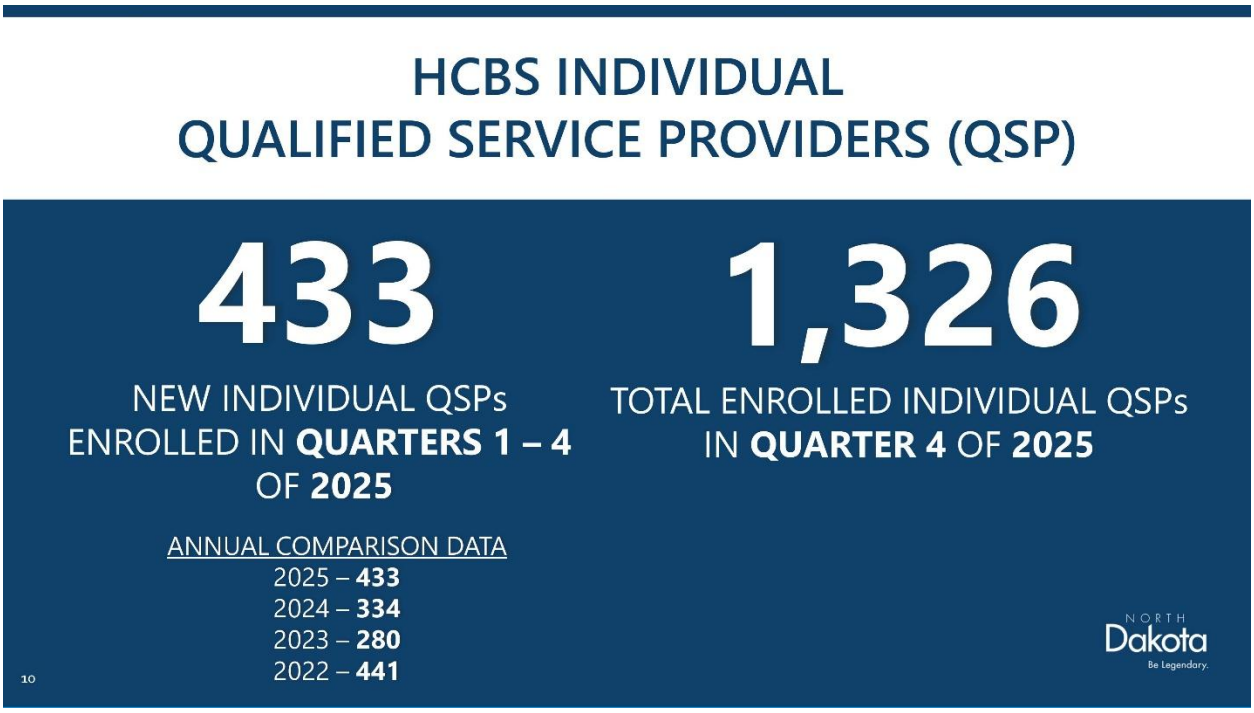
ENROLLMENT & RETENTION

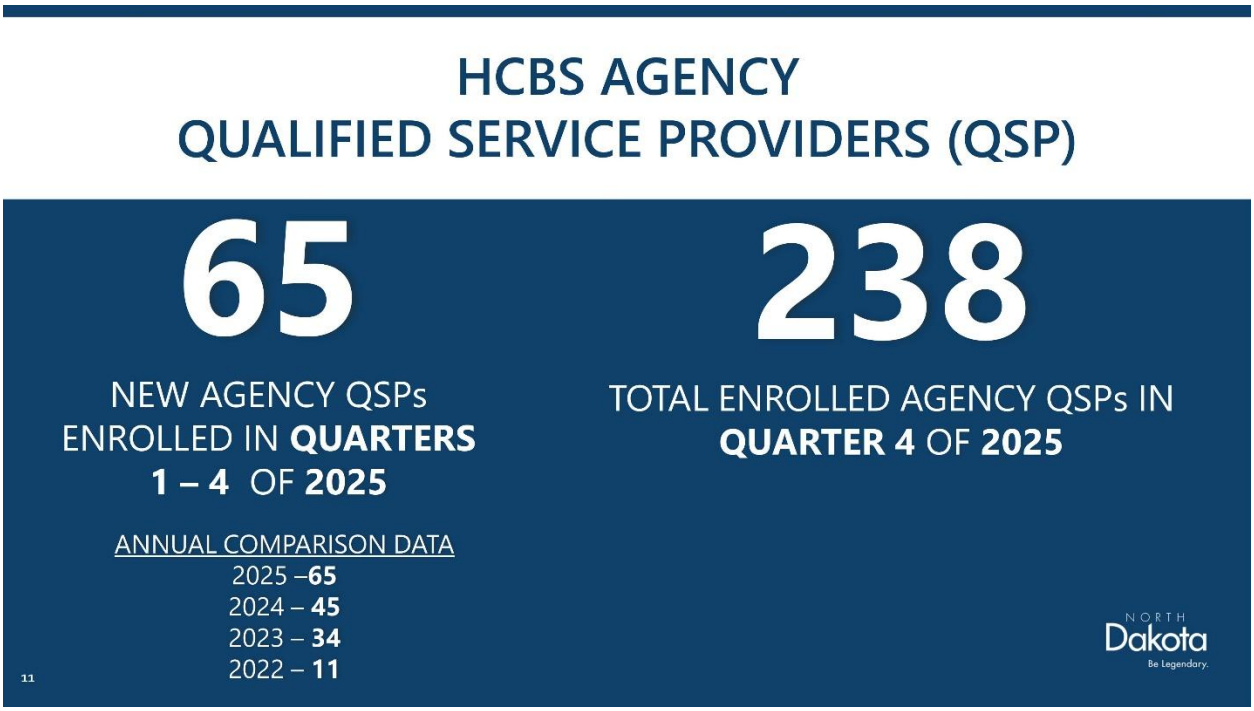
The capacity to provide effective HCBS lies with having a sufficient and competent number of Qualified Service Providers (QSPs) available statewide to serve Target Population Members (TPMs). Section XIII.A. of the Settlement Agreement requires that the State take necessary steps to ensure an adequate supply of qualified, trained community providers to enable TPMs to transition to and live in the Most Integrated Setting. In 2024, the State moved enrollment activities back "in-house" to DHHS Medical Services and modified those activities so the entire process could be completed electronically. Since that time, the State has kept a close watch on the effectiveness of this activity, with the goal of enrolling and revalidating all QSPs within 15 days. In the latest Key Performance Indicators report (*DOJ Implementation Plan Key Performance Indicators October 1, 2025 – December 13, 2025*) the State reported the following:

For the last several quarters, the State has reported the enrollment length of time for Agency QSPs at an average of 31 days. In conversation with DHHS Medical Services, the SME learned that efforts related to enrollment of Agency QSPs had changed. When DHHS Medical Services first became responsible for enrolling providers, if an Agency QSP had not completed all necessary steps for enrollment within 15 days, the enrollment was closed and the agency would need to begin the enrollment process again, effectively changing the length of time to approve applications to a shorter period. More recently, and with much better success, enrollment staff has been providing technical assistance to agencies requiring such assistance to help them complete enrolling to provide services. Based on the information received about changes to how agencies are assisted and how days are

counted, the SME can reasonably assume that it has always taken about 30 days to enroll agencies since the new process was instituted. The SME can infer that Agency providers who did not initially complete enrollment within 15 days at the outset of the change in process did not simply not enroll, but rather gathered the remaining information required and necessary and began the enrollment process a second time. The State also continues to make effective use of the QSP Resource Hub, which also provides technical assistance and support to individual and agency QSPs to assist in the enrollment process.

As the number of individuals seeking HCBS has continued to increase, so has the need for more QSPs, both individuals and agencies. In the *DOJ Implementation Plan Key Performance Indicators October 1, 2025 – December 13, 2025,* the State notes the following figures for the fourth quarter of 2025:





As can be seen in the above graphic, the number of new agencies enrolling to provide HCBS has increased dramatically over the course of Settlement Agreement. In addition to enrolling new providers, it is equally important that they are retained. In the *DOJ Implementation Plan Key Performance Indicators October 1, 2025 – December 13, 2025,* the State reports the number of new providers enrolled during the year noted who are retained in the years following initial enrollment:

New QSPs Retained							
Year	2020	2021	2022	2023	2024	2025	Total
# Agency QSPs	11	14	10	34	32	62	163
# Individual QSPs	53	112	201	280	296	378	1,321

Historically, there have been parts of the state where it can be more difficult to find QSPs based on the rural and frontier nature of those areas. These challenges occasionally continue to occur in these very rural parts of North Dakota. Section XIII of the Settlement Agreement, as noted, requires that the State provide HCBS statewide to ensure that TPMs can return to or remain in the community rather than be in institutional care. In response to questions raised by the Subject Matter Expert about service availability and capacity in frontier and rural areas of North Dakota, the State provided data on three (3) areas: Stark, Williams, and Cavalier counties. These areas have historically been harder to serve than other portions of the state and conversations with TPMs in those areas over the course of the agreement has made them areas of special focus. Data shared with the SME and USDOJ in January 2026 (below) provides a snapshot in time of those areas and the number of individuals being served. The number of TPMs waiting to transition in these areas is low

and the SME has not received any information that those persons living in the community and requesting HCBS are not being served. While there remain, at times, difficulties in accessing services in those areas, the State has made significant strides in ensuring that individuals seeking HCBS are being served and that the number of individuals waiting undue lengths of time to transition is not excessive. The SME will continue to track the availability of service statewide to ensure that lack of QSP availability is not causing undue delays to transition.

	Stark County	**Williams County**	**Cavalier County**
Number of Individuals Receiving Services	193	77	7
Number of Individuals Waiting to Transition in County	1	2	1
Number of Individuals Transitioned Home during Settlement Agreement	12	4	0
Number of Enrolled QSPs	115	100	68
Number of QSPs Serving Clients	97	47	9

PROVIDER QUALITY

As important as having sufficient providers is ensuring that those providers are qualified to deliver the services for which they contract and do not engage in improper billing or deliver substandard care. The State worked with a vendor to complete a project to assess the current training requirements and structure for HCBS providers working through several sections of DHHS to identify and establish innovative workforce training strategies. As a result of this, the State made the decision to use a curriculum created by the University of Wisconsin Green Bay and customize it for North Dakota (*North Dakota – Department of Justice Settlement Agreement Biannual Report, June 14, 2025 – December 13, 2025, pg. 71)*. Work on customization of this curriculum has begun, as well as work on the Learning Management System where it will be housed, that:

- Establishes a standardized set of training policies and procedures across the various services, systems, and sections,
- Identifies core qualifications for all providers to develop and maintain, and
- Improves collaboration and coordination among State agencies and stakeholders.

The State has also devoted resources to the provision of training around behavioral health, which is a noted need of TPMs and others who receive HCBS. The State established a provider agreement with behavior analysts to help support individuals who have both behavioral health and physical health needs through the development of a specific behavioral plan for the individual that guides care delivered. While the initial implementation of this has been slow, the State is now seeking multiple contracts to provide this service going forward. Additionally, in 2025 the State engaged Therapeutic Options to deliver a train-the-trainer model with Agency QSPs who provide residential

habilitation and community support services, the two (2) most intensive HCBS services, and Adult and Aging Services staff. These trainings offered ways to motivate behavior change, de-escalate situations, interventions with individuals actively using illegal drugs, and offered general mental health awareness and personal resiliency information for QSPs and State staff (*North Dakota – Department of Justice Settlement Agreement Biannual Report, June 14, 2025 – December 13, 2025, pg. 36)*. The complexity of care needs demonstrated by the target population increases demands on QSPs, and additional training is designed to support their ability to provide effective and quality services.

The State has also worked with the QSP Resource Hub (https://www.ndqsphub.org/) to deliver training available to all QSPs. This training is available both on demand and through webinars scheduled by the Hub. It covers areas from enrollment and maintaining provider status to understanding behavior, working with Indigenous populations, understanding diabetes, and working with Traumatic Brain Injury.

As the State undertakes, completes, and offers this work to enhance training, it is also completing audits with providers to ensure that standards are being met. While almost all Agency QSPs that have been audited have demonstrated the delivery of quality HCBS, the State has revoked the licenses of 10 agencies (*North Dakota – Department of Justice Settlement Agreement Biannual Report, June 14, 2025 – December 13, 2025, pg. 9)* for issues including improper billing and substandard care in the last year. The State provided technical assistance to other Agency QSPs that have had issues in state audits to increase their ability to deliver quality services.

In addition to training that has been offered and is forthcoming, the State could also consider additional ways to measure whether QSPs provide quality care. These could include, for example, the number and severity of incidents covered by CIRs, complaints, and hospitalizations, or a return to institutionalized care.

RECOMMENDATIONS

As the State continues its work to maintain an effective, quality cohort of QSPs, the SME recommends the following during Year 6 of the Settlement Agreement:

- Complete the Learning Management System build out and begin to deliver the revised curriculum to all QSPs based on state-specific changes to that developed by the University of Wisconsin Green Bay.
- Continue different methods of provider recruitment in historically harder to serve areas such as enlisting the support of the TPM who wishes to return to the community in identifying potential providers not yet known to the State, and outreach to specific SNFs in those areas to develop their capacity to deliver HCBS in addition to facility skilled care.
- Offer additional training for QSPs serving individuals with co-occurring behavioral health and physical health care needs.

- Provide additional QSP Program Integrity workshops to help providers better understand documentation and record keeping requirements and showcase tools through the case management and claims submission systems that aid in compliance. The State has developed these workshops and should continue to offer them frequently to gain greater participation from QSPs.
- Develop coordinated interdivisional strategies with leadership across divisions to further streamline the enrollment process.

COMPETENCY AND GUARDIANSHIP

Issues of competency and guardianship remain, at times, a concern for TPMs. In the 2025 – 2027 ND Legislative Session, the State established a Guardianship and Conservatorship Office(GCO). This office is expected to be staffed and ready to begin work in April 2026. The SME and USDOJ, along with the State, have had the opportunity to meet with the executive director of this new office and outline some of the specific concerns that have been noted in the past. The director was provided with the section of the most recent SME Report addressing issues and recommendations that have been under discussion (https://www.hhs.nd.gov/sites/www/files/documents/Adult%20and%20Aging/sme-compliance-report.pdf).

The Settlement Agreement speaks to guardianship and the requirement that guardians' decisions reflect the wishes of the TPM. Since 2020, the State reports that there have been 21 instances in which the TPM signed a consent to transition to the community and the guardian prevented the individual from transitioning. There have been times when a guardian rejected a TPM's transition absent a stated reason and other times in which the guardian chose not to attend meetings to learn about how HCBS are delivered and the ability to actively support people at home, even those with significant needs. It is expected that with the additional involvement of the GCO these instances will continue to decline.

There are also those TPMs who don't have a legal guardian, but who have a Power of Attorney in place, usually with a family member. Some of the SNFs and transition staff have treated these documents and powers with the same gravity as a guardianship. An individual, by law, can revoke a Power of Attorney at any time, further qualifying that a Power of Attorney is crafted by the person and not determined by a court. The SNFs and the Transition Teams have indicated that the wishes of the TPM, at times, are not taken into due consideration. The individual designated as having the Power of Attorney often dictates what can and cannot happen when they do not have the legal authority to do so and they are not challenged. Many of these instances involve questions about competency of the individual, especially when no determination of competency has legally been made. Only the court can determine competency. This has caused delays in transitioning to the community and it creates an unnecessary barrier to transition.

A third area of concern that historically has been noted is that some TPMs have reported being told they cannot leave the facility without a guardian – that it is a condition of returning to the community. This does not seem to be a current trend, but the State reports the issue is cyclical. It speaks to the need for more information to be available to families, facilities, and State staff about competency questions, guardianship, and the decision making authority held by a Power of Attorney. Additionally, it must be noted that the availability of corporate guardians in North Dakota is not sufficient to meet the need of requests for such consideration.

Finally, there remain, at times, questions from Transition Teams who must balance the health, safety, and welfare of an individual with the individual's right to live in the setting of their choice when no ruling of competency has been made. There are concerns that an individual may struggle in the community, especially if a family is not supportive, and that the transition will not be successful. Transition Teams find themselves conflicted between regulations addressing health, safety, and welfare and the right of an individual to choose their place to live.

DHHS Adult and Aging Services has a Guardianship Establishment Fund. This fund allows the State to financially assist individuals who seek to become a guardian for a TPM by supporting legal fees to assist that process. In the ND 2025 – 2027 Legislative session, $423,000 was allocated for the biennium to support these services. Within five (5) months allocation of all of the funds for Year 1 ($211,500) of the biennium were designated. The process to become a guardian is lengthy. Some of those funds allocated may become available again if an individual is unable to meet/complete guardianship requirements, but the resources for guardianship assistance in the state remain insufficient for the need that has been noted. In April 2026, the Guardianship Establishment Fund previously managed by Adult & Aging Services was moved to the new ND Guardianship and Conservatorship Office.

The new ND Guardianship and Conservatorship Office (GCO) has a primary twofold charge as noted by its executive director:

1. Monitoring investigations already in place, and
2. Becoming an educational hub for the State so individuals can better understand what it means to be a guardian, including what rights and responsibilities lie within such status.

DHHS Adult and Aging Services will work closely with the GCO in the coming months to assist in development of educational resources and ensure that the office is aware of concerns as they arise. Educational materials will speak to the differences of guardianship/conservatorship and powers of attorney. They will seek to address concerns of guardians when there are behavioral health issues in play (particularly substance abuse) and what the guardian's responsibilities are in such instances. The State had previously been working on an FAQ regarding guardianship (early in 2025) but that work was set aside

when the OGC was created with the belief that developing these materials together would be more effective. Additional specific duties of the new office are spelled out in the enabling legislation from the 2025 – 2027 Session (https://ndlegis.gov/assembly/69-2025/regular/documents/25-0224-02000.pdf).

The State has, in the interim, developed a guardian expectation sheet that can be shared when it is proving difficult to get a guardian to participate in transition discussions to help them understand that a ward/conservatee can live safely in the community. One of the Transition Teams noted to the SME during a key informant interview that having this resource is helpful in engaging reluctant guardians. It should be noted that Transition Teams work, sometimes over the course of many weeks or months, to ensure that these meetings with guardians finally take place before a decision is made.

CONCLUSION

As the State of North Dakota surpasses the five (5) year mark of the initiation of the Settlement Agreement, several things have become evident. First, the State's steady progress toward substantial compliance in many areas is undeniable. Second, issues of durability and sustainability in challenging areas, such as case management capacity, QSP quality, and transition services require continuing attention.

Consistent with productive discourse occurring between the Parties on amending to "narrow" the Settlement Agreement, both this report and the State's next Implementation Plan (covering both Year 6 and 7 of the Settlement Agreement) focus on the aforementioned areas. A primary aspect of the work that remains is the development and implementation of continuing and new strategies to address the areas of challenge highlighted in this report.