SB 2012 Testimony
Senate Appropriations-Human Resources Committee
Senator Dever, Chairman
January 26, 2023

Chairman Dever and Members of the Committee, I am Carlotta McCleary, the Executive Director of the ND Federation of Families for Children's Mental Health (NDFFCMH), which is a parent run organization that focuses on the needs of children and youth with emotional, behavioral, or mental health needs and their families. I am also the Executive Director for Mental Health America of ND (MHAND) which is a consumer-run organization whose mission is to promote mental health through education, advocacy, understanding, and access to quality care for all individuals. Today I am testifying as the Chairman of the Behavioral Health Planning Council (BHPC). Members of the BHPC are appointed by the Governor. BHPC's objective is to monitor, review, and evaluate the allocation and adequacy of mental health and substance abuse services in North Dakota. The BHPC has a focus and vision on wellness and recovery that is consumer and family driven.

The ND Behavioral Health Planning Council (BHPC) is testifying in support of SB 2012. The ND Behavioral Health Planning Council has been closely working with the Human Services Research Institute (HSRI) and the North Dakota Department of Health and Human Services on the HSRI Study Implementation Plan. Out of that work, the BHPC has seen meaningful progress, but the one recommendation that stands out as needing the most assistance is AIM 5: "Enhance and streamline system of care for children and youth." In that aim, North Dakota has accomplished one objective out of three with the successful application of the SAMHSA System of Care grant. The remaining tasks for AIM 5 are: "AIM 5.2-Expand culturally responsive, evidence-based, trauma-informed wraparound services for children and families," "AIM 5.3. Expand in-home community supports for children, youth, and families—including family skills training and family peers." AIMs 5.2 and 5.3 have six objectives that have yet to be completed. The behavioral health system for children and youth needs a lot of work and effort.

The BHPC has released a resolution in favor of the construction of a new State Hospital in North Dakota. I am attaching that resolution for your consideration.

The BHPC has also reviewed IMD Exclusion policy over the last biennium. The BHPC has issued its position on whether to pursue an IMD Exclusion Waiver. After deliberations, the BHPC is opposed to pursuing an IMD Exclusion Waiver. The IMD exclusion serves an important purpose, a waiver would risk undermining that purpose. We believe there are numerous ways to improve Medicaid funded behavioral health services without pursuing a waiver. I am attaching BHPC's summary of findings on IMD Exclusion.

Thank you for your time I'd be happy to answer any questions that you may have.

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Resolution of Recognition of Evident Need and Support for the Advancement of a New State Hospital Within the State's System of Care

January 4, 2022

WHEREAS, the North Dakota Behavioral Health Planning Council assumes its duties as the state's principal advisory body established under Public Law 102-321 (42 U.S.C 300X-4), to monitor, review, and evaluate the allocation and adequacy of behavioral health services in North Dakota and to meet federally mandated requirements, and whose members are duly appointed by the Governor of North Dakota to advise the Governor regarding the administration of the state's behavioral health practices and policies; and

WHEREAS, the membership of the Council represents the diverse voices and interests of the people of North Dakota, bringing forth vast strengths and perspectives from consumers of mental health and substance abuse services, family members, advocates, referral sources, schools, institutional and community-based service providers, the general disability community, and the criminal justice system, and covering an expanse of expertise including a shared knowledge of individual and general consumer situations, Medicaid, service delivery systems, reimbursement issues, housing and community development, legal issues, community resources, recovery, peer mentoring, service delivery, children's issues, and advocacy for mental health and substance abuse issues; and

WHEREAS, the Council has endorsed and guided the development and implementation of the state's current behavioral health strategic plan, covering the breadth of state behavioral health needs, and in so doing, has adopted a Statement of Vision that recognizes *With full regard for the value of each person, appropriate behavioral health services, encompassing the full continuum of care, are readily available at the right time, in the right place and manner, and by the right people, offering every North Dakotan their best opportunity to live a full, productive, healthy and happy life—free of stigma or shame, within caring and supportive communities;* and

WHEREAS, the Council recognizes the inherent value and necessity for a properly sized and situated State Hospital as a critical component of the state's comprehensive system of care, providing specialized care and highly trained staff and ensuring the capacity of the state to provide for its citizens the full expanse of services demanded of a balanced, efficient, and modern continuum of care, documented by multiple studies; and

WHEREAS, the current State Hospital facilities, having served the state for multiple generations, now exhibit profound deterioration, documented by structural, mechanical, electrical, and plumbing deficiencies or failures approximating 76%, significantly evidencing that these facilities have long outlived their expected lifespans; and

WHEREAS, any measured, deferred maintenance budget cannot sustain the volume and cost of needed repairs and systems replacement, and where the current, antiquated facilities lack adequate natural light, healing green space, and pose safety risks for patients and staff, outright failing to provide for an

appropriate setting that will speed recovery, improve patient and staff safety, and improve overall satisfaction of patients and staff; and

WHEREAS, the co-location of the current State Hospital facility with an adjoining prison facility contributes to the stigma, prejudice, and discrimination of individuals with mental illness, denying patients and residents served at the State Hospital the right to receive appropriate and respectful care in a safe and healing environment.

THEREFORE, LET IT BE RESOLVED, that the North Dakota Behavioral Health Planning Council, acting within its assigned charge to provide studied advice to the state on critical issues of care regarding behavioral health services within North Dakota, does endorse

- Adopting and advancing, through policy and funding across all appropriate agencies, the full implementation of all program goals specified within the statewide behavioral health strategic plan; and

- Securing and sustaining a statewide behavioral health system that facilitates an integrated continuum of care across all services, directed to the unique needs of every person served; and

- Building a new, modern State Hospital central facility, located in Jamestown, ND, and providing readily accessible specialized psychiatric care services statewide, securing for all state residents reasonable and ready access to appropriate and specialized behavioral health services.

FURTHERMORE, LET IT BE RESOLVED, that the North Dakota Behavioral Health Planning Council petitions the North Dakota Department of Human Services, the Office of the Governor, the Acute Psychiatric Care Committee, and the full North Dakota 68th Legislative Assembly to authorize and secure sufficient and sustainable financial resources and supporting policies that accomplish each of these stated aims.

North Dakota Behavioral Health Planning Council's
Summary of Findings on IMD Exclusion

The BHPC has been reviewing IMD exclusion over the last biennium. We have had presentations from ND Medicaid, Karen Kimsey and Tom Betlach from Speire Healthcare Strategies, and finally a presentation from Jennifer Lav, from National Health Law Program and Elizabeth Priaulx, from National Disability Rights Network.

Under Section 1905(a) of the Social Security Act, there is a general prohibition on Medicaid payment for any services provided to any individual who is under 65 and who is residing in an institution for Mental Diseases (IMD). "The term 'institution for mental diseases' means a hospital, nursing facility, or other institution of more that 16 beds, that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care, and related services." Under this definition, can have more than 16 beds dedicated to mental health treatment in a general hospital. The purpose of the IMD Exclusion was to clarify it as the states responsibility and to encourage community-based services.

The IMD Exclusion is limited:

- Does not apply to individuals 65 and over
- Does not prevent children under 21 from getting services in the following settings (even if more than 16 beds) psychiatric hospital, psychiatric unit of general hospital, and psychiatric residential treatment facility
- Does not stop managed care enrollees from getting services in an IMD for up to 15 days per calendar month (ND Medicaid Expansion)
- Does not prevent states from asking for a state plan option to allow people to get services for SUD in IMDs (expires 9/30/2023)
- Does not prevent States from getting federal funds for impatient psychiatric care in general hospitals
- Does not prevent federal funding for adult settings that are 16 beds or less.

What do IMD Waivers let states do? IMD waivers allow states to collect federal dollars for services provided to residents of IMDs.

There are certain services, resources, and infrastructure elements that should be in place prior to applying for and implementing a IMD waiver.

- Budget Neutrality Strategy: CMS requires states to have a strategy to offset the costs of the additional services provided so that projects do not result in Medicaid costs to the federal government that are greater than what the federal government's Medicaid cost would have likely been absent the demonstration.
- State Plan Services: Meeting CMS milestone requirements might require the provision of serves not currently covered in the state plan.
- Infrastructure Development: New services could require developing adequate provider networks, utilization management protocols, and care management infrastructure to support the access to and the appropriate use of new services.
- Integrating Services: Integrating new services and improving the overall system of care for behavioral health services could require a significant investment of time and resources along with internal and external stakeholder input.
- Management Staff: Additional staff could be needed to assist with planning, execution, and management of the IMD Waiver.

Steps Prior to applying for a waiver:

- Conduct a gap analysis of current to future delivery system
- Determine FTE and resource needs for IMD
- Determine stakeholder demand/appetite and political climate
- Develop a phased implementation plan to address the gaps

We must also consider:

- Discriminatory impact & adverse impact on community-based integration
- Administrative burden
- Opportunity costs

What are the alternatives, North Dakota's 1915(i). Give the 1915(i) time to meet its promise. The service package within the 1915(i) are some of the best within the country. Mobile Crisis Response and Stabilization Services, under American Rescue Plan Act (ARPA), states may apply for and receive an 85% federal match for qualified mobile crisis services, for up to 3 years during a 5-year period, starting April 1, 2022, and increasing access for Assertive Community Treatment.

Through our deliberations, we concluded that we needed to keep the end user and their families at the forefront of our recommendations. The response to the pursuit of an IMD waiver was negative. Consumers and family members have been adamant that the work the council has embarked on to support the HSRI recommendations needs to continue. That work concentrated on the development of community services for people with behavioral health needs, not increasing our reliance on institutional care and large institutional settings. We also heard from providers that the pursuit of an IMD waiver sends the message to existing providers that their work to play by the rules and build their facilities around smaller bed counts across the state are not rewarded for that work. Instead, bigger providers are going to reap the benefits of such a change.

The IMD waiver does nothing for community-based services that cannot be done by directly improving community-based services. If anything, the IMD waiver jeopardizes the work that we have done over the last few years and the work that remains to be done.