North Dakota Settlement Agreement with the US Department of Justice

Report of the Subject Matter Expert

May 2025

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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 eighth biannual Compliance Report submitted by the Subject Matter Expert (SME), is for the recently concluded time period (June 14 – December 13, 2024).

The State of North Dakota has made significant progress in meeting both the spirit and the letter of the Settlement Agreement with the USDOJ over the past four (4) years. While challenges remain, there are hundreds of individual success stories. The potential for further progress is dependent on the State's ability to sustain productive partnerships, continue to secure housing resources, further grow the Qualified Service Provider (QSP) network, and respond to specific challenges for individuals.

As indicated in the table below, the State has met compliance for all but one of the requirements contained in the Settlement Agreement for Year 4. The provision where only partial compliance has been achieved is ensuring that all Target Population Members (TPMs) who wish to transition to the community are able to do so within 120 days of request. During the first four (4) years of the Agreement, 72.5% of TPMs transitioned within 120 days of their consent. There is a wide diversity of issues that can delay transition. The greatest barrier to transition is securing housing, which is discussed in detail later in this report. Some individuals have significant medical and behavioral issues and some need additional therapy before being able to return home, choosing to withdraw their request to transition to the community until those therapies have been accomplished successfully. Securing QSPs in some parts of the State is more difficult than areas with greater population. The State has implemented multiple strategies in these areas and works diligently to transition all TPMs that desire transition. The Subject Matter Expert and the SME Team review all transitions that have been delayed on a quarterly basis, the latest reviews being completed in January 2025. This allows the SME to provide technical assistance and to ensure that the State is addressing all barriers for individuals seeking transition.

YEAR 4 COMPLIANCE REQUIREMENTS

SA Section #	Requirement	Compliance Status
VI.F	Create a Year 5 Implementation Plan	Full Compliance
XIII.D	Provide technical guidance to SNFs that commit to provide HCBS and rural community providers who commit to expand	Full Compliance to Date
VIII.I.2	Person centered planning training of Case Managers	Full Compliance to Date
XIII.I.3	Person Centered Planning to an Additional 650 TPMs	Full Compliance
XV.D	Submit Biannual Data Reports	Full Compliance to Date
X.B.2	Implement incremental changes to the NF LoC process and community-based services eligibility	Full Compliance to Date
X.B.3	Require annual NF LoC determination screening for all continued stays in a nursing facility for TPMs	Full Compliance to Date
XI.B	Transitions occur no later than 120 days after TPM chooses (See note above)	Partial Compliance
XI.E.2	Transition 60% of Nursing Facility TPMs who request transition	Full Compliance
XI.E.2	Divert an Additional 150 At Risk TPMs from the SNF	Full Compliance
XIV.A.1	Conduct individual or group in-reach to each nursing facility	Full Compliance to Date
XV.D	Submit year 5 Implementation Plan	Full Compliance

There are many success stories that speak to the enhanced level of teamwork involved in supporting an unprecedented number of TPMs in North Dakota, 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. The State has diverted hundreds of TPMs from entering a Skilled Nursing Facility (SNF) in addition to providing transition assistance. In its Year 4 Biannual Report, the State included stories from individuals about the variety of Home and Community-Based Services (HCBS) they receive in order to live in the community. The State continues to expand these opportunities each year. The number of individuals receiving support from the State continues to grow.

REPORT STRUCTURE

This report is structured in the following subject areas subsequent to this introduction:

- Transition Services
- Diversions
- Qualified Service Providers (QSPs)
- Cognitive Capacity/Guardianship
- Appropriation Request Highlights, and
- The Road Ahead.

Each subject area includes specific challenges that the State faces on a daily basis. These challenges include housing, QSP capacity and quality, and challenging behaviors and behavioral health needs of TPMs. Staffing at the State level is also a focus. We note that the State is working to further develop successful strategies – and create new ones – to remove systemic barriers that may hinder individuals in returning home (transitions) or remaining at home (diversions). The pages that follow highlight the successes of North Dakota, identify the continuing challenges, and review suggestions for meeting those challenges.

RECOMMENDATIONS

In previous reports, most recently the October 2024 Compliance Report, the SME included multiple recommendations for consideration by the State. In this reporting period, the SME focused on review of previous recommendations made and the State's implementation of those recommendations. This report adds one additional recommendation (see Number 12 below). The State addresses these recommendations through multiple strategies. Some recommendations contained in previous SME compliance reports have been fully addressed and are not covered here. Work on the following previously made recommendations is robust, but remains active and ongoing. This report focuses on the following recommendations:

1. Develop enhanced collaboration among internal Department of Health and Human Services (DHHS) sections and divisions.
2. Enhance managerial capacity and internal administrative infrastructure at Adult & Aging Services.
3. Develop additional strategies to address the intermittent service needs of TPMs.
4. Add additional staff to the CILs to focus on enhancing post-transition support.
5. Consider efforts in specific areas of the State where incentives could be considered to expand and enhance services.
6. Offer training for QSPs and case managers in several topical areas of behavioral health.
7. Implement a peer support pilot project to assist in the mitigation of challenges related to assisting TPMs to return to the community more rapidly and remain in the community longer.

8. Determine how to provide assistance for TPMs who exhibit "acting out" and challenging behaviors that jeopardize services.
9. Consider innovative QSP recruitment efforts in targeted areas.
10. Determine if certain needed medical procedures or interventions that currently delay transitions and keep TPMs in nursing facilities or hospitals could be carried out after an individual has transitioned into a community placement in order to avoid delaying the transition process.
11. Bring together USDOJ, the SME, the State, and other entities such as Protection and Advocacy and Legal Services of North Dakota, to clarify and provide guidance on issues associated with cognitive capacity, guardianship, and power of attorney.
12. Ensure the implementation of training for agency and individual QSPs that supports their ability to work with TPMs with behavioral health conditions and behavior concerns as soon as possible.

TRANSITION SERVICES

A foundational component of the Settlement Agreement – Section XI – is for North Dakota to ensure that any TPM who wishes to transition home to community living be able to do so. Section XI.E.2.b. of the Settlement Agreement indicates, in part, "Within four years of the Effective Date [by December 2024], the State will, consistent with the member's Informed Choice, as appropriate to the member's needs, transition at least 60% of Nursing Facility Target Population members… from nursing facilities to Community-Based Services…" The requirement in the previous subsection (Section XI.E.2.a.) of the Settlement Agreement required the State to transition 100 TPMs within the first two (2) years of the Settlement Agreement. The 60% compliance target is based on those who have been referred to transition services and have consented to transition.

In its 2024 Dashboard, the State reports the following:

TPM TRANSITION REFERRALS COMPLETED SUMMARY

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

TOTAL TPM TRANSITION REFERRALS THAT COMPLETED TRANSITION: 139

TRANSITIONS	TOTAL	%	BY GRANT POPULATION		
			DD	ELDER	PD
MFP	110	79%	10	50	50
ADRL/DIVERSION PROJECT	29	21%	4	21	4
HCBS MEDICAID WAIVER COMMUNITY TRANSITION	0	0%	0	0	0
TRANSITIONS WITHOUT COMMUNITY SUPPORTS	0	0%	0	0	0

(2024 Aging Services DOJ SA Dashboard Dec 14, 2023 - Dec 13, 2024)

The State's 2024 Biannual Report reflects that these 139 transitions are 64% of the 217 individuals who requested to transition *(North Dakota – Department of Justice Settlement Agreement Biannual Report December 14, 2023 – December 13, 2024, pg. 56)*. The remaining 78 TPMs are actively seeking transition and have an assigned Transition Team. The State is meeting this benchmark requirement and in the four (4) years since the initiation of the Settlement Agreement has transitioned 469 TPMs from Skilled Nursing Facilities (SNFs) to the community.

Section XI.B of the Settlement Agreement contains an additional transition requirement, indicating "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. The State will identify any member whose transition has been pending more than 100 days to the Subject Matter Expert and the United States on at least a biannual basis."

The State has provided to both the Subject Matter Expert and USDOJ, on a quarterly basis, a 90+-Day Transition Report that is discussed in further depth later in this section. One purpose of the review of this report is to analyze cases in which a barrier or multiple barriers have resulted in lengthier transition timeframes and to provide feedback to the State, acknowledging their responsibility to navigate those barriers efficiently while balancing adherence to the health, welfare, and safety needs of transitioning Target Population Members.

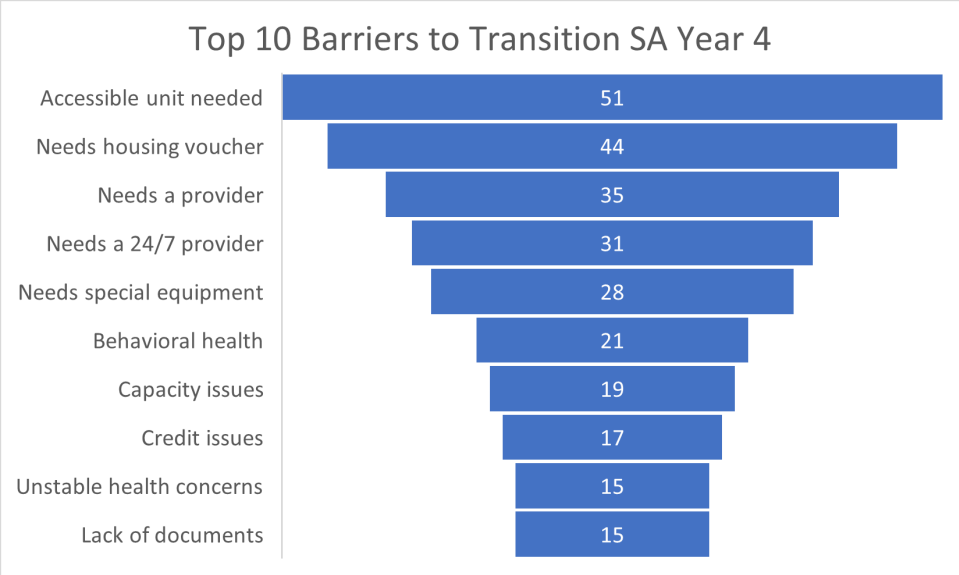
During the initial four (4) years of the Settlement Agreement, the majority (72.5%) of TPMs were able to transition to the community within 120 days of consent to transition. The State is to be commended for achieving this target for the majority of individuals. For some, this target is simply unrealistic. There will always be cases involving complex circumstances that will not allow for viable and sustainable transitions within the prescribed number of days in the Settlement Agreement.

The following tables depict transition data and the prevalent barriers to more timely transitions.

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
	ADRL/DIV PROJ	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
	ADRL/DIV PROJ	16	16	0	0	0	0	0
	HCBS MW	0	0	0	0	0	0	0
	TOTAL:	121	35 29%	29 24%	12 10%	11 9%	5 4%	29 24%
2023:	MFP	105	15	26	9	10	8	37
	ADRL/DIV PROJ	13	12	1	0	0	0	0
	HCBS MW	0	0	0	0	0	0	0
	TOTAL:	118	27 23%	27 23%	9 8%	10 8%	8 7%	37 31%
2024:	MFP	110	29	17	16	11	8	29
	ADRL/DIV PROJ	29	29	0	0	0	0	0
	HCBS MW	0	0	0	0	0	0	0
	TOTAL:	139	58 42%	17 12%	16 12%	11 8%	8 6%	29 21%

(Aging Services LTSS DOJ SA Annual Comparison Dashboard)

Of individuals still waiting to transition past 120 days, in its last report the State indicated the following reasons (see chart below). All individuals that have consented and who remain waiting to transition have more than one barrier. It is noted that this list of barriers does not include individuals who requested to transition but whose cases were closed before the individual transitioned (the "Closed" list, described on pg. 9.) While the barriers are identical, the prevalence of which barriers have prevented TPMs from transitioning changes for those individuals who have closed their request to transition. Complete data is not yet available for those TPMs, but recent case reviews by the SME and USDOJ indicate that capacity/guardianship issues and unstable health concerns are primary barriers. It is suggested that the State consider creating another chart in the coming year for those individuals who did not transition based on the same barriers, showing the difference in the prevalence of each barrier for those that were unable to transition.



(North Dakota – Department of Justice Settlement Agreement Biannual Report December 14, 2023 – December 13, 2024, pg. 52)

In keeping with the requirement of assuring the SME and USDOJ are aware of those individuals who are awaiting transition for longer than 100 days, the State created a system that included the development of the aforementioned 90+-Day Transition Report. This document has changed format over the years to bring increasing clarity to issues that prevent each individual from returning to the community in a timelier manner. The report contains three (3) lists – the Active List, the Closed list, and the Transitioned list. The Active list are those individuals who have indicated a desire to return home and signed consent to work with the transition program and are waiting past 100 days; the Closed list are those individuals who at one time indicated they wanted to transition, but who no longer are pursuing that course of action for any number of reasons; and the Transitioned list tracks information for all TPMs that have returned to the community from a SNF.

The SME Team reviews this list at length each quarter, particularly those on the Active list, to provide technical assistance and discussion with the State, focusing on additional ideas to affect barriers preventing people from returning home. Documentation in this area has shown continual improvement based on feedback from the SME Team, including detailed notes from internal monthly staff meetings addressing each individual's needs and action steps being taken to resolve barriers. It is easier for the SME and USDOJ to more clearly understand what is happening with TPMs whose transitions are delayed.

A significant internal support for those individuals on the Active list is routine case staffings held within the Aging and Adult Services Section. Led by senior members of Money Follows the Person (MFP) programs, these staffings provide the opportunity for in depth discussion of TPMs and brainstorming ways to successfully navigate barriers to transition. This activity has allowed for more creativity in identifying solutions.

There are significant numbers of TPMs who move through these lists each reporting period. It is not unusual to have new names show up on the Active list while others previously on the list have been able to transition home. There are individuals who have been on the Closed list whose cases have been reopened at their request and they too have transitioned or are in the process of doing so. There are TPMs who were able to transition in less than 100 days and, as such, did not appear in the report (on the Active list) until they transitioned.

The 90+-Day Transition Report has been a priority focus during the most recent reporting period and will continue moving forward. This includes productive discussions between the State and USDOJ about specific cases of TPMs on the Closed list that clarify barriers and the State's ongoing and updated efforts to navigate those barriers.

HOUSING

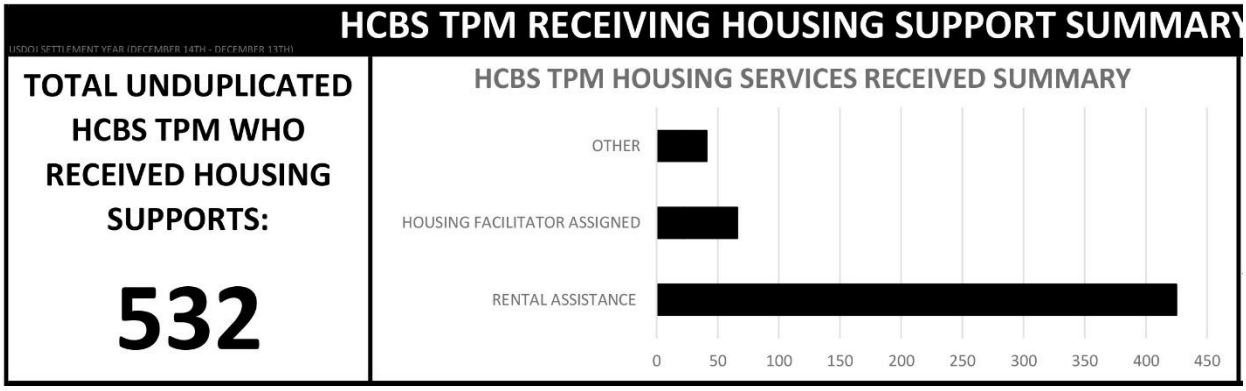
The State works diligently to ensure that any TPM who wishes to transition to the community is able to do so. As is noted on pg. 5, this is not always possible within the 120 day requirement contained in the Settlement Agreement. The largest barrier to transition for those who are awaiting services for extended periods of time is housing.

The State continues work on multiple fronts to both expand and coordinate resources relative to the completion of home modifications to make existing housing physically accessible. The Centers for Medicare and Medicaid Services (CMS) approved a plan allowing North Dakota to create a capital incentive fund – titled the Home Modification Capital Fund – to assist in having more opportunities to complete home modifications through the Medicaid Waiver. The State created a pool of funds and contracted with a provider to manage it. The fund allows for contractors to be paid in installments for the work they complete in homes and does not require them to become a QSP to be able to do so, which had been a previous barrier. Once a project is complete, the provider bills Medicaid for the work, returning those funds, less an administrative fee, to the incentive fund to replenish it. It is anticipated that the next Biannual Report from the State will provide data on how this fund is being used – e.g. number of modifications completed, average costs, length of time for projects.

The State continues to report growing numbers of housing assistance provided to TPMs. In its most recent report *(2024 Aging Services DOJ SA Dashboard Dec 14, 2023 - Dec 13, 2024)*, the State indicated that of those individuals transitioning to the community:

- 34 received home modification assistance,
- 50 received permanent supportive housing, and
- 84 received housing facilitation assistance.

The State also provides housing supports to people living in the community. As shown below, 532 TPMs received housing supports in the reporting period with the vast majority receiving rental assistance.



Accessible and affordable housing stock is limited across the country. But there are many other aspects of assisting people to secure housing, going beyond a home that is accessible and affordable, that remains of great significance. There are reasons specific to a person that can prevent them from easily obtaining housing. For example, they may have no identification and securing new identification will be difficult. Others may have a felony history, making some landlords reluctant to rent to them. Still others may have a history of significant housing debt from not paying previous landlords or facilities. Housing Facilitators work with these individuals to successfully navigate these barriers in the efforts to assist in securing housing.

There have been changes in the federal Department of Housing and Urban Development that affect the availability of housing vouchers. Anyone, from anywhere in the United States, can seek a housing voucher in any state that has them available. This adversely impacts less populated states such as North Dakota. An individual can request a housing voucher from North Dakota and use it in another state, which causes the State to lose that voucher. The State has responded by connecting directly with housing authorities in different regions of North Dakota to develop Memorandums of Understanding (MOUs) to designate TPMs as a preferred population when it comes to the distribution of housing vouchers. Three (3) MOUs have been established. While this cannot fully address the number of available housing vouchers, it can help the State in offering as much as possible to those citizens most vulnerable. Additionally, the State has requested that legislators include a $300,000 appropriation in the 2025 – 2027 ND budget to provide rental assistance, the largest type of housing support requested by TPMs.

DIVERSIONS

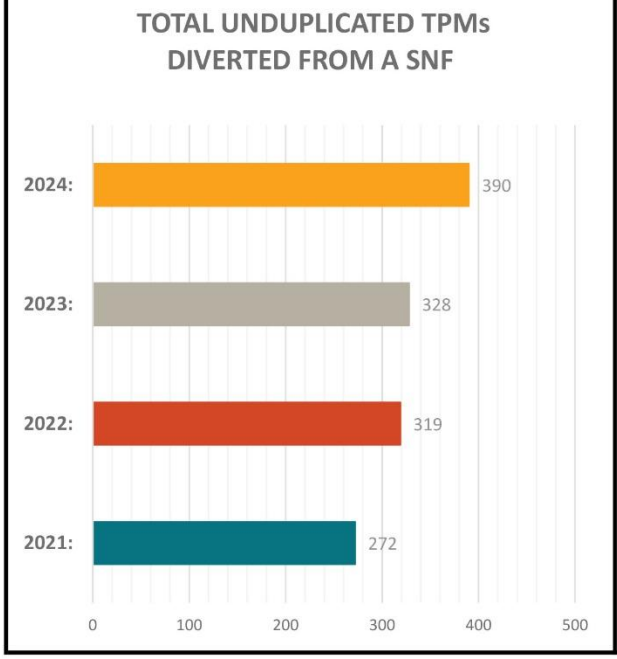
Essential to the success that North Dakota is achieving in relation to serving more individuals in the community are its efforts in diverting TPMs from ever entering a SNF and then having to transition home. Per the Settlement Agreement, diversion activities occur before a TPM is admitted to a nursing facility and provide an appropriate alternative to meet the Target Population Member's needs in the most integrated setting.

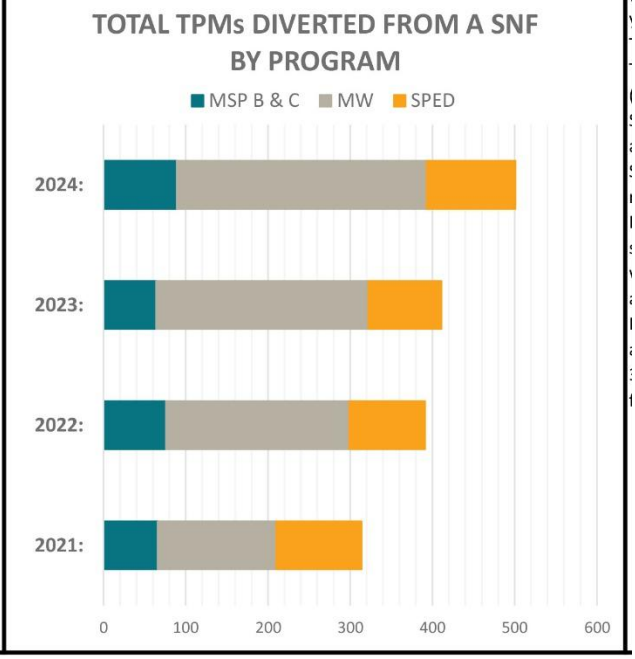
Section XI – Transition Services of the Settlement Agreement includes requirements that North Dakota must meet to be in compliance with diversion targets. By the end of Year 4 of the Agreement, the State was required to divert 250 TPMs from admittance to Skilled Nursing Facilities (SNFs). In its latest Biannual Report reflecting data across four (4) years, North Dakota indicates the following:

HCBS LONG TERM CARE (LTC) DIVERSIONS

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

DOJ YEAR	TOTAL UNDUPLICATED TPMs DIVERTED FROM A SNF	TOTALS BY PROGRAM		
		TOTAL MSP LEVEL B & C TPM DIVERSIONS	TOTAL HCBS MW TPM DIVERSIONS	TOTAL SPED TPM DIVERSIONS
2021:	272	66	144	104
2022:	319	76	223	92
2023:	328	64	258	89
2024:	390	89	304	108
TOTAL:	1,309	295	929	393





(Aging Services LTSS DOJ SA Annual Comparison Dashboard)

As is apparent from the table above, the number of diversions continues to increase year over year and the State has far exceeded the requirements of the Settlement Agreement; more than fivefold in the four (4) year period. The development of the Aging and Disability Resource Link (ADRL) and the continued expansion of Home and Community-Based Services (HCBS) has been essential to this success. There is continued increase in ADRL information and assistance volume. The ADRL is the central location for all referrals to service.

AGING & DISABILITY RESOURCE LINK (ADRL) INFORMATION & ASSISTANC

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

DOJ YEAR	TOTAL UNIQUE I & A INQUIRIES	I & A INQUIRIES BY SOURCE			AVERAGE CALL WAIT TIME (IN MINUTES)	TOTAL WEB INTAKE REFERRALS
		ADRL I & A CALLS	ADRL I & A WEBSITE HITS	ADRL I & A UNIQUE WEBSITE HITS		
2021:	34,487	11,207	28,092	23,280	7	576
2022:	43,475	14,255	33,691	29,220	1	1,198
2023:	49,187	15,502	39,272	33,685	1	1,440
2024:	68,269	16,226	60,479	52,043	1	1,641
TOTAL:	195,418	57,190	161,534	138,228	N/A	4,855

(Aging Services LTSS DOJ SA Annual Comparison Dashboard)

Growth in the number of TPMs who have been diverted is also reflected in a significant drop in the number of individuals in SNFs. Key Performance Indicators reported by the State show an 11 percent drop in the number of TPMs in SNFs at the end of 2024 Quarter 4 reporting compared to 2023 (https://www.hhs.nd.gov/sites/www/files/documents/Adult%20and%20Aging/kpi-report-final.pdf).

North Dakota is also building on its successful diversion measures and engaging with individuals from an "upstream" and preventative perspective by contracting with Legal Services of North Dakota to hold scheduled "futures planning" events. In these events they distribute tool kits to educate HCBS recipients about the need to take steps now to ensure that their health care and other wishes are known in the event they become incapacitated. The goal of the in-person events is to provide education and have a completed durable power of attorney for health care or other legal documents that are ready to be shared with their family and healthcare providers by the end of each event. Legal Services is also holding monthly educational webinars for HCBS recipients who want to create advance directives, and can also schedule virtual appointments with attorneys from Legal Services.

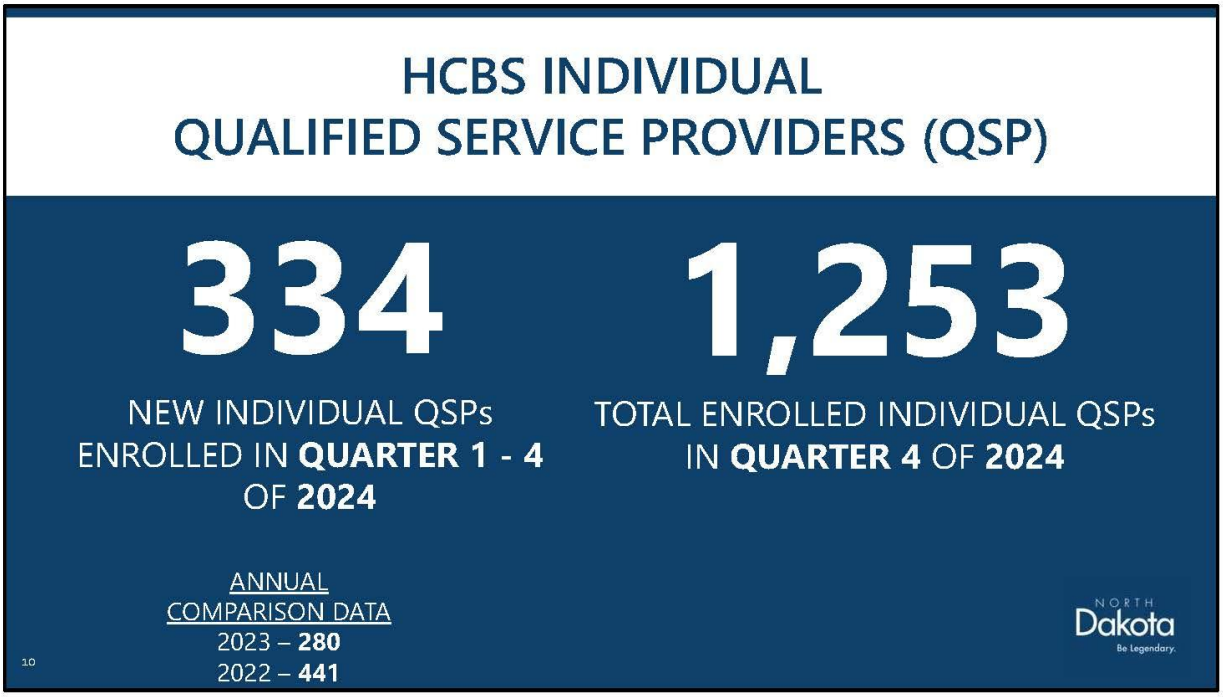
QUALIFIED SERVICE PROVIDERS (QSPs)

Section XIII of the Settlement Agreement addresses Community Provider Capacity and Training. As it has been from the start of HCBS in North Dakota, access to an adequate supply of available Qualified Service Providers (QSPs) is essential to enable TPMs to return to or remain in the community with necessary services. At a minimum, every individual receiving HCBS in the community requires at least one (1) person to provide care. For those individuals requiring 24-hour support to reside in the community it may require five (5) or more QSPs to ensure care needs are met every day. The State's initiatives focus on both building capacity and enhancing quality.

ENROLLMENT DATA

There is a significant turnover in QSPs each year – a number of QSPs stop providing services and a number start in any given year. There are reasons for this that have been shared in previous reports and will be explained further below. The State is showing steady growth in the recruitment and retention of QSPs.

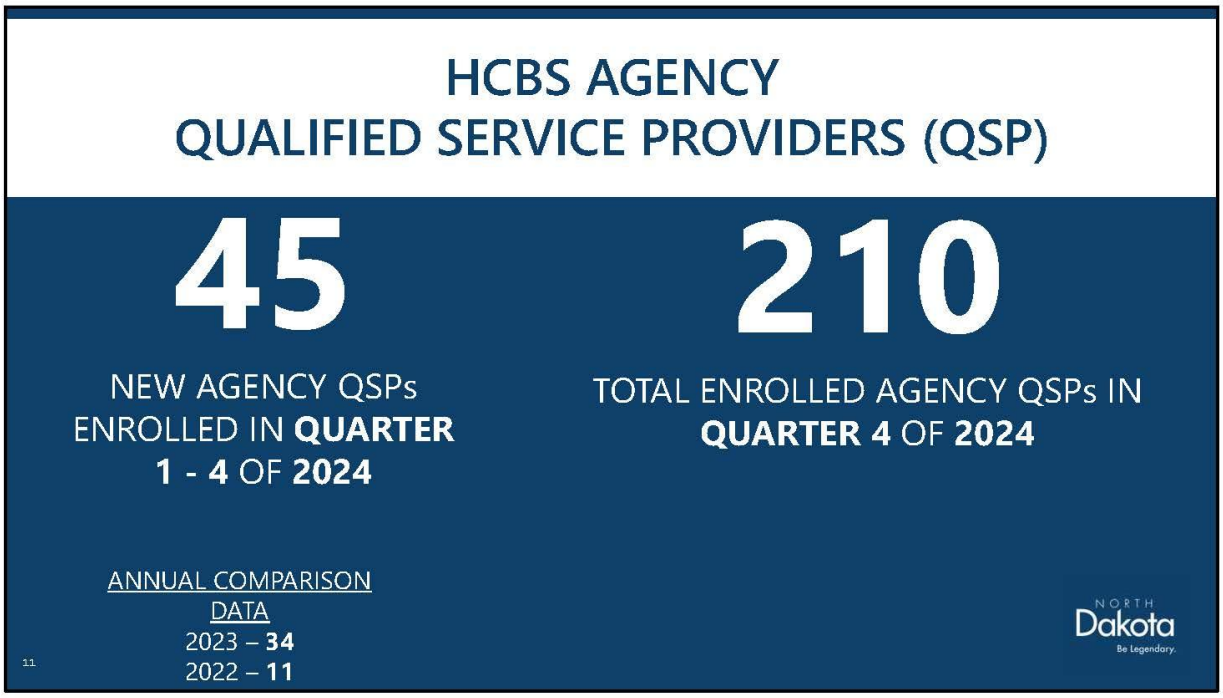
Key Performance Indicators (KPIs) reported by North Dakota at the end of Quarter 4 reflect the following (https://www.hhs.nd.gov/sites/www/files/documents/Adult%20and%20Aging/kpi-report-final.pdf):



In 2024, the State implemented various recruitment and retention strategies to encourage individuals and agencies to enroll to be a QSP. The number of new individual QSPs enrolled increased by 19.3% over 2023. Strategies included the State's efforts to improve the

systems that are used by providers to meet enrollment, documentation, and claims submission requirements. Perhaps most significant in these efforts has been the significant reduction in time for a new provider to complete enrollment. The average completion time is currently nine (9) days. Prior to the new system, though data was incomplete, many providers indicated that it could take weeks or months in the old paper-based system to become enrolled. This information was supported by the QSP Resource Hub for whom one primary area of service is to help with enrollment.

There are currently 210 QSP agencies enrolled to provide various types of care across the State. This is the largest number of QSP agencies that have ever been enrolled in the State since the inception of HCBS for older adults and adults with living with physical disabilities. The State awarded incentive grants in the past several years to entities willing to start or expand a QSP agency that has helped increase the number of available providers. Agencies choose their service territory and the type of services they want to provide.



Turnover of QSPs can reduce the impact of new enrollment, so retention is just as significant as enrolling new providers in the State's effort to expand capacity. Some providers leave who have been serving one person (usually a family member) on the death of that person or their move to institutional care. Others leave because there are other options for employment in North Dakota that pay at similar levels to QSP services and are much less stressful. The State uses written resources, offers trainings, and, through the QSP Resource Hub, works to provide a level of support to retain QSPs. Additionally, as

previously reported, in the current Legislative Biennium, the State was able to secure rate increases for some services.

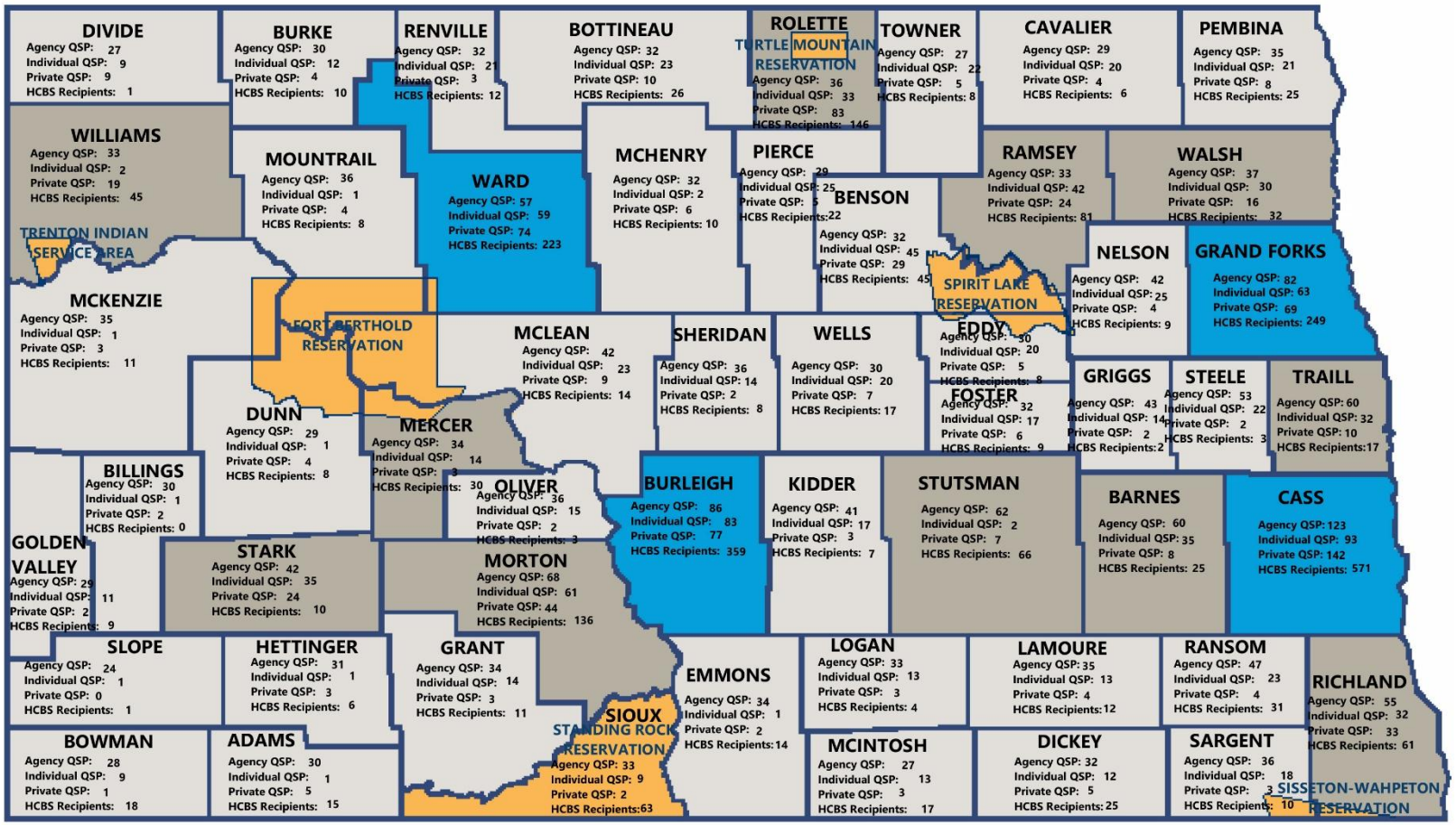
The graph that follows shows the number of *new* QSPs who were retained following their first authorization period to provide services. Currently, QSPs must reauthorize every five (5) years. Prior to 2023 it was every two (2) years. The SME commends the significant work that North Dakota has done to increase QSP capacity.

New QSPs Retained by Year	2020	2021	2022	2023	2024	Total
Agency QSPs	11	14	10	34	32	101
Individual QSPs	52	112	201	280	298	943

The State provides, through its KPI quarterly report, information about where QSPs are located and where they provide service. There continues to be some areas of the State where it is difficult to find a sufficient number of providers – these include Jamestown and areas in the western part of the State. Conversely, there are many providers in the eastern part of the State, particularly the Fargo area, who would like to serve more people but all service needs are being met in that area. The State is generating ideas on how to recruit more providers in areas that have unmet need or to encourage providers in other areas to expand through satellite offices into those areas. The current map of QSP locations follows on the next page. The current map and supporting legend and tables can be found at https://www.hhs.nd.gov/sites/www/files/documents/Adult%20and%20Aging/qsps-per-county.pdf.

NORTH Dakota | Health & Human Services
Be Legendary.

Home & Community Based Services (HCBS)
Qualified Service Provider (QSP) Totals Per County



QUALITY IMPROVEMENT CHALLENGES AND INITIATIVES

Increasing the quality of providers is also a focus of attention by the State. With many new providers enrolling, the State needs to put an even more enhanced focus on ensuring that these individuals and agencies have the necessary skills to manage the complexity and diversity of situations with which they are faced. Addressing provider quality is multi-faceted. One facet is the simple growth in the number of providers in recent years. Another is the background and limited experience of new providers. Many of these providers are New Americans, particularly on the eastern side of the state where those communities are larger.

New Americans

It is reported that New Americans have had a more difficult time navigating the enrollment and billing processes of the QSP system. An aspect of this is language barriers. The QSP Resource Hub spends more time with these individuals assuring that they understand the work they are engaging in. The QSP Resource Hub has created more than 35 short videos related to business acumen to help providers, regardless of their primary language, better navigate the system. These are available at https://www.ndqsphub.org/training/videos.

Additionally, a "Virtual Tour With a QSP (https://explore.careerviewxr.com/v/YD1GOBpW1by) was created to visually share what kinds of activities QSPs engage in to assist TPMs. An 11-scene interactive series, the videos share information about each type of service a QSP may be authorized to deliver to assist the client in maintaining life in the community over institutional care. This series is designed to address all new individuals and agencies that wish to serve as QSPs to offer additional information about the role of QSPs in serving the physically disabled and elderly populations.

The State believes that a majority of QSPs are New Americans and people of color in parts of the state, particularly in the east. For most TPMs receiving services, the acceptance of New Americans and people of color as service providers has not been an issue, as is evidenced by the vast number of units of service being delivered across the State. However, for a number of TPMs this has not been the case. Behaviors related to racial bias have caused TPMs to dismiss providers "who aren't from here and do not look like them" and it has caused providers to not work with some individuals who routinely are disruptive, combative, and, in some cases, verbally abusive. This jeopardizes TPMs' ability to remain in the community because, given the shortage of providers in certain areas, if TPMs dismiss their current providers there may not be any other providers available to serve them. The State is working with University of North Dakota staff to provide training related to cultural awareness and provider resilience to address some of these situations when TPMs exhibit behaviors that are jeopardizing their services in the community. Though training in and of itself cannot address all of these situations, it is a step in the right direction. Moving forward, the SME has asked the State to gather more data to better understand the scope and impact of this issue.

A number of Critical Incident Reports (CIRs) received by the State are related to individuals exhibiting these types of behaviors. North Dakota is working on a case-by-case basis with TPMs regarding these types of behaviors and the ability to provide continuous support to help them maintain their health and safety and remain in the community. The Year 5 Implementation Plan lays out current and future strategies in place to continue to address these needs.

Native Americans

A significant number of North Dakotans are enrolled Tribal members. To appropriately serve these individuals, the State has convened a Tribal Consultation Group made up of subject matter experts from each tribal nation. This group meets monthly and is focused on what changes to the system could assist in either creating more services for TPMs who reside in reservation communities or could enhance those that already exist. Efforts of this group have led the State to request a change to its Medicaid Waiver and State Plan to include the addition of care coordination to services already offered. Care coordination allows a qualified individual to "walk alongside" a TPM to assist them in such activities as applying for Medicaid and securing HCBS. The State has focused on this initiative on the recommendation of the Tribal Consultation Group and it will be an additional service available to any TPM. Care coordination will allow for additional services to be delivered that can be reimbursed.

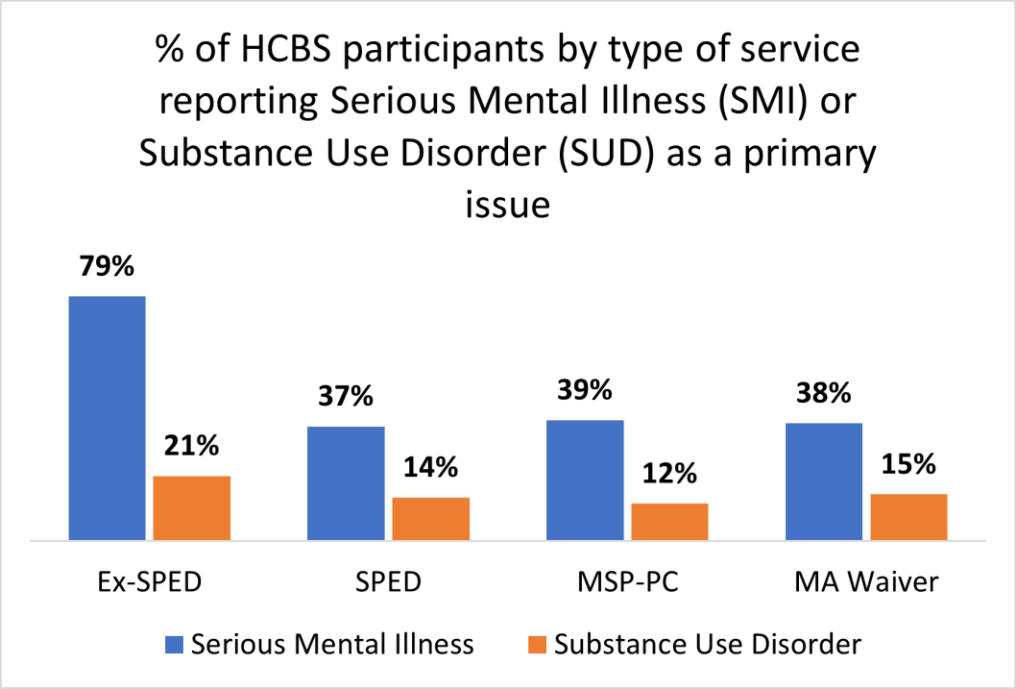
Planning is underway to provide the training that will be necessary to provide this new service as well as determine how individuals can express interest in and prove they have the necessary qualifications to offer this level of care. Care coordinators will support the work of the 15 HCBS case managers who already work in reservation communities *(pg. 20, ND Biannual Report, December 14, 2023 – December 13, 2024)*.

The Tribal Consultation Group will continue to meet monthly and address other topics such as additional appropriate cultural training for case managers and QSPs that work with TPMs from different Tribal nations, and engaging more families in accessing available care. In addition, a long-term support services tribal liaison with the National Resource Center on Native American Aging and the Native Aging in Place Project with the Center for Rural Health at the University of North Dakota works in support of Aging and Adult Services.

MFP contracts with Turtle Mountain Band of Chippewa; Home Instead to serve in the south segment of the Mandan, Hidatsa, and Arikara (MHA) Nation, also known as the Three Affiliated Tribes; and North Dakota State University for general tribal liaison support. Turtle Mountain and Home Instead are providing direct care. These are tribal-owned agencies that employ Tribal members to serve Native American elders. The Spirit Lake Tribe also has an active QSP agency – Spirit Lake Okiciyapi. They are a very active agency that established services without involvement of the MFP Tribal Initiative.

Behavioral Health

An additional quality improvement challenge being addressed by the State is related to those TPMs who also have a substance use or mental health disorder that affects their capacity to receive, and the QSP's capacity to provide, sufficient care for their physical needs. Individuals who are experiencing these additional needs have greater difficulty in transitioning safely and sustainably, finding adequate housing in the community and remaining at home. The chart below, extracted from the State's latest Biannual Report *(North Dakota – Department of Justice Settlement Agreement Biannual Report December 14, 2023 – December 13, 2024)* indicates the number of individuals involved with HCBS presenting with a serious mental illness or substance use disorder. Brief explanations of what are considered Serious Mental Illnesses (SMIs) are included as a one page Appendix to this report. Greater depth of information regarding SMIs can be found at https://www.nimh.nih.gov/health/statistics. A report of Serious Mental Illness or a Substance Use Disorder for a TPM does not necessarily indicate that a formal diagnosis has been made.



To address these concerns, North Dakota has engaged with Therapeutic Options, an organization that provides training "to help the helpers." The goal is to create a systematic approach to work effectively with TPMs with co-occurring physical and behavioral health needs. Training that will be offered includes:

- Motivational behavior changes and de-escalation training,

- Interventions to use when encountering TPMs who are actively using drugs, and
- General mental health awareness and personal resiliency.

The SME Team has had several meetings with the State to discuss behavioral health concerns and approaches to addressing them, both globally through training and for individual TPMs. The State has and is addressing recommendations from these conversations to improve the ability of QSPs to provide services in light of these additional challenges presented. Training around behavioral health concerns will be made available to all providers and is currently being designed.

AUTHORIZATION AND UTILIZATION

The State began engaging in a project in February 2024 that seeks to identify discrepancies between services authorized and services utilized for TPMs and the reasons behind these differences. In its 2024 Biannual Report the State shared complete data regarding Residential Habilitation and Community Supports Services and preliminary data for Personal Care and Homemaker Services. Detailed information can be found in the State's report beginning on pg. 87 (https://www.hhs.nd.gov/sites/www/files/documents/Adult%20and%20Aging/nd-usdoj-settlement-agreement-report.pdf). The information is available by county.

The next steps in this project are for the State to finalize and analyze Personal Care and Homemaker Services data and begin to identify trends in the data. In many cases, that will require an analysis of individual records. There are times when a TPM is hospitalized and not available to receive HCBS during that time. There are TPMs who pass away during an authorization period who then would not utilize all of the authorized services. There are other known instances when a TPM indicates that they do not want as many services as are authorized, they are not available when a provider arrives at their home, or they refuse the services on that given day. The challenge is to figure out how often each of those things occurs and if patterns emerge in the data (either across services or in specific regions) and/or if the issues are situational to the individual. Only then can further strategies be put in place that could potentially address how authorizations are determined, how data is updated (and can be easily collated) when life changes occur, and how to better align the services used with those authorized. We look forward to receiving and reviewing this data and analysis.

COGNITIVE CAPACITY/GUARDIANSHIP

As indicated in the previous SME Compliance Report (October 2024), a barrier to transition or more efficient transition is, at times, associated with the question of legal authority for decision-making. This involves a combination of factors including the determination of cognitive capacity, the role of guardianship, the determination of need for and timing of neuropsychological examinations, and the authority and reversibility of a Power of Attorney (POA).

Section VIII.D.3. of the Settlement Agreement addresses guardianship specifically and indicates that "Any decision(s) made by the guardian about where the member [Target Population Member] will receive services should reflect the member's preferences…to the fullest extent possible." In the course of onsite interviews in September 2024, we were made aware of multiple scenarios in which cognitive capacity issues, including the role of guardianship, raise uncertainties and a lack of clarity when it comes to supporting TPMs in maintaining or transitioning to a preferred integrated setting. In the review of Person Centered Plans, Critical Incident Reports, and 90+-Day Transition Reports, there is a prevalence of issues that require navigation. These include, but are not limited to, the following:

1. Guardians that are engaged with a TPM, but not necessarily in agreement with a TPM's desire to transition or there are questions relative to honoring a TPM's informed choice.
2. Corporate guardians that may not be fully engaged with TPMs.
3. TPMs in need of guardians and the State lacking the resources to fully meet the need.
4. Disagreements among family members and questions related to opportunity for and honoring a TPM's informed choice and deference to relatives who do not have actual decision-making authority.
5. TPMs experiencing lengthy wait times for neuropsychological examinations and remaining in institutional care during this time due to questions about capacity.
6. Lack of clarity on the actual authority granted by a Power of Attorney (POA) designation.
7. Lack of clarity about who or what team of professionals ultimately makes the determination that an individual is capable or not capable of living in the community.

These are complex issues for which there is no simple or rapid solution. The SME encourages the State to facilitate, in an expeditious manner, the development of a taskforce with participation from subject matter experts in the fields of guardianship, self-determination, and cognitive capacity determination to address policy making around these issues for individuals. The SME has discussed this with the State and the State has expressed a sense of urgency for bringing this group together to navigate and clarify these issues. It is suggested that the group includes a full breadth of experts, including from the medical/neuropsychological and judicial communities, and state entities such as the ND Protection and Advocacy Project and Legal Services of North Dakota.

In practical terms, one goal would be the design and implementation of a package of community-based services that includes supported decision-making so that TPMs who are

institutionalized and have less significant cognitive impairment have ample opportunity to live in the setting of their choosing.

Relative to guardianship, the North Dakota Legislature is currently considering legislation that would create an Office of Guardianship. Recent discussions involved various options for where the office would be housed including the North Dakota Department of Health and Human Services or the ND Supreme Court. This legislation cleared the House of Representatives and is currently under consideration by the Senate. The Office would be responsible for all guardianship issues and would have regulatory authority if approved. The initial version of the bill carried a $10 million appropriation. Regardless of where the office is housed, addressing the insufficiency of resources to provide trained and effective guardians to all TPMs that need them is paramount.

A recommendation from the SME's previous report in October 2024 worth reiterating is an enhanced focus on education for transition coordinators about guardianship and more education for guardians about HCBS and how people with limitations can still safely live in the community if they desire. The State's Year 5 Implementation Plan includes strategies to address this.

APPROPRIATION REQUEST HIGHLIGHTS

While the North Dakota Legislature remains in session as of this writing, with budget deliberations not yet finalized, there are a number of requests made by the Department of Health and Human Services (DHHS) that impact the provision of HCBS to TPMs.

The North Dakota DHHS has had the flexibility during the current biennium (through June 30, 2025) within a single department wide appropriation and position authorization to address high priority needs. The Department has been able, during the current fiscal year, to address needs in the Aging and Adult Services Section that have a direct bearing on progress toward further compliance with the Settlement Agreement.

Four (4) case managers were added prior to January 2025 and an additional four (4) case managers will be added early in the coming fiscal year. The Department continues to add internal capacity as staff continue to battle rising and increasingly complex caseloads each year. The weighted caseload for HCBS Case Managers remains at 117 despite the increase in staff and as a direct result of more TPMs who choose to remain in the community rather than move to institutional care.

An Adult and Aging Services Section Assistant Director Position was created in 2024 and is currently posted. An additional Complaint position will be created and posted before the end of the fiscal year (June 30, 2025). Both positions are designed to assist the State in further meeting the needs of TPMs and others who require services from DHHS.

As the Department was able to create these positions from current budget and position authorization levels, the appropriation request for the 2025 – 2027 biennium focused on priorities other than additional staff. Among the priorities for the Aging and Adult Services Section contained in the Executive Budget Request was an equalization and increase of rates for six (6) different home and community-based services, including personal care and homemaker services, allowing providers to assist TPMs at a steady billing rate throughout the course of daily interactions. This also would include services such as chore, respite, supported employment, and transitional living. Other services the Department hopes to equalize (and increase rates for) are related to nursing services – nurse education and extended personal care. Finally, there is a request to equalize and raise rates for companion services including non-medical transportation, companionship, and supervision. The rate increase requests are between 12 – 15% of current rates. The ability to increase these rates, in addition to potentially improving recruitment and retention of QSPs, also allows North Dakota to be more competitive in border cities with the states of South Dakota, Minnesota, and Montana who reimburse the same services at higher levels.

Additional appropriation requests essential to meeting requirements of the Settlement Agreement and assuring that TPMs can return to or remain in the community include:

- $5.2 million for the Transition & Diversion Project (formerly a pilot – TDPP) which assists individuals in a short-term institutional placement return home prior to having to wait for the 60-day requirement in placement to engage MFP services,
- $300,000 for State Rental Assistance to assure that the State can meet as many needs as possible, particularly with the changes to the availability of federal housing vouchers, and
- $752,000 for Adult Protective Services in rural areas of the State. Funding for the increase in staffing and services has come to date through the American Rescue Plan Act (ARPA) which will cease in September 2025. Without a State appropriation, the ability to maintain staffing in rural areas will decrease.

THE ROAD AHEAD

While it is important to look back at the barriers identified, the goals achieved, and the lessons learned, it is equally important to look to the road ahead. The State's Implementation Plan is updated yearly to reflect lessons learned, objectives achieved, and contains many strategies aimed at navigating the significant challenges that lie ahead. The State last updated the plan in December 2024. It is available at https://www.hhs.nd.gov/sites/www/files/documents/Adult%20and%20Aging/usdoj-nd-sa-ip.pdf. The SME Team works with the State weekly to provide guidance, technical assistance, and direction to help inform North Dakota's strategies. The SME would like to highlight a few of the State's strategies included in its Year 5 Implementation Plan.

Included in Section XIII of the Implementation Plan, Community Provider Capacity and Training, are strategies affecting Qualified Service Providers (QSPs). Information gleaned from QSPs through surveys and calls to the QSP Resource Hub indicated that a significant portion of providers are interested in additional training on a variety of topics to improve their ability to deliver services. The State is addressing this through finding an appropriate curriculum that can be purchased and live events that QSPs can attend, ensuring that the curriculum will be valuable across the lifespan for all sections of DHHS that provide home and community-based services.

Training for providers has also been requested in the area of behavioral health due to the high percentage of TPMs who experience behavioral health problems in addition to physical disabilities. The State strategy to address this is a contract with Therapeutic Options, a national company that provides training in behavioral health. Therapeutic Options will deliver, in a train-the-trainer format, a series of workshops addressing behavioral health for Agency QSP directors. These directors can then train their own staff and remain able to do so for the long term.

Section XIII of the Implementation Plan also includes strategies to engage other agencies as potential community providers for TPMs in "service desert" areas such as Jamestown and Dickinson. The State is creating a Communication and Recruitment Plan that will include meeting directly with the leadership of specific health care agencies like hospitals and SNFs, and their provider associations, to directly ask for their assistance in providing HCBS to Target Population Members that live in their service area. Additionally, the State is continuing group and individualized training and technical assistance to SNFs that express interest in learning more about and providing HCBS.

Section XI of the Implementation Plan mirrors that of the Settlement Agreement and is related to transition services. The four (4) Centers for Independent Living (CILs) serve as transition coordinators for the State. The State is monitoring the CILs in all four (4) locations – Fargo, Bismarck, Minot, and Grand Forks – to assure they have sufficient staff to meet the needs of individuals wishing to transition. There is a strategy in the Implementation Plan to address the need for additional staff if the need arises. Additionally, the State has a strategy to provide technical assistance, training, and contract monitoring of the CILs to continue to address the need for the MFP transition coordinators to provide high quality transition support statewide and consistently adhere to required policy and procedures. All of these efforts help to ensure that TPMs are receiving the best services to allow them to live in the most integrated setting of their choice.

In the area of housing barriers, the State has a strategy to address some of the federal changes in housing rules and supports that have made accessing federal housing resources more difficult. As has been noted in this report, the State has requested funds to provide rental assistance to TPMs. Additionally, there is a strategy in the Implementation

Plan to maximize the use of federal rental assistance. The State plans to request the use of MFP supplemental services funding to cover rent for TPMs for up to six (6) months. If further support is needed beyond this period of time, state-funded rental assistance will cover the remaining costs. This strategy is contingent on CMS approval and will require the development of an individualized housing plan.

A strategy to address TPMs who are waiting to transition for longer periods of time is to engage with peer supports. There are multiple reasons why transitions can be delayed including, for some individuals, a level of anxiety, indecisiveness, and hesitation during the transition process. Some have not lived independently, managed a household, or been responsible for tasks such as bill paying and grocery shopping in a long time. A peer support worker can help address those concerns. Independence CIL in Minot is piloting with the State a project that embeds a trained peer support worker in the Transition Team, offering those services to every TPM. The State and CIL are monitoring the impact of this effort and if it is fruitful it can expand statewide.

The State has developed more than 100 strategies that are contained in the Implementation Plan that address every requirement of the Settlement Agreement. Some strategies are longer term and have been addressed and updated over time to continue to ensure that needs of TPMs are being identified and met effectively. Other new strategies have evolved from previous work that has been successfully implemented in improving the State's HCBS system to allow for further refinements.

The State will need to remain nimble in adapting to changes at the federal level, including potential reductions in force that may create bureaucratic barriers. These barriers are a natural result of any change in administrations. There is discussion among program experts and fiscal analysts at both federal and state levels about potential Medicaid and discretionary funding reductions and how to respond should those reductions come to pass. The State may be required to stretch its resources even further to ensure program sustainability, to meet all federal mandates, and to maintain compliance with the Settlement Agreement.

The attention paid to making and sustaining system changes, the attention to eliminating roadblocks of any kind, and the attention given to ensuring quality services are provided by the State and its contractors is to be commended and lays groundwork for meeting the challenges on the road ahead.

Appendix

Types of Severe and Persistent Mental Illness

Schizophrenia. Schizophrenia is a serious mental health disorder that features hallucinations and delusions, and a general detachment from reality.

Schizoaffective disorder. Schizoaffective disorder is a combination of schizophrenia and a mood disorder, such as depression or bipolar disorder.

Bipolar disorder. Bipolar disorder features extreme mood swings that alternate between depressive and manic episodes.

Autism. Autism spectrum disorder is a disorder of the ability to communicate or relate with others.

Obsessive-compulsive disorder. Obsessive-compulsive disorder (OCD) features obsessive fear-based thoughts coupled with compulsive behaviors that attempt to reduce the resulting anxiety.

Major depression. Severe depression features persistent feelings of despair and hopelessness, extreme fatigue, sleep disruptions, loss of interest in life, and suicidal thoughts.

Some of the symptoms of severe mental illness include:

- Persistent feelings of being watched
- Increasingly disorganized thinking
- Mental confusion
- Detached from reality
- Extreme mood swings
- Insomnia, nightmares
- Auditory and visual hallucinations
- Delusional thoughts
- Garbled or disorganized speech or writing
- Socially inappropriate behavior
- Avoidance of social situations, isolation
- Decline in academic or work performance
- Unusual body positioning or movement

Unusual preoccupation and fears centered on a person or situation

- Irrational or angry behaviors, physical assault
- Inability to concentrate
- Memory problems
- Loss of interest in appearance and hygiene
- Personality changes