

ND Department of Human Services

Outlier Policy

Outliers

Who can request an outlier?

An Outlier Request may be initiated by the client, legal decision maker, or the provider agency serving the client. The request must include the decisions of the team, which consists of the client, legal decision maker, DD Program Manager (DDPM), and the provider(s).

Based on the client's assessment (Support Intensity Scale (SIS) or Inventory for Client and Agency Planning (ICAP)), an amount of assessment score hours is assigned to determine direct support staffing for specific core services.* The core services included ICF/IID; Residential Habilitation; Independent Habilitation; Day Habilitation; Prevocational Services; Small Group Employment Support; Individual Employment Support. An Outlier Request is additional direct support staffing above and beyond the core service(s) a client is receiving.

**If a client does not have an assessment, the team may submit an Outlier Request prior to the assessment being completed. The request will be based and reviewed on the outlier qualifying criteria. Since assessment score hours are not available, exact outlier hours will not be defined as it is unknown how many hours the assessment score will provide. However, if the outlier is approved, the approval will define the level of staffing. Outlier hours will be allotted once an assessment is completed and in effect.*

Team Planning Considerations Prior to Requesting an Outlier Request

Teams must meet to discuss a potential Outlier Request. **It can be up to the team if that is in person, email, or via phone, however it must be documented. The team should consider what method is most appropriate for them and this decision should be individualized.** All Outlier Requests must be unique to the client and the request must specify how the need for additional hours distinguishes the person from others at the same resource allocation level.

Requests must not be submitted unless other options (i.e., natural supports, sharing staff time, environmental modifications, and learning skills) have been explored and documented prior to the request. Thorough planning and identification of what is needed by the client on a typical basis, how certain supports will be offered, frequency of the supports, and a reflection of the person's actual routine is critical. The plan must also identify who provides the various supports needed throughout the day (e.g., paid staff, family, friends, community members, other service entities, etc.).

Supports for clients may be accessed through various ways and systems that work to promote autonomy, independence, skills building, community inclusion, and achievement of personal goals. These include, but are not limited to: the DD system (paid supports), educational system, other community services, unsupported time (if appropriate), shared supports, and natural supports.

Those who know the client should focus on the client's perspective (not their own opinions) and clarify the services and supports based on the client's priorities, perspectives, and preferences. There must be recognition that everything a client or team may want is not practical or achievable. Family members, providers, and friends do not always share the same perspective as clients on the care and supports they receive. The support team helps the client in sorting through personal goals to focus on the highest priority outcomes and ensure that alternative

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strategies for achieving personal outcomes are reviewed and understood during the planning process.

Clients with significant behavioral issues must have a functional assessment and behavioral support plan that is being implemented to address the concerns identified. All appropriate environmental or adaptive equipment and technology have also been obtained and utilized.

Opportunities to share supports must be explored as an option, unless it is contraindicated. Sharing supports provides opportunities for a person to get to know others, expand a client's social network, and increase community integration. Sharing supports also provides opportunities for sharing monthly living expenses including rent, utilities, and food costs, which may result in improved housing options and having additional funds for recreation, leisure, and personal activities. Sharing supports may lead to learning opportunities through exposure to other people, customs, and ways of life.

Prior to submitting a request for an outlier, the client, legal decision maker, and/or provider must consider whether the request is truly an Outlier Request or if the situation is a major life changing event triggering a new SIS or ICAP assessment. See applicable Assessment Policy.

Criteria to Request an Outlier

If a client's needs exceed the hours identified by the multiplier calculation the client may qualify for an Outlier Request if they meet **all** four of the following criteria:

1. Meet one of the medical or behavioral qualifiers outlined below;
2. Poses an imminent risk of harm to the health and safety of self and/or others*;
3. Support needs exceed hours identified by the multiplier calculation; and
4. Other mitigation options were pursued and/or implemented prior to a request for additional support hours (i.e. shared staffing, positive reinforcement, environmental change/modification, etc.).

**This does not include behavior that may be considered "lack of good judgment" and/or "poor choices" by some. For those who are able to understand the risk, the rationale, and understanding of their behavior, they should have the right to make choices and be subject to the natural consequences of their behavior.*

Requests for an outlier should typically not be submitted for the following situations, as other options must be considered (i.e., shared supports, environmental modifications, assistive technology, teaching skills, etc.)

1. Independent Habilitation, Residential Habilitation, ICF/IID:
 - If the teams recommended number of hours exceeds the multiplier calculation by less than two hours per day, the team must consider other options to meet the client's needs.
2. Day Habilitation, Prevocational Services, Small Group Supported Employment, Individual Supported Employment:

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- If the teams recommended number of hours exceeds the multiplier calculation by less than a half hour per day, the team must consider other options to meet the client's needs.

Outlier Request Qualifiers

Medical qualifiers:

- Uncontrolled seizure disorder
 - Uncontrolled by medication and the person must be supervised at all times to prevent injury due to the frequency and severity of seizure activity
 - A client has an uncontrolled seizure disorder, which is defined as frequent, typically daily seizures, uncontrolled by medication, and the person requires supervision all times to prevent injury due to the frequency of seizure activity and potential for status epilepticus.
- Respiratory (trach care, vent care, chest PT)
 - A client has need for respiratory care (trach, vent care, chest PT) and uses life sustaining equipment and/or respiratory treatment such as deep suctioning or chest percussion that is required on an as needed basis requiring close monitoring.
 - Does not include Oxygen to a stable individual and oxygen setting is well established where staff assist a client with tank change, position nasal cannula and adjust to an established setting.
- Gastrointestinal (IV fluids)
 - A client requires Gastrointestinal (IV fluids) for a condition that is not stable and requires frequent nursing observation and ongoing staff training.
 - Does not include regular established tube feedings (G or J) with bolus feeding to a stable individual.
- Genitourinary (catheter care)
 - A client requires Genitourinary (catheter care) for a condition that is not stable and requires frequent nursing observation and ongoing staff training.
 - Does not include regular catheter care for a stable client such as cleaning the area, draining the catheter, recording input/output etc.
- Infection (active resistant infection & IV antibiotic)
 - A client who has a highly contagious disease or serious immune deficiency condition for which basic universal precautions will not maintain health and safety for the individual or his/her sharing partner;
 - A client has an Infection (active resistant infection & IV antibiotic) with need for frequent nursing intervention and ongoing staff training.

Behavioral qualifiers:

- Inappropriate sexual behavior – i.e., exposure and/or predatory behavior
 - A client who has a history of sexual offending behavior and has been convicted of a crime or pled guilty to a sexual offense, but not convicted. Restrictions are still required in the person's ISP for convictions or admissions that happened longer than a year ago.
 - A client who has a history of or currently displays inappropriate sexual behavior and/or has a well-documented history of sexual offending behavior.
- Self-injurious behavior

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- A client has frequent and ongoing self-injurious behavior (i.e., head banging, skin cutting, biting self, etc.) that have the potential to result in severe injury to self unless continuous staff supervision and physical intervention is provided and may have the potential for frequent medical intervention.
- Physical aggression
 - A client with frequent high intensity aggressive episodes that have resulted in injury or were life-threatening particularly if directed towards other people or resulting in significant property destruction or the potential for eviction.
 - A client needing to live alone to avoid significant physical aggression with a history of significant altercations or injury to roommates.
- Elopement
 - A client has a significant history of wandering/elopement that necessitates staff search and chase for extended periods of time unless there is another mechanism for locating the missing client. In these situations the client is at risk and is unaware of the safety skills necessary to be safe in the community.
 - This does not include situations when the person demonstrates understanding of the risks and rules of community safety but intentionally chooses not to follow the rules.
- Criminal activity – an illegal act or violation of law in for which there is the potential for consequences or conviction by a court.
 - This does not include clients who exhibit inappropriate boundary issues due to lack of social skills/sexuality training, who can make an informed decision and understand the nature and consequences of their behavior and engage in illegal activity. This behavior may be considered “lack of good judgment” and/or “poor choices” by some. Opportunities for client’s ongoing teaching, training, programming, counseling, and information/education are the focus in these situations not extraordinary staffing. *For those who are able to understand the risk, the rationale, and understanding of their behavior, they should have the right to make choices and be subject to the natural consequences of their behavior.*
 - Taking money, items, or food within the client’s own home does not constitute criminal activity.

Special Considerations:

These qualifiers are not an exclusive listing. The Department has the discretion to approve Outlier Requests that are similar in severity. This will only be considered in the most rare and severe cases. A special consideration may include situations where no more than one client is receiving services in the geographical area.

Life Skills Transition Center (LSTC) or the North Dakota State Hospital (NDSH) qualifiers:

If a client coming from the LSTC or the NDSH and returns to the previous provider, he/she must have been in the LSTC or the NDSH for a minimum of 6 months to qualify for consideration as an Outlier Request. This 6 month timeframe is not applicable for delays in discharge (i.e., time to find staff, obtaining new home, etc.) when the reason for the continued stay is not related to the reason for admission.

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If the client is leaving the LSTC or the NDSH and enrolling with a new provider, there is no minimum timeframe. Clients coming from the LSTC or the NDSH are not required to meet the imminent risk condition. Transitions from the LSTC and NDSH do not automatically qualify for outlier approval. The team will need to demonstrate how the client's needs are in excess of the approved assessment score hours.

Requests for outlier consideration may be made at any time after the client leaves the LSTC or the NDSH, but the availability of Outlier Request consideration expires after 12 months (if the request is made two months after leaving the LSTC or the NDSH, it still expires 12 months after leaving the LSTC or the NDSH). After 12 months, the client must meet one of the medical or behavioral qualifiers in order to be considered as an Outlier Request. Clients leaving the LSTC or the NDSH may still qualify for an Outlier Request consideration under one of the other criteria.

Outlier Request Process and Documentation Requirements:

If the team deems the client needs more hours than approved in the multiplier process and the client meets all criteria outlined in the section above, the team is to complete the Outlier Request Form using SFN 1835. If the form is not completed and submitted with the required information in its entirety, the Outlier Request will be determined incomplete and sent back to the provider for the required information. The provider will have 15 business days from the date of the notification to submit **all** the required information to the DD Program Administrator (DDPA). If **all** the required information is not submitted within the **15 business days**, the outlier request will be considered withdrawn. If the need is still present, a new outlier request will need to be submitted.

Link to Outlier Request Form <https://www.nd.gov/eforms/Doc/sfn01835.pdf>

The information in the Outlier Request must include information related to the specific request and reason for the request. If there is a request for one client for multiple services, include information specific to each service throughout the request form (i.e. if requesting for both residential habilitation and day habilitation outline between the two settings regarding the behavior and medical needs for each setting). If only requesting for one service ensure the request only includes information from that service setting (i.e. requesting for day habilitation do not focus on residential habilitation). The Individual Service Plan (ISP) must reflect the authorized service(s) in the Outlier Request. Information in the form must also outline other attempts at providing supports or alternatives to assist the client in addressing the need. The person centered plan must contain evidence of the behavior or medical need and provide supporting documentation.

In addition to completing the Outlier Request Form, information must be provided to justify the request. If the information can be found in the web-based case management system, the provider must indicate the location of the information on the form and if it cannot be found, include it with the request. The information, including a summary, must be included from the timeframe when the behavior or medical needs began, how long since the last occurrence, and the frequency of the behavior or medical need. **Documentation must reflect the risk(s) associated with the medical and/or behavior qualifiers.** Examples may include, but are not limited to:

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- Seizure logs
- Data tracking
- Medical assessments
- Nursing care plans
- Psychiatric assessments
- Behavior support plans
- GER's
- RMAP
- Person Centered Service Plans
- Team meeting minutes
- Medication lists
- QDDP monitoring
- Staffing schedules/documentation
- Any other information and data related to the request for each identified service

Teams are expected to develop an attainable cessation plan that will assist the client to live as independently as possible and to continuously explore alternative options. The cessation plan must be documented in the Outlier Request.

The Outlier Checklist must be completed by the provider, DDPA, and the DD Division to track if an Outlier Request is complete.

Submission and Approval of the Outlier Request:

The Provider CEO will sign the completed Outlier Request Form. The following Department timelines will be effective when a completely executed outlier request and documentations are received. All requests must be typed and submitted to the DDPA. The DDPA shall consult with the DDPM and make a recommendation of approval or denial to the DD Division within 10 business days.

The Outlier Request will be reviewed by the DD Division where an approval or denial decision will be made within 15 business days and the DDPA is notified of the decision. The DDPA will notify the provider, client and/or legal decision maker of the decision within 5 business days including the reason for the approval or denial if applicable. If the Outlier Request is approved, the DDPM will complete and approve the Outlier Request based on hours per day in the web base case management system.

The effective date of the **approved** Outlier Request will be one of the following:

- The date the request was received by the DDPA. This would be applicable for a new outlier request for any currently authorized services.
- Start date of a newly enrolled authorized service in the ISP. This would be applicable to align the Outlier with the start date of a new service.
- The day following the end date of a previously approved Outlier to maintain continuity of the Outlier. The request would need to be received by the DDPA prior to the end date of the previously approved Outlier, otherwise the effective start date, if approved, would be the date the DDPA received the request.

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The provider will be reimbursed beginning on the identified effective start date of the approved Outlier. If the request is denied, payment will not occur after the end date of the prior approved Outlier Request.

If an Outlier Request is denied, it can only be re-submitted if there is new information and documentation for review that wasn't included in the previous request. If an Outlier Request is re-submitted there must be discussions among the team members to ensure all are aware of the re-submission, and the team has reviewed and discussed the proposed changes or additional information submitted. If no new information is submitted, the original Outlier Request decision will be upheld.

Outlier Requests will only be approved for 6 to 12 months; however the timeframe will be based on the specific needs of the client and may be shorter to align with the person centered service plan date. An Outlier Request does not automatically renew. Teams need to meet to discuss if an Outlier Request continues to be needed. If the team determines that an Outlier Request is still necessary, the request must be submitted within the timeframes to ensure continuity of services. If an Outlier Request is not submitted within the timeframes, there may be a lapse in the continuity of services.

If a new SIS or ICAP assessment becomes available during the approved Outlier Request timeframe, the approved Outlier Request amount may need to be adjusted. The team must discuss the changes resulting from the new assessment and determine if the need for an Outlier Request remains or if any modifications to the plan are needed to address the delivery of services.

Outlier Requests are not transferrable and a new Outlier Request will need to be submitted.

Appeals

Outlier Requests are a temporary adjustment to meet the client's needs within a specified time frame. An Outlier Request is additional support above and beyond the core service(s) a client is receiving. A denial of an Outlier Request is not considered a denial, reduction, or termination of the client's core service(s).