



**DOJ SETTLEMENT**  
AGREEMENT SUMMARY  
HOUSE APPROPRIATIONS – HUMAN RESOURCES DIVISION  
REPRESENTATIVE JON NELSON, CHAIRMAN

January 22, 2021

NORTH  
**Dakota**  
Be Legendary.™

# SETTLEMENT AGREEMENT BETWEEN U.S. DOJ & STATE OF ND

Purpose is to ensure that the State will meet the ADA requirements by providing services, programs, and activities for individuals with physical disabilities in the most integrated setting appropriate to their needs.

## **Effective December 14, 2020**

*Agreement will terminate eight years after effective date if Parties agree that the state has attained substantial compliance with all provisions and maintained that compliance for a period of one year.*





U.S. Department of Justice  
Civil Rights Division

Disability Rights Section – NYA 6019  
950 Pennsylvania Ave. NW  
Washington, DC 20530

December 2, 2015

**SENT VIA EMAIL AND FEDERAL EXPRESS**

Bonnie Storbakken  
Attorney at Law  
Office of the Governor  
600 E. Boulevard Ave.  
Bismarck, ND 58505-0100

Dear Ms. Storbakken,

The purpose of this letter is to inform you that the United States Department of Justice has opened an investigation in response to complaints we received which allege that the State of North Dakota fails to serve individuals in nursing facilities in the most integrated setting appropriate to their needs and puts individuals at serious risk of nursing facility placement in violation of Title II of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12131-34; and the Supreme Court decision of *Olmstead v. L.C.*, 527 U.S. 581 (1999). The Department of Justice has primary authority to enforce Title II of the ADA. 42 U.S.C. §§ 12131-34; 29 U.S.C. § 794a.

Title II of the ADA incorporates by reference the remedies, procedures, and rights set forth in Title VI of the Civil Rights Act. 42 U.S.C. §§ 12133-12134. Among other obligations, Title VI regulations require "[a]ccess to sources of information" to permit the United States to ensure that all non-discrimination requirements are being met. See 28 C.F.R. §§ 42.201; 42.106(c). To assist in our investigation, we ask that you provide the documents and information specified in the attached request within thirty calendar days of the date of this letter. If the data are stored in electronic form, we ask that you provide us those data in a commonly-readable format, e.g., portable document format, Microsoft Word document, or Excel database. If the data are stored in proprietary format, please contact us to make arrangements for a usable transfer of the data. Please number each response to correspond with the number of the respective element in the data request.

We also encourage you to furnish any additional material that you think may be helpful for our investigation. Please be assured that all of the information that you provide will be carefully reviewed during our investigation.

You may send the requested information and documents to me at the following address: 950 Pennsylvania Ave, N.W. – NYA 6019, Washington, DC 20530. Please reference the Department of Justice matter number assigned to this matter, DJ No. 204-56-30, in any correspondence that you send to this office. If you have any questions, concerns, or would like to discuss this matter, you may contact me at (202) 616-2925 or Victoria.Thomas2@usdoj.gov. Thank you for your time and attention to this matter.

Sincerely,

Victoria Thomas  
Trial Attorney  
Disability Rights Section

# NOTIFICATION FROM DOJ

...complaints we received which allege that the State of North Dakota fails to serve individuals in nursing facilities in the most integrated setting...

DECEMBER 2015



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Disability Rights Section

# NOTIFICATION FROM DOJ

...complaints we received which allege that the **State of North Dakota fails to serve** individuals in nursing facilities in the most integrated setting...



**PEOPLE OVER 65 IN  
CERTIFIED NURSING  
FACILITIES  
HIGHEST RATE IN THE U.S.**

DECEMBER 2015

# VARIETY OF CONCERNS

## EXAMPLES PROVIDED BY DOJ

 **Unnecessary segregation** of disabled individuals in skilled nursing facilities

Adults in skilled nursing facilities who would **rather be in their community**

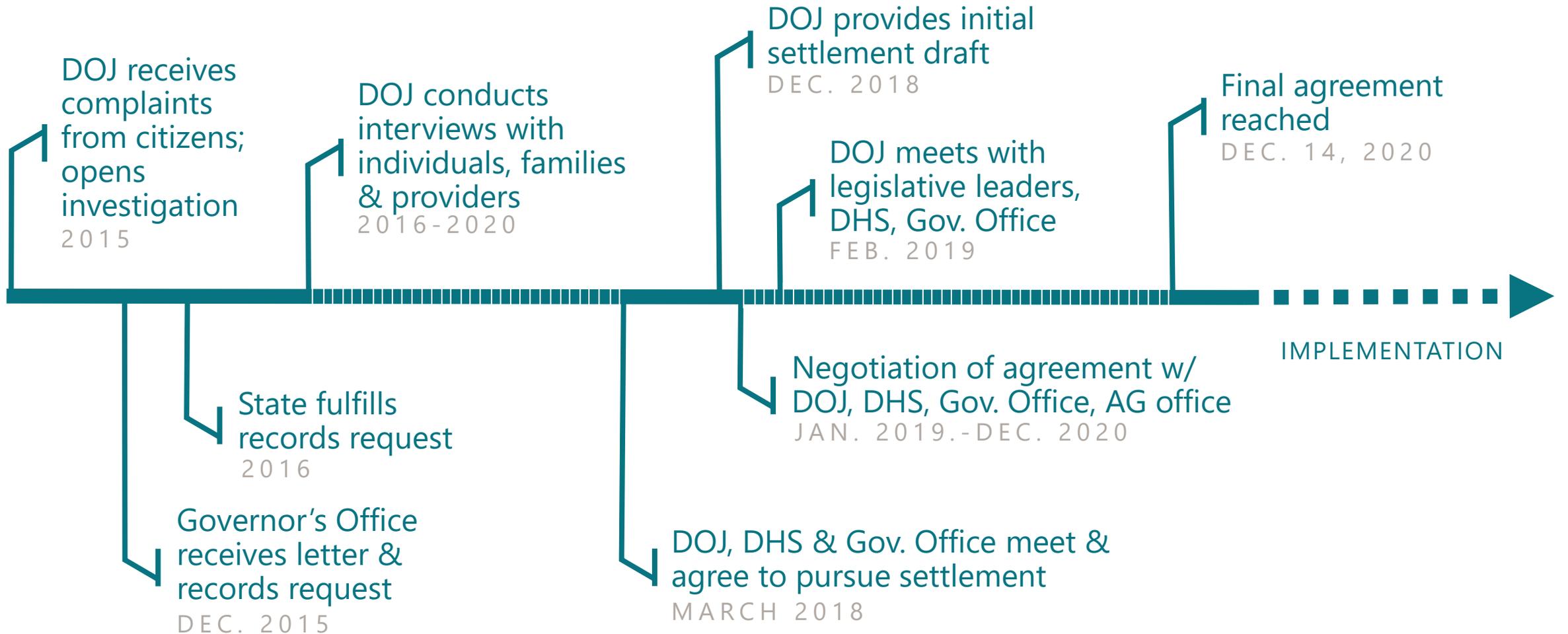


 **Imbalance of funds** to skilled nursing facilities and community-based services

**Lack of awareness** about existing transition services and available tools



# TIMELINE



# KEY TERMS | DOJ SETTLEMENT

## Americans with Disabilities Act

The Americans with Disabilities Act (ADA) requires public agencies to **eliminate unnecessary segregation** of persons with disabilities and provide services in the **most integrated setting appropriate** to the needs of the individual.

In **1999** the Federal Supreme Court **Olmstead** decision **affirmed** the **ADA** requirements.



# KEY TERMS | DOJ SETTLEMENT

## Most Integrated Setting

*A living environment* that allows individuals with disabilities to interact with non-disabled persons to the fullest extent possible.

*December 2020 U.S. Dept of Justice  
Settlement with State of North Dakota*

### For Example

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Single Family Home  
Apartment  
Townhome  
Condominium

Farm or Ranch  
Adult Foster Care  
Living with family

# KEY TERMS | DOJ SETTLEMENT

## Community Integration Mandate

Public entities are required to provide **community-based services** when:

- Community-based services are **appropriate** for the individual; and
- The individual **does not oppose** community-based treatment; and
- Community-based treatment can be **reasonably accommodated**, taking into account:
  - Resources available to the entity and
  - Needs of others receiving disability services.



# BENEFITS OF DOJ AGREEMENT

1

**Expands and raises awareness** about community-based care options available to adults with physical disabilities

2

Allows individuals to make **informed choices**, including the option to receive care while enjoying the benefits of community living in the least restrictive setting

3

Builds upon the investments made by the 2019 Legislature and our **shared goal** of improving services to citizens

# KEY TERMS | DOJ SETTLEMENT

## Informed Choice

The process by which the State ensures that Target Population members have an opportunity to make an informed decision about where to receive services.

*December 2020 U.S. Dept of Justice  
Settlement with State of North Dakota*

### For Example

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- Person-centered planning
- Info about benefits of integrated settings
- Facilitated visits or other experiences in integrated settings
- Opportunity to meet with peers (other individuals with disabilities who are living, working and receiving services in integrated settings)
- Reasonable efforts to identify and address concerns

What do we need to do to help someone make an informed choice about how they may want to access services in the most integrated setting that is right for them?



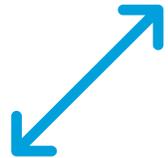
# AGREEMENT VISION



Long-term care system & supports reform



Increase access to community-based services



Increase awareness about service options



Increase provider capacity & training



Builds upon **shared goal** of improving services to citizens providing care closer to home

# AGREEMENT COMPONENTS

- I. Introduction
- II. Jurisdiction
- III. Definitions
- IV. Target Population
- V. Subject Matter Expert
- VI. Implementation Plan
- VII. Case Management
- VIII. Person Centered Plans
- IX. Access to Community Based Svc
- X. Information, Screening & Diversion
- XI. Transition Services
- XII. Housing Services
- XIII. Community Provider Capacity & Training
- XIV. In-reach, Outreach, Education & Natural Supports
- XV. Data Collection & Reporting
- XVI. Quality Assurance & Risk Management
- XVII. Enforcement
- XVIII. General Provisions

# IV. TARGET POPULATION MEMBERS (TPM)

## COMMUNITY MEMBERS

- Adults with disabilities living in an integrated community setting, but at risk of Medicaid-funded nursing facility care.
- Adults with disabilities in need of additional community-based services to continue living in an integrated community setting.

## NURSING FACILITY MEMBERS

- Adults with disabilities who reside in a nursing facility and receive Medicaid-funded long-term care services.
- Adults with disabilities who reside in a nursing facility who are at risk of becoming eligible for Medicaid-funded services.

# Who are we trying to reach?

## *Target population*

### Basic Eligibility

- Individual with physical disability
- Over age 21
- Eligible or likely to become eligible to receive Medicaid long-term services and supports (LTSS)
- Is likely to require LTSS for at least 90 days.



### IF in skilled nursing setting

- Receive Medicaid-funded nursing facility services AND
  - Likely to require long term services and supports
- Receive nursing facility services AND
  - Likely to become eligible for Medicaid within 90 days, have submitted a Medicaid application, and have approval for a long-term nursing facility stay

### IF in hospital or home setting

- Referred for a nursing facility level of care determination AND
  - Likely to need services long term
- Need services to continue living in the community AND
  - Currently have a HCBS Case Manager or have contacted the ADRL

# KEY TERMS | DOJ SETTLEMENT

## Physical Disability

“Physical Disability” – means an impairment that substantially limits major life activity, including one or more major bodily functions, see 42U.S.C 12102: 28 C.F.R 33.108 such that the individuals meets ND’s Nursing Facility Level of Care (LOC) by requiring for example, assistance with activities of daily living such as toileting, eating, or mobility.

*ND Admin code 75-02-09, as may be amended.*

# WHO IS NOT A MEMBER OF THE “TARGET POPULATION”

Individuals under age 21

Individuals who are not Medicaid eligible

Individuals who are not expected to need services for at least 90 days

Individuals with an intellectual disability or mental illness who do not screen at a nursing facility level of care



# V. SUBJECT MATTER EXPERT

Individual chosen by the parties with expertise in management, administration and finance of HCBS

Provide technical assistance and compliance reviews

Michael Spanier  
Santa Fe, New Mexico  
MAS Solutions Consulting

2014 & 2015  
NM State Senate  
Senior Analyst  
Senate Majority Whip Office

2009 - 2010  
NM Aging and Long-Term Services Department  
Cabinet Secretary

1995-2004  
NM Department of Finance and Administration  
Deputy Director

2015 - 2017  
Santa Fe County Community Services Department  
Senior Services Director & Administrative Manager

2011-2013  
Consumer Direct Management Solutions  
Chief Operating Officer

2004 - 2009  
NM Aging and Long-Term Services Department  
Deputy Cabinet Secretary

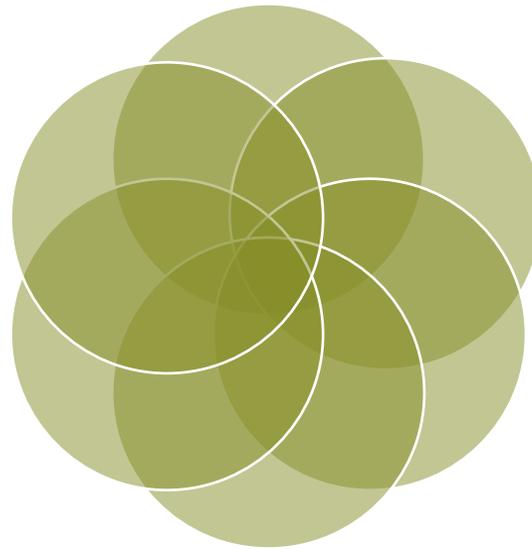
1989 - 1995  
NM Legislative Finance  
Committee Legislative Analyst

# VI. IMPLEMENTATION PLAN

**Within 120 days of effective date produce draft plan**

Establish a method  
to address  
challenges to  
implementation

Assign agency and  
division  
responsibility for  
achieving  
benchmarks

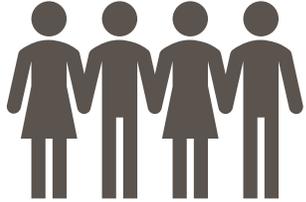


Review relevant  
services, capacity  
and barriers

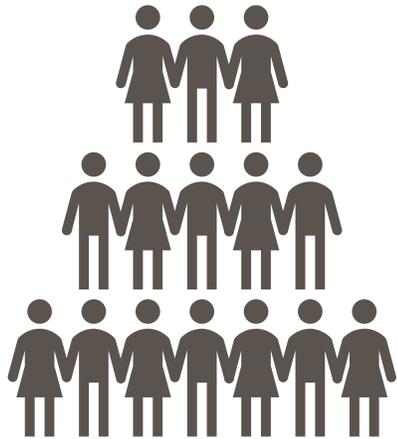
Engage Stakeholders

Identify benchmarks  
and timelines for  
meeting Agreement's  
requirements

# VII. CASE MANAGEMENT



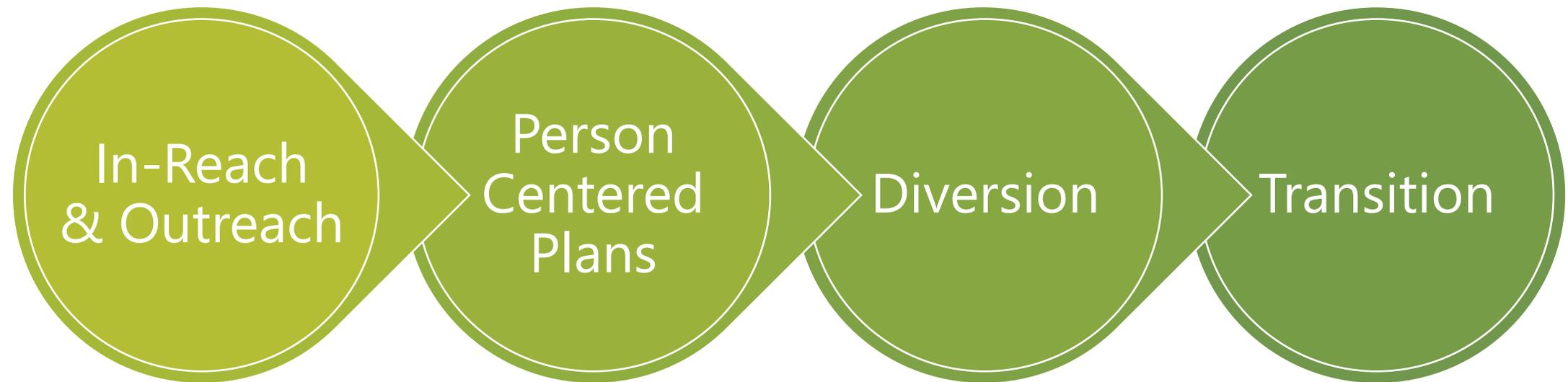
**64 HCBS Case Managers**



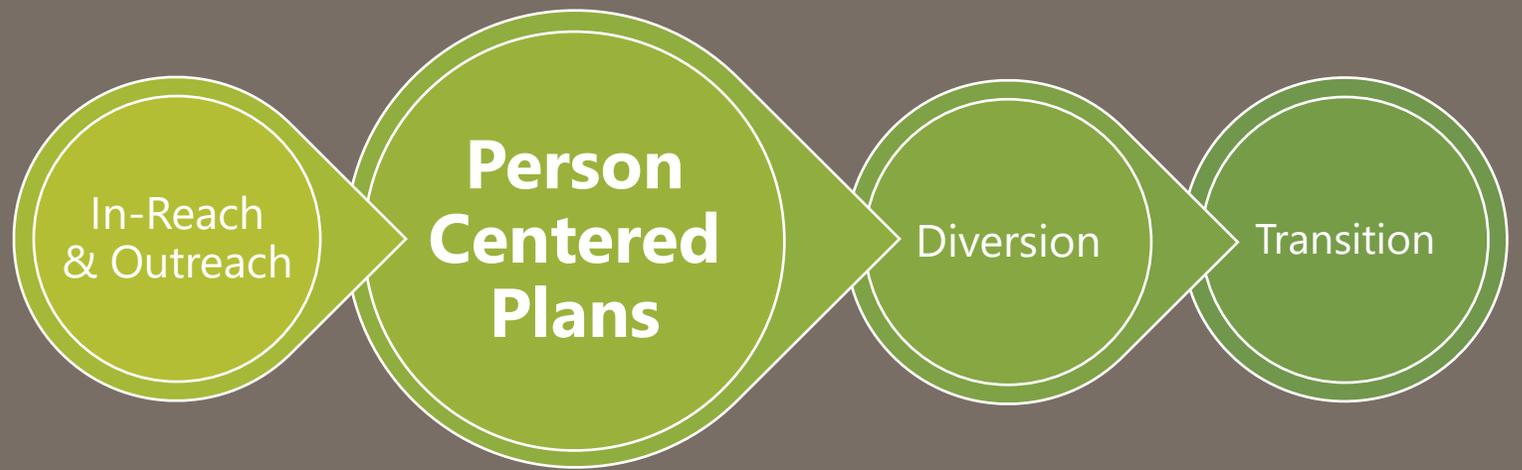
**Served 2300 individuals**  
*(Nov 2020)*

- Provide case management for older adults & individuals with physical disabilities receiving:
  - Service Payments for the Elderly and Disabled (SPED)
  - Expanded SPED (Ex-SPED)
  - Medicaid 1915-(c) Waivers
    - Aged and Disabled
    - Tech Dependent
  - Medicaid State Plan Personal Care (MSP-PC) in community
- Conduct informed choice referral visits

# ND / DOJ AGREEMENT STRATEGY



# VIII. STRATEGY



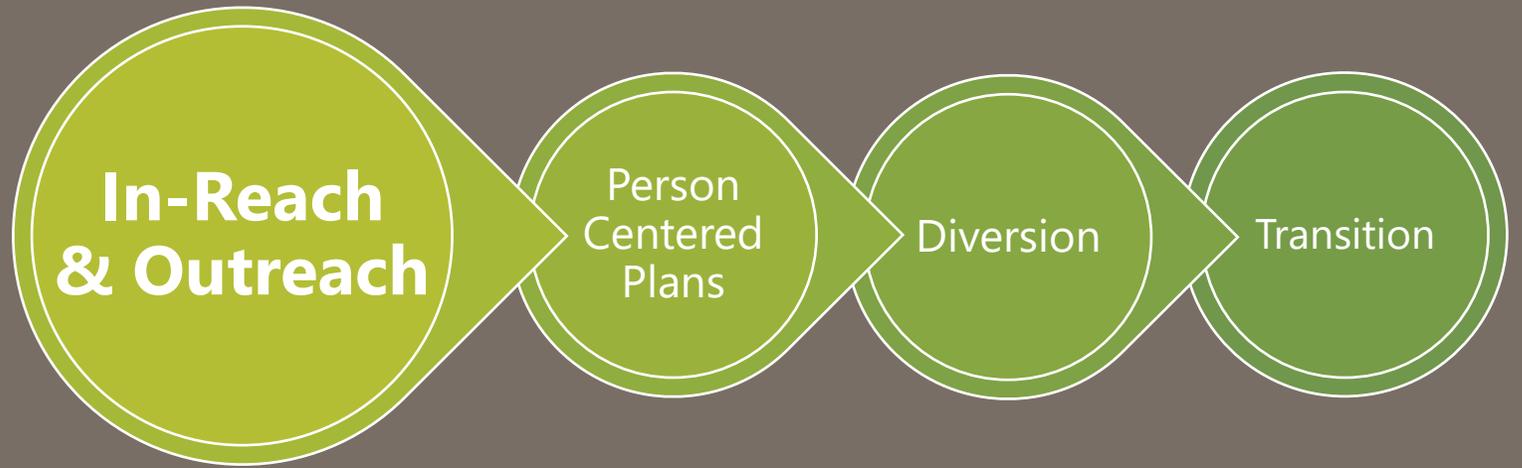
## PERSON CENTERED PLANNING

Medicaid mandated process, developed by individual and case manager to identify supports and services that are necessary to meet the individual's needs in the most integrated setting

### GOALS

Year 1	Year 2	Year 4	Year 6	Year 8
•290 Target Population Members (TPM)	•Additional 290 TPM	•Additional 650 TPM	•Additional 670 TPM	•Additional 670 TPM

# XIV. STRATEGY



## IN - REACH

Informing individuals in skilled nursing facilities and hospitals of their care options

## OUTREACH

Informing individuals and stakeholders in the community about their care options

## GOALS

### Within 9 months

- Individual or group in-reach to all skilled nursing facilities

### Year 2

- Develop peer support system

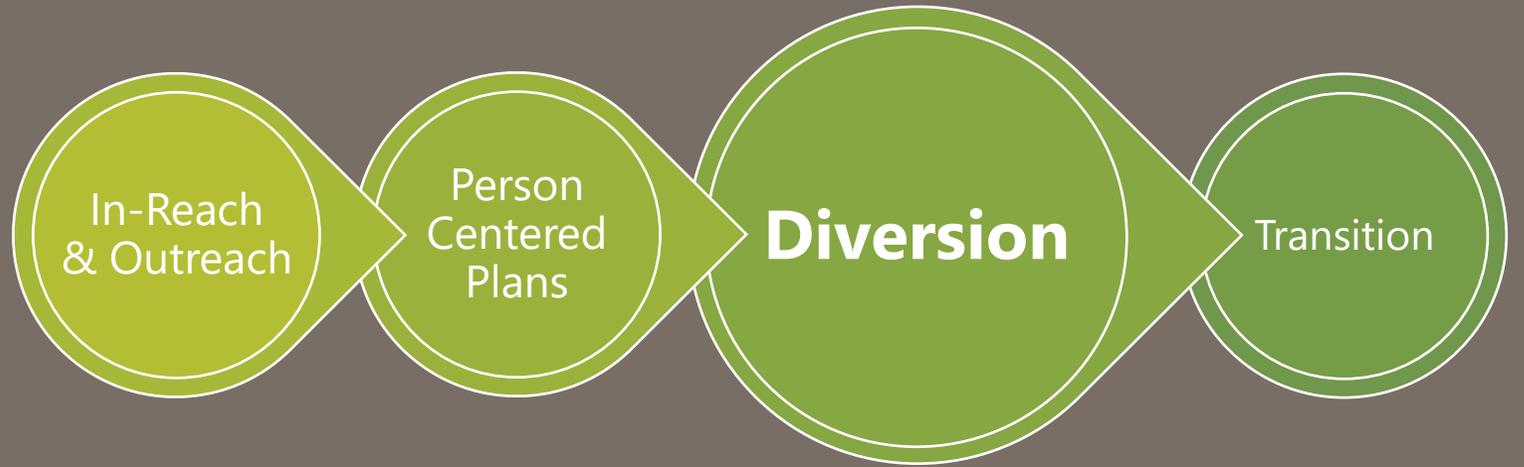
### Year 4

- Individual in-reach to at least 1,000 Skilled Nursing Facility target population members

### Year 5 and after

- In-reach to all newly admitted or identified Skilled Nursing Facility target population members

# X. STRATEGY



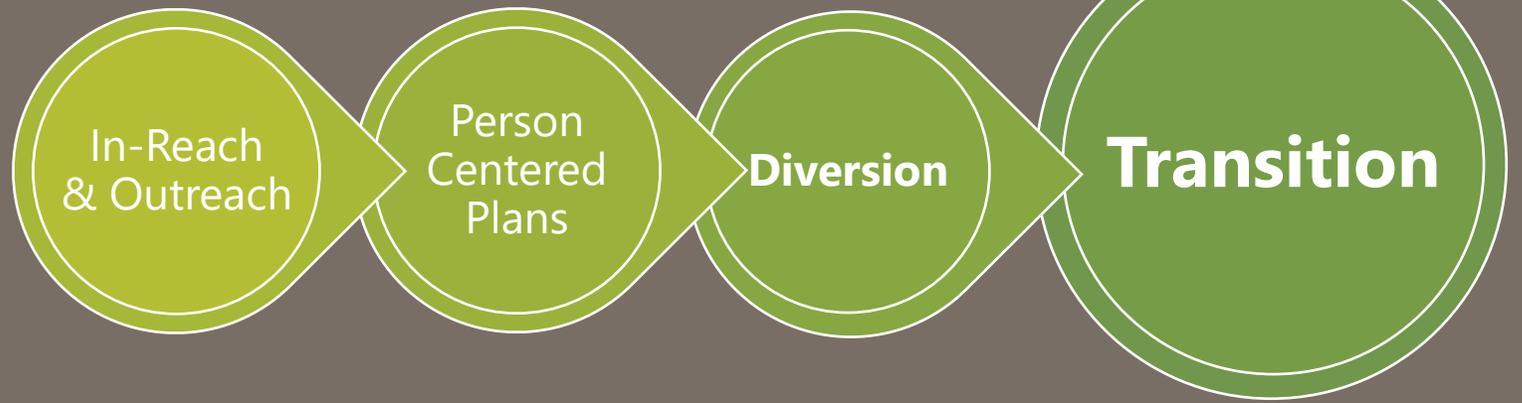
## DIVERSION: COMMUNITY LIVING

Set of activities that allow a target population member to avoid placement in a skilled nursing facility and remain living in their home and community

### GOALS

GOALS			
<b>Year 2</b> •100 Target Population Members (TPM)	<b>Year 4</b> •150 additional TPM	<b>Year 6</b> •150 additional TPM	Total 400 diverted

# XI. STRATEGY



## TRANSITION TO COMMUNITY

Services to prepare an individual currently residing in a skilled nursing facility to return to an integrated community setting

### GOALS

Year 2	Year 4	Year 6	Year 8
•Transition 100	•Transition 60% identified through person centered planning (PCP)	•Transition 70% identified through PCP	•Transition all remaining individuals identified PCP

# XII. HOUSING SUPPORTS

## INTEGRATED HOUSING

Federal, state, or local assistance to TPM who need help accessing available integrated housing and support for TPM where lack of housing has been identified as a barrier to community-based services



## GOALS

Year 1	Year 2	Year 3	Year 4-8
•Assist 20 Target Population Members (TPM)	•Assist additional 30 TPM	•Assist additional 60 TPM	•Assist additional number of TPM based on aggregate need

# KEY TERMS | DOJ SETTLEMENT

## Permanent Supported Housing

Affordable, permanent housing coupled with housing supports and other community-based services. Individual lives in a private home alone, with family, significant other, or roommates of their choosing.

*December 2020 U.S. Dept of Justice  
Settlement with State of North Dakota*

### Notes

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- Tenants must have access to community provider for intermittent on-call, planned and back up community-based services
- Must be scattered site housing

# KEY TERMS | DOJ SETTLEMENT

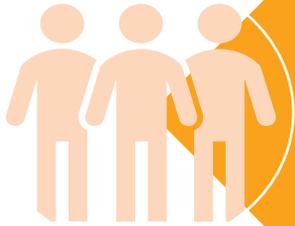
## Integrated Housing

Housing **cannot be provided in** group homes, nursing facilities, boarding homes, residential care facilities or assisted living residences; or any building where more than 25% of the occupants are TPM.

Requires state to **provide** funding for **rental assistance** including reasonable expansion of existing capacity by funding and providing rental assistance to support permanent housing for TPM.

Requires state to **provide** for **assistance** with **identifying** housing, **coordinating** housing modifications, applying for subsidized housing, as well as help **preserving** tenancy if temporarily admitted to a Nursing Home.

# XIII. PROVIDER CAPACITY AND TRAINING



State will ensure an adequate supply of qualified trained community providers to enable target population members to transition and live in most integrated setting



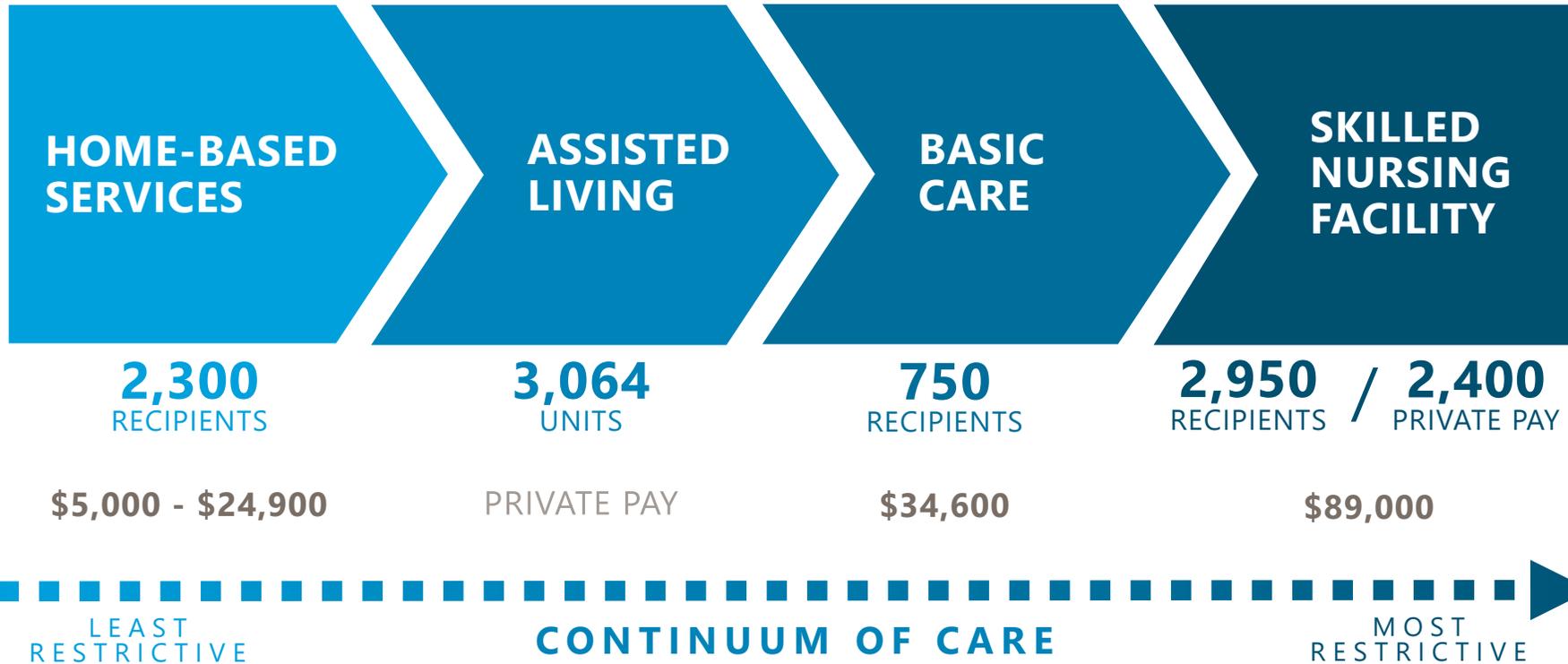
Provide guidance and training to nursing homes and other community providers who make a commitment to provide community-based services



Draft plan to addresses provider capacity, reimbursement rates, incentives to serve individuals with significant medical/supervision needs, those living on Native American reservations and in rural areas

# CONTINUUM OF CARE

## LONG-TERM CARE SERVICES & SUPPORTS



# OPPORTUNITIES FOR COLLABORATION

## Internal and external partners



# DHS Key Priorities



## Build Stronger Families

- Maintain family connections
- Improve stability and prevent crises
- Promote and support recovery and well-being



## Enhance Early Childhood Experiences

- Support workforce needs with improved access to childcare
- Help kids realize their potential with top quality early experiences
- Align programs for maximum return on investment



## Provide Services Closer to Home

- Create pathways that help people access the right service at the right time
- Engage proactively with providers to expand access to services



## Innovate and Redesign

- Embrace process redesign to find efficiencies in our work
- Leverage technology to support greater efficiency, quality and customer service



## Inspire a High-Performing Team

- Develop a One DHS Team culture
- Engage team with opportunities for learning and development
- Implement fiscal scorecard to drive efficiency and effectiveness

## Reinforce the Foundations of Well-being

Economic Health | Behavioral Health | Physical Health

# Meet Margo



Margo is 53

She lives alone in her home

Margo has disability-related physical impairments. She is Medicaid eligible and meets a nursing home level of care.

Her monthly income is from Social Security Income, \$783 per month

Margo needs support in the morning and the evening, and some home-making assistance to live independently and some occasional help with non-medical transportation. She can manage the rest of her day with the help of several assistive devices.

Margo is a good candidate for **Medicaid State Plan-funded Personal Care and the Medicaid waiver**

**What will help  
Margo to choose  
to live at home?**

# AGING & ADULT SERVICES

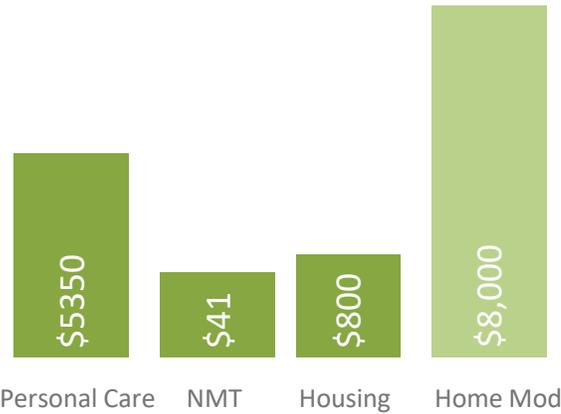
## Types of *Support Services* available via HCBS

- Adult Day Care
- Adult Foster Care
- Adult Residential Care
- Attendant Care
- Case Management
- Chore Service
- Community Support Services / Residential Habilitation
- Community Transition Services
- Companionship
- Emergency Response System
- Environmental Modification
- Extended Personal Care
- Emergency Response System
- Environmental Modification
- Family Home Care & Family Personal Care
- Home Delivered Meals
- Homemaker Services
- Non-Medical Transportation
- Personal Care Services
- Respite Care
- Specialized Equipment
- Supervision
- Supported Employment
- Transitional Care



Wants to stay in her home and it has been determined that her care needs can be met there safely

**\$5391/mo**  
+ \$8,000 (one time)



- Chose an agency provider
- Needs help with rent
- Needs some modifications to bathroom and kitchen

# Meet Barb



Barb is 67 years old

Barb lives alone in her home.

Her monthly income of \$1,193 comes from Social Security. Barb is Medicaid eligible.

She meets a Nursing Facility Level of Care because of her dementia and related impairments. She needs supervision and help with her personal cares.

Barb is a good candidate for the **HCBS Medicaid Waiver and Medicaid State Plan Personal Care.**

**What will help  
Barb to choose  
to live at home?**

# AGING & ADULT SERVICES

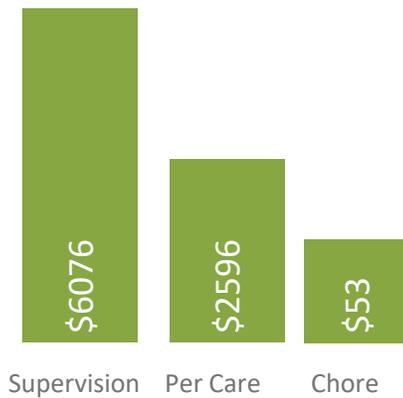
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- Non-Medical Transportation
- Personal Care Services
- Respite Care
- Specialized Equipment
- Supervision
- Supported Employment
- Transitional Care



Wants to stay in her apartment and it has been determined that her care needs can be met there safely

**\$8725/mo**



Family enrolled to provide the care

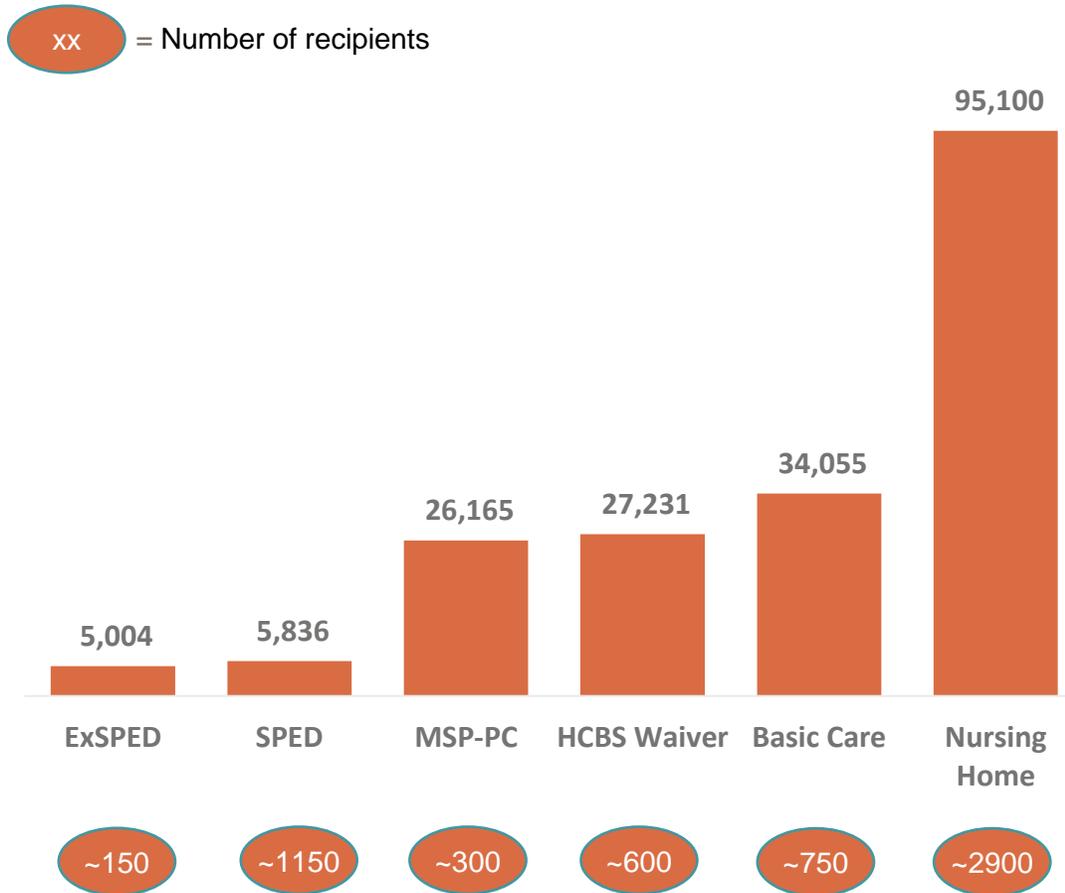
History wandering, often up at night

# DHS FUNDED LONG TERM CARE AND HCBS SERVICES

## Total cost by type of service

### Cost Per Recipient Per Year

Cost paid by state by service in \$ in State Fiscal Year 2020



### Program Descriptions / Detail

- **Service Payments for the Elderly and Disabled (SPED):** Provides services for people who are older or physically disabled, have limited assets, and who have difficulty completing tasks that enable them to live independently at home.
- **Expanded SPED (Ex-SPED):** Pays for in-home and community-based services for people who would otherwise receive care in a licensed basic care facility.
- **Home and community-based services (HCBS) waiver:** This waiver from the federal government allows the state to use Medicaid funds to provide services enabling eligible individuals who would otherwise require nursing home services to remain in their homes or communities.
- **Medicaid State Plan personal care (MSP-PC):** Personal care services available under the Medicaid state plan and enable persons with disabilities or chronic conditions accomplish tasks they would normally do for themselves if they did not have a disability.
- **Basic Care:** Room and board and personal care services for persons eligible for Medicaid.

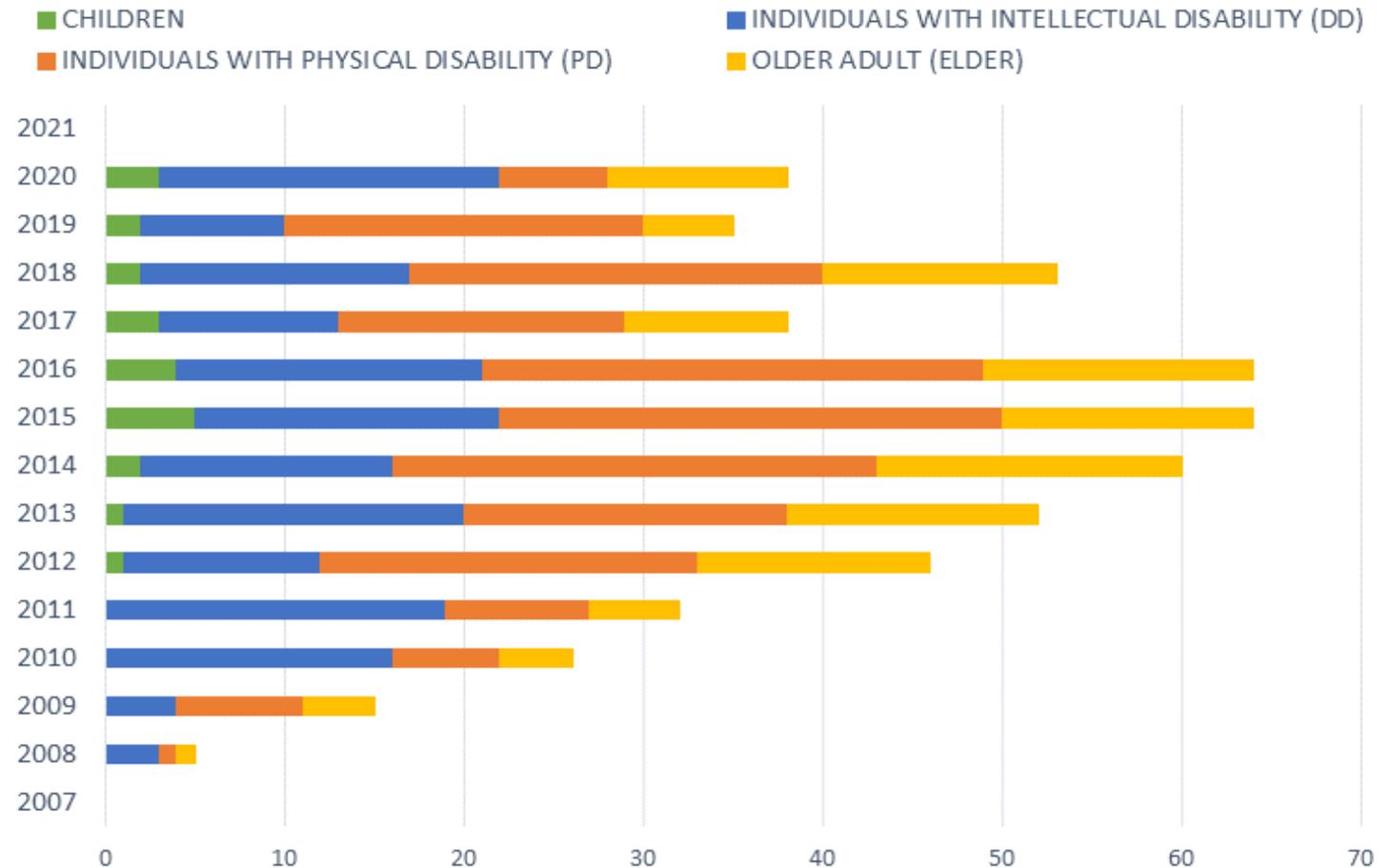
# AGING & ADULT SERVICES

## Money Follows the Person

Federal Grant designed to assist states to increase the use of home and community-based services (LTSS System Rebalancing)

- Eliminate barriers that prevent individuals from receiving LTSS in the settings of their choice
- Original award - \$8.9 million (2007)
- Award through 2020 - \$29 million (fed) and \$1.7 million (state)
- Transitioned 528 individuals from institutional settings back to the community

RUNNING MFP TRANSITION SUMMARY PER YEAR





## Contact Information

Nancy Nikolas Maier  
DOJ Agreement Coordinator

Director, Aging and Adult Services  
Division, Department of Human Services

1237 W Divide Ave, Suite 6  
Bismarck, North Dakota 58501-1208  
Phone: 701-328-4601  
Toll-Free Aging & Disability Resource LINK: 1-  
855-462-5465  
E-mail: [carechoice@nd.gov](mailto:carechoice@nd.gov)

