

House Human Services

Sixty-seventh Legislative Assembly of North Dakota

Senate Bill No. 2256

March 9, 2021

Good morning, Chairman Wiesz, and Members of the House Human Services Committee. I am Pam Mack, Director of Program Services for the Protection & Advocacy Project (P&A).

P&A is here today to support SB 2256 - a legislative management study of home and community-based waived services for individuals with Developmental Disabilities. NDCC § 25-01.2-01 and 42 U.S.C 15002(8) provide definitions for the term "developmental disability". NDCC § 25-01.2-02 further provides that "all individuals with developmental disabilities have a right to appropriate treatment, services, and habilitation for those disabilities. Treatment, services, and habilitation for individuals with a developmental disability must be provided in the least restrictive appropriate setting".

Currently, within our service delivery system and our current administrative rules (NDAC § 75-04-06), there is a narrowing of the scope of individuals to be served through the "Intellectual Disabilities – Developmental Disabilities Program Management Services" system to include, in some places, replacement of the term "developmental disabilities" with "intellectual disabilities". To be eligible for DD Program Management AND DD services, an individual must, amongst other things, be: 1) eligible for ND Medicaid; and 2) meet the Intermediate Care Facility for Individuals with Intellectual Disability (ICF/IID) level of care.

Currently, some individuals determined by DHS to have a developmental disability, but who are not able to be screened for ICF/IID,

receive Program Management Services only (using State General Funds). DHS' proposed budget for the 21-23 biennium removes the State funds, and therefore Program Management, for these individuals. I refer you to the attached hand-out from DHS, dated July 2019, which shows the process as a flow chart.

Moving on to the HCBS waiver, eligibility is based on screening with the ICF/IID level of care. Any waiver requires screening some type of institution (e.g., hospital, nursing home). The following is also included:

The State additionally limits the waiver to individuals with intellectual disabilities or individuals with related conditions (as defined in 42 CFR §435.1009) and cognitive impairment who meet the ICF/IID level of care (as defined in 42 CFR §440.150(a)(2)). Cognitive impairment means that a person performs significantly below appropriate age level in brain function (perception, attention, memory, motor, language, executive functioning), and the impairments are not severe enough to qualify as an intellectual disability.

State law gives DHS the authority to adopt rules (NDCC § 25-01.2-18). It specifically states, "the rules adopted may not restrict or limit the rights guaranteed by this chapter". What we have today is not congruent with NDCC § 25-01.2-02, which states that "all individuals with developmental disabilities have a right to appropriate treatment, services and habilitation for those disabilities. Treatment, services, and habilitation for individuals with a developmental disability must be provided in the least restrictive appropriate setting".

Therefore, P&A supports a legislative management study to help sort this out.

If you have any questions or would like to contact me, you can reach me by e-mail at [pmack@nd.gov](mailto:pmack@nd.gov) or by phone at (701) 328-3975. Thank you for your consideration.

## Process to Obtain Developmental Disabilities Program Management (DDPM) and DD Services

### Step 1:

Contact your local Human Service Center: <http://www.nd.gov/dhs/locations/regionalhsc/>

Your inquiry will be provided to the DD Unit and they will arrange for an in-person meeting to gather information.

### Step 2:

During the in-person meeting, the following will be addressed:

- Information about you and your needs
- Explanation of the eligibility criteria/process for both DDPM and DD services, Medicaid eligibility, role of the DDPM, and overview of DD services
- Complete an application, releases of information, and other necessary paperwork.
- Assist in obtaining or completing any necessary evaluations or information such as adaptive functioning, psychological testing, school records, speech, etc.
- Complete a screening assessment identifying current levels of functioning to determine level of care
  - If eligible, this assessment must be completed each year if you wish to continue to receive services

### Step 3:

After all the necessary information is obtained, the Human Service Center will determine if you are eligible for DDPM and/or DD services using the information collected and screening assessment. A notice will be sent to you to let you know the results of the eligibility determination. If you are determined not eligible, you can request an appeal to have the decision reviewed.

- Eligibility for DDPM and DD services are 2 separate processes and you may be eligible for only DDPM or both DDPM and DD services. (see page 2)
- Eligibility may take up to 45 days, or longer if all the information is not available.
- **What is a DDPM?**

The DDPM is an employee of the State of North Dakota Department of Human Services located at one of the eight regional human service centers. The DDPM will help you locate, coordinate, provide information, and monitor supports and services with you, including natural and community supports.

### Step 4:

If you are determined eligible for DDPM and/or DD services, you will choose among available DD services, will be referred to available DD providers of your choice, and can meet with any providers. Once an available provider(s) accepts your referral, you will choose the provider(s) to provide the service(s).

- Self-directed services are available and may be an option depending on your service needs.

### Step 5:

The provider and the DDPM will help you identify family and/or other individuals who are important to you to be part of the planning team. You and your planning team will work together to evaluate your needs, goals, and develop a person-centered service plan (PCSP). The DDPM will review your plan to make sure it meets your needs.

- The PCSP must be updated each year or as needs change. You may request an update to your plan anytime by contacting your DDPM or provider.

## Eligibility Determination Process for DDPM and DD Services

In order to be eligible for supports and services from the ND Department of Human Services Developmental Disabilities Division (DD Division) a person must:

- Be a resident of ND and meet Medicaid U.S. citizenship and alienage
- Be eligible for ND Medicaid (Determined by the local County Social Service office)
- Meet the criteria defined in law per North Dakota Administrative Code (NDAC) 75-04-06  
<https://www.legis.nd.gov/information/acdata/pdf/75-04-06.pdf>
- Meet the Intermediate Care Facility for Individuals with Intellectual Disability (ICF/IID) level of care

**Age 3 & Older**

**Birth through Age 2**

**Eligibility Criteria:**

- 1) Intellectual disability with a developmental disability;
- 2) Intellectual disability with no developmental disability but able to benefit from DD services; **or**
- 3) Related condition with a developmental disability and able to benefit from DD service

Developmental disability means a severe, chronic disability which is:

- Due to a mental and/or physical impairment, NOT mental illness;
- Age of onset occurred before age of 22;
- Likely to continue forever;
- Results in substantial functional limitations in 3 or more areas of major life activities; **and**
- Wide array of services from a broad variety of professionals needed

**Eligibility Criteria:**

- 1) 25% delay in 2 areas;
- 2) 50% delay in 1 area;
- 3) High risk of becoming developmentally delayed; **or**
- 4) Informed clinical opinion of becoming developmentally delayed

**No**  
Not eligible for DDPM  
**STOP proceeding**

**Yes**  
Eligible for DDPM  
Continue with ICF/IID level of care determination

**Not Screenable**  
Not eligible for DD services  
**STOP proceeding**

**Yes Screenable**  
Eligible for DD services

**No**  
Not eligible for DDPM  
**STOP proceeding**

**Yes**  
Eligible for DDPM  
Continue with ICF/IID level of care determination

**Not Screenable**  
Not eligible for DD services  
**STOP proceeding**

**Yes Screenable**  
Eligible for DD services