



DOJ SETTLEMENT
AGREEMENT SUMMARY
SENATE APPROPRIATIONS SENATOR HOLMBERG, CHAIRMAN

March 11, 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...



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

DECEMBER 2015

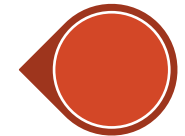
Sources: Henry J Kaiser Foundation, US Census Bureau (2016)

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



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

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

- 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?



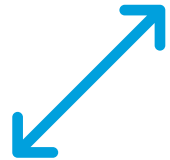
AGREEMENT VISION



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

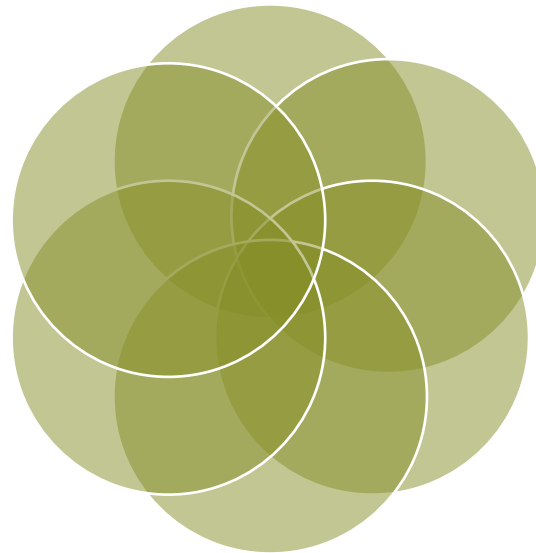
1989 - 1995
NM Legislative Finance
Committee Legislative Analyst

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

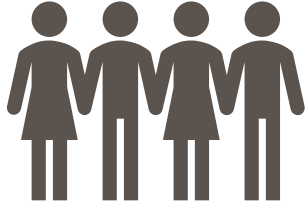
Engage Stakeholders

Identify benchmarks and timelines for meeting Agreement's requirements

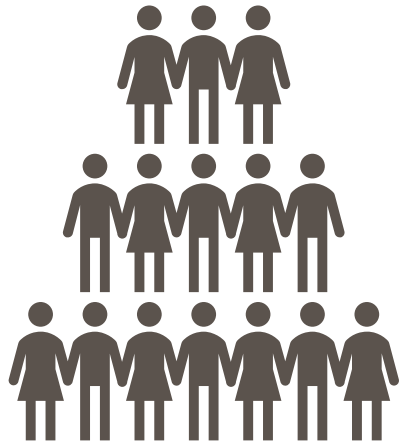
State received approval from DOJ to extend deadline 45 days.

Plan due 5.28.21

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

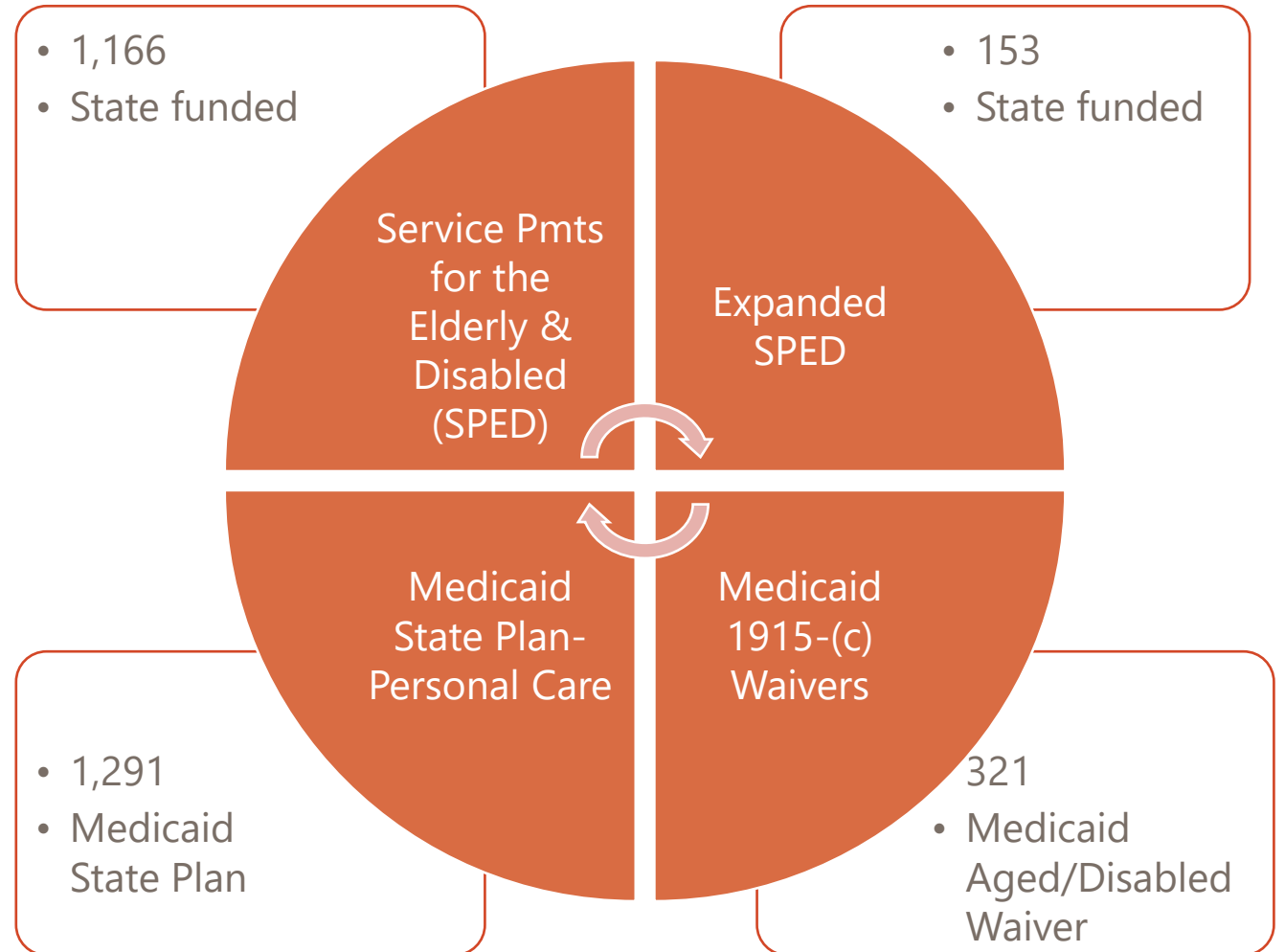
AGING & ADULT SERVICES

Home and Community Based Services

2,300

HCBS supported 2,300 unduplicated recipients

- Primarily serves older adults and individuals with physical disabilities
- Recipients must be both functionally and financially eligible
- May have client cost share based on income
- Federal and state funds

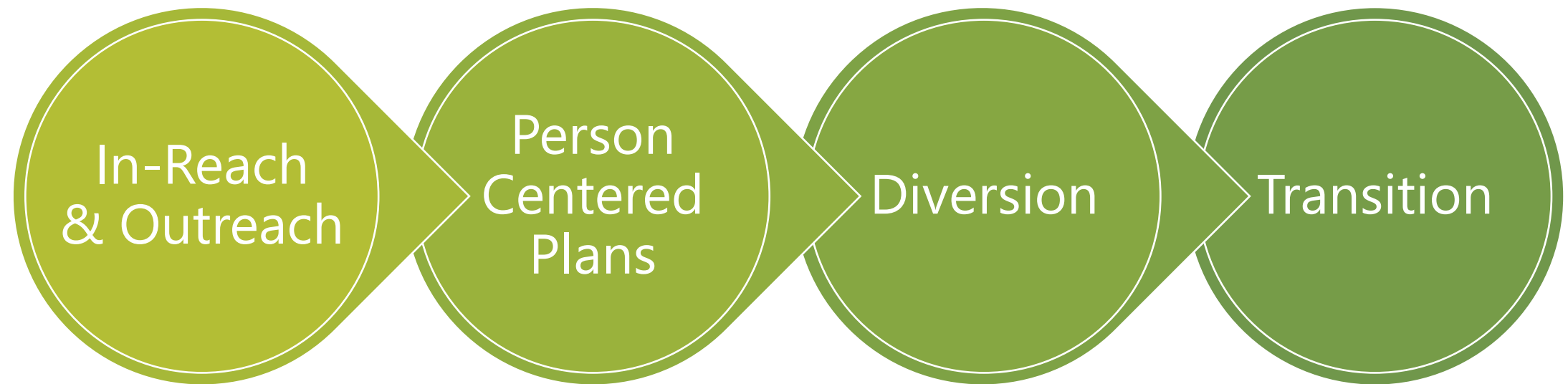


AGING & ADULT SERVICES

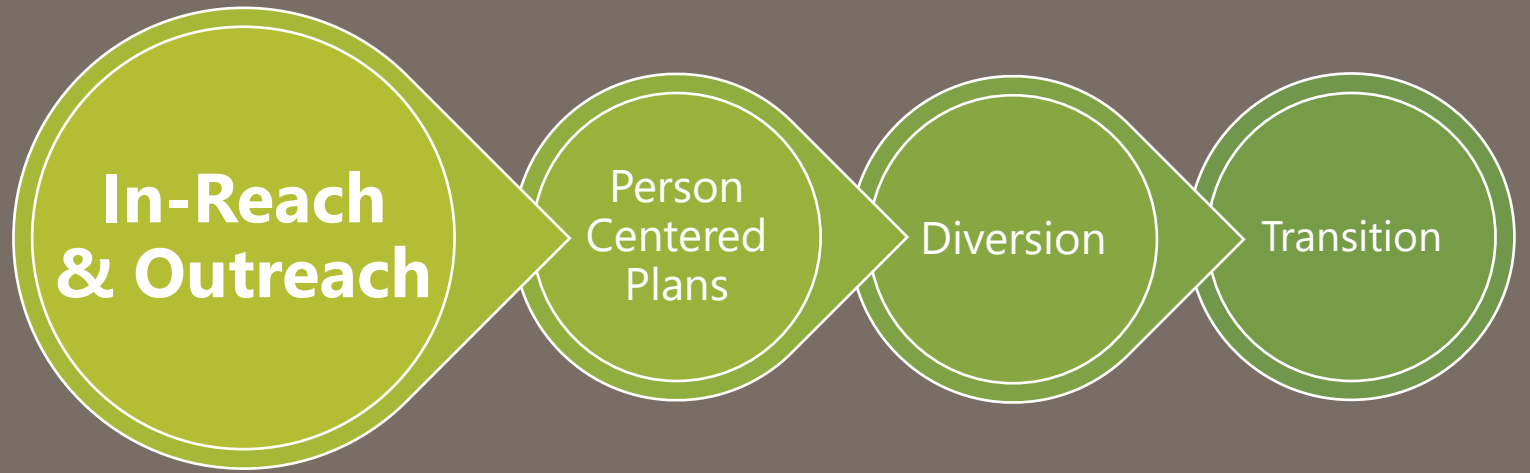
Types of Support Services available via HCBS

- 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
- 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 Living

ND / DOJ AGREEMENT STRATEGY



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

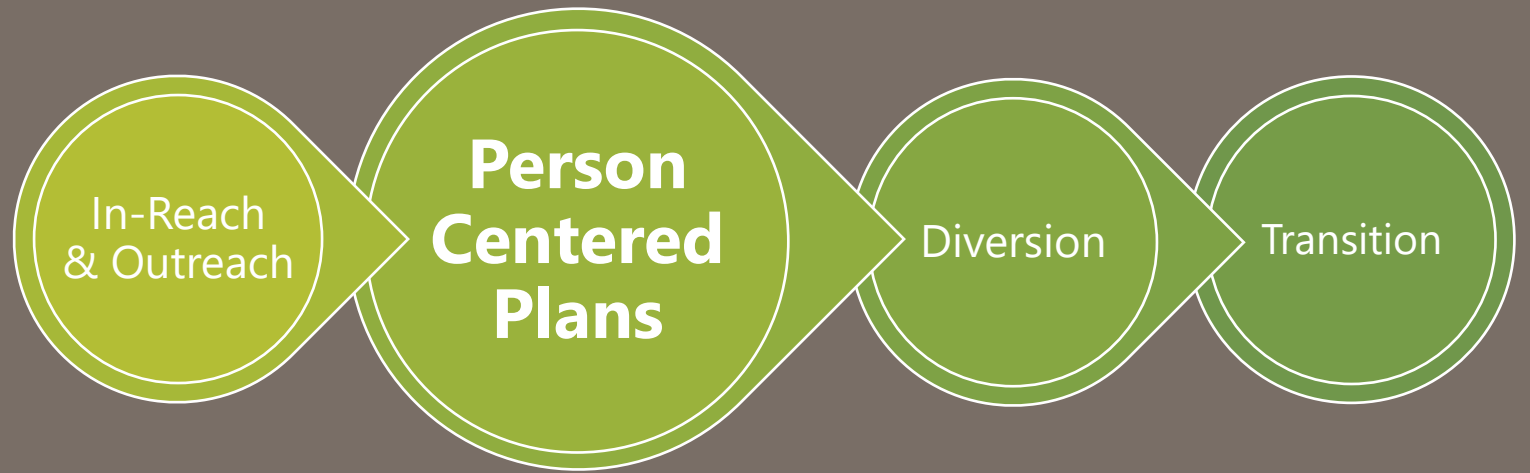
Year 4

- 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

VIII. STRATEGY



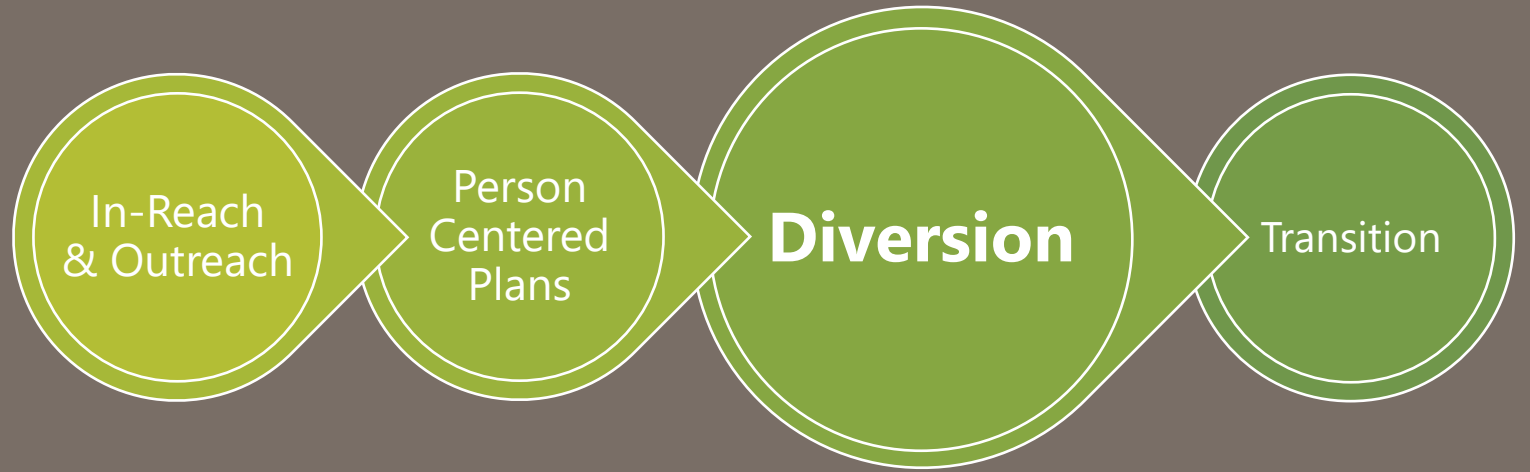
PERSON CENTERED PLANNING

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

X. STRATEGY



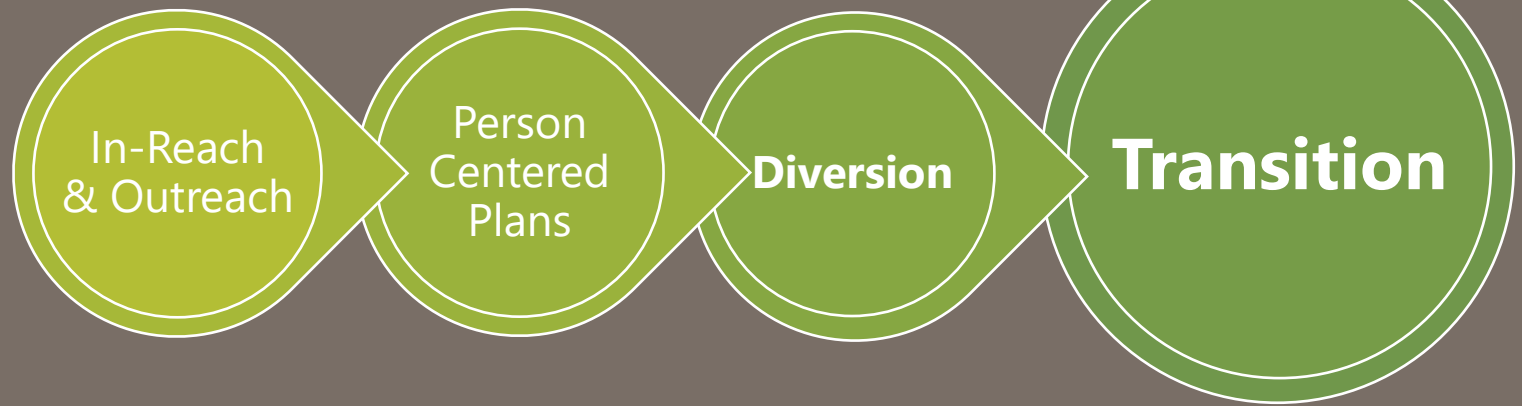
DIVERSION: COMMUNITY LIVING

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			
Year 2 •100 Target Population Members (TPM)	Year 4 •150 additional TPM	Year 6 •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

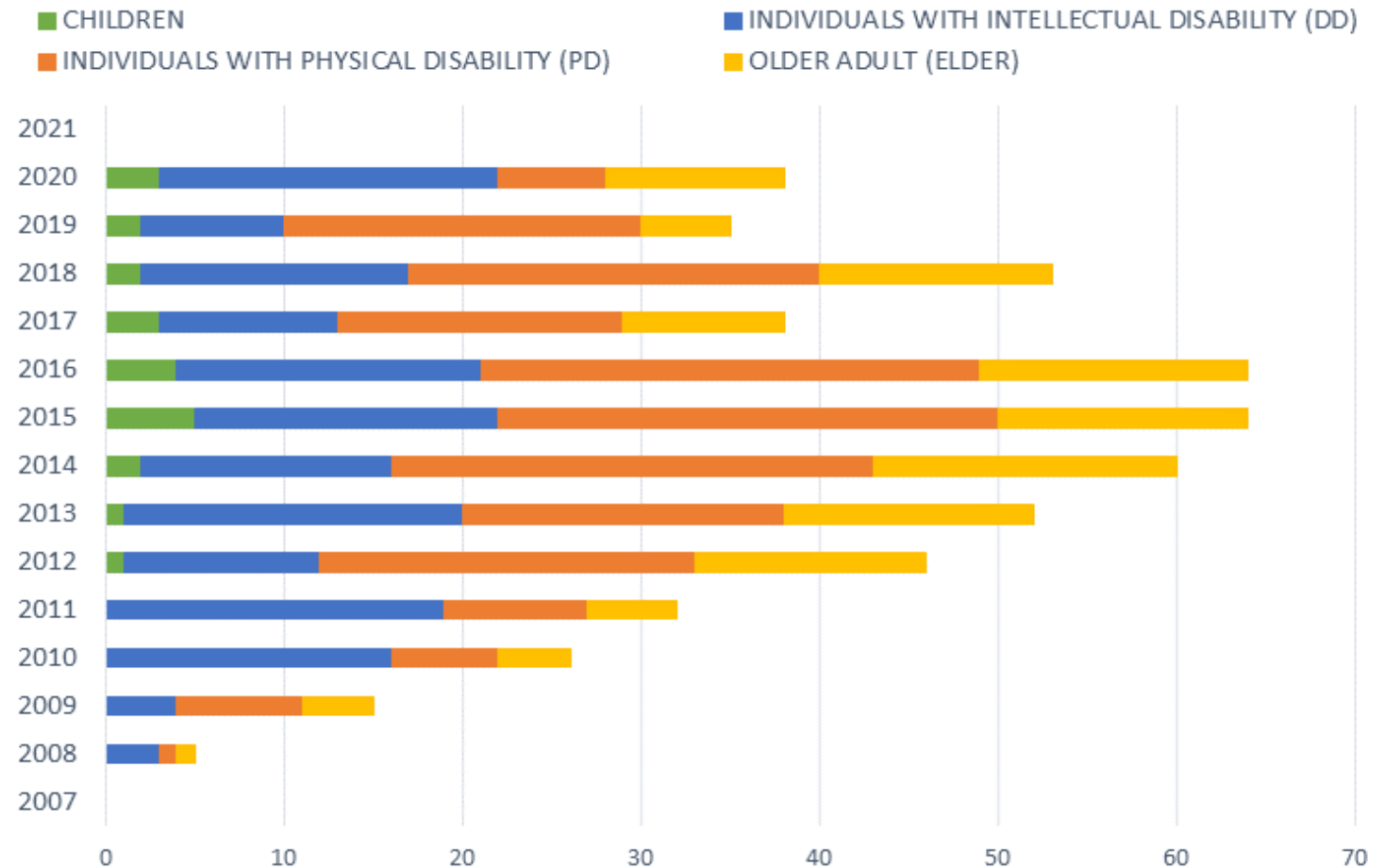
AGING & ADULT SERVICES

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



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

- 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



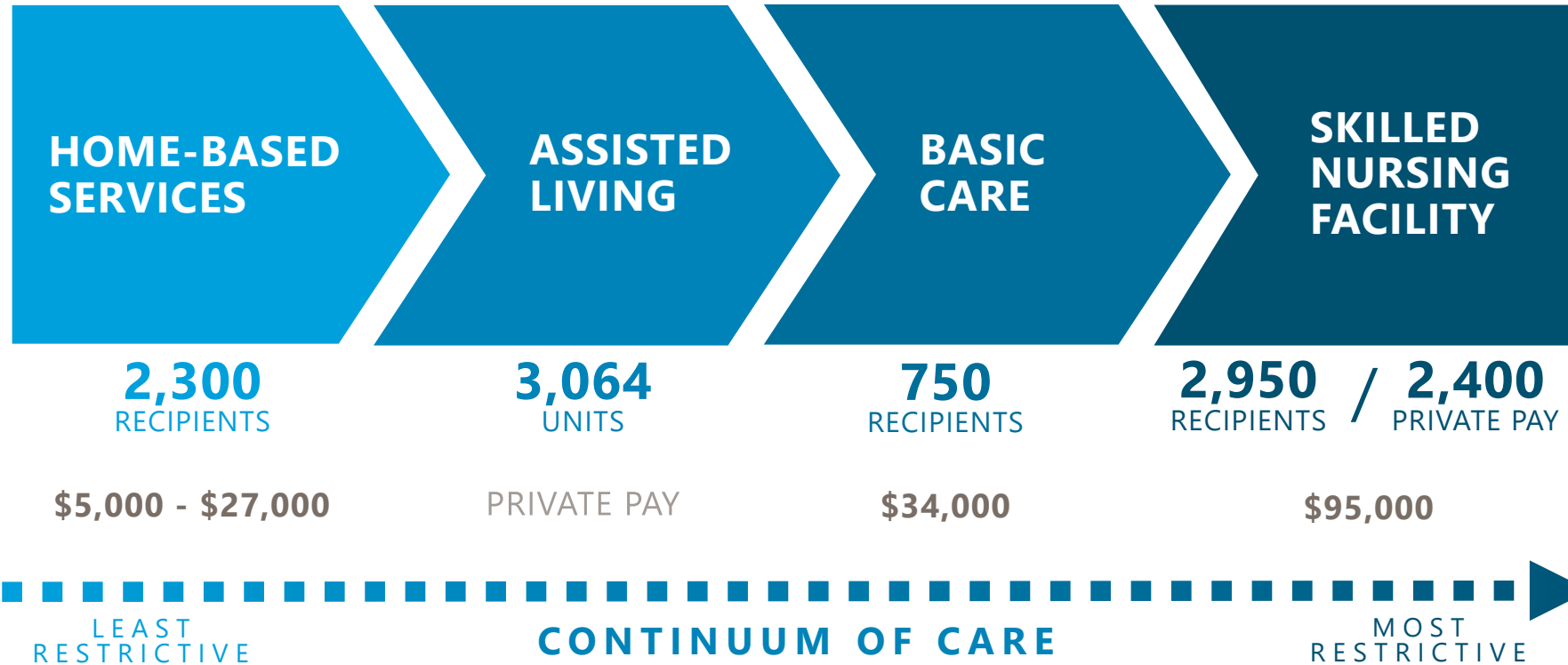
Provide guidance and training to nursing homes and other community providers who make a commitment to provide community-based services



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

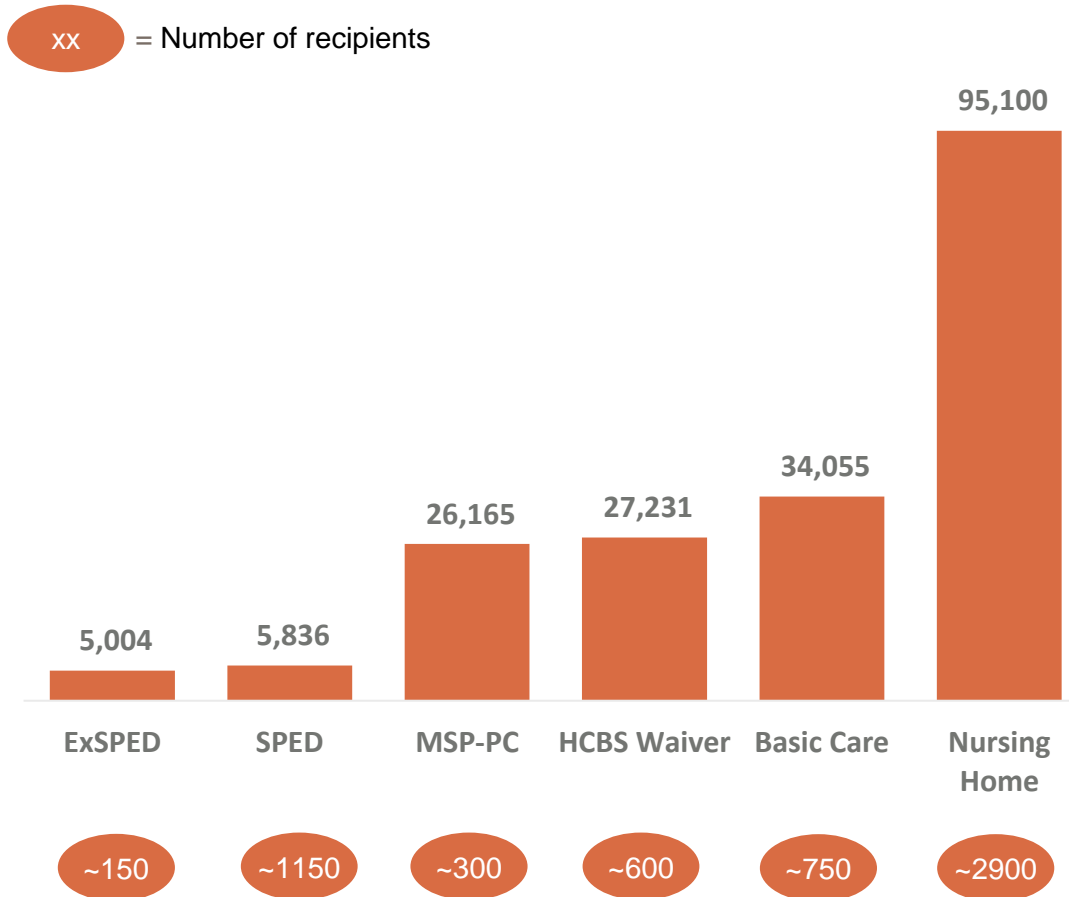


DHS FUNDED LONG TERM CARE AND HCBS SERVICES

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.

OPPORTUNITIES FOR COLLABORATION

Internal and external partners



SECTION XVII. ENFORCEMENT

- The Agreement was entered in good faith between the United State and the State. The state agreed to implement the terms of the Agreement and fulfill the requirements under Title II of the ADA.
- After receipt of each of the State's data reports, the United States and State will confer to assess the State's compliance with this Agreement.
- If the United States believes that the State has violated this Agreement, it will notify the State and include reasonably specific information regarding the violation.
- The United States and the State will negotiate in good faith to resolve any dispute.
- If the United States and the State are unable to agree on a resolution within 90 days of the United States' notice of violation, the United States may commence a civil action in the U.S. Court for the District of North Dakota to enforce the terms of this Agreement or the ADA.
- The Agreement will terminate eight years after the Effective Date if the Parties agree that the State has attained substantial compliance with all provisions and maintained that compliance for a period of one year.

Budget recommendations related to DOJ Settlement for Older and Disabled Adults HCBS

2021 HB 1012

Service	Recommendation	2021-23 DHS Budget - HB 1012 as approved by House			
		General Funds	Federal Funds	Other Funds	Total Funds
HCBS Supervision	Increase rate from \$2.49 / 15 min unit of service for both individual and Agency QSPs to \$4.79 for individual QSP and \$6.58 for Agency QSP / 15 min unit of service.	\$566,683	\$651,991	-	\$1,218,674
HCBS Family Personal Care	Increase rate from maximum of \$76.67 / day to no more than \$150 / day.	\$1,393,154	\$1,602,882	-	\$2,996,036
HCBS Non-Medical Transportation	Increase rate from \$3.27 / 15 min unit of service to \$8.74 / 15 min unit of service.	\$85,557	\$44,248	-	\$129,805
HCBS Non-Medical Transportation Escort	Increase rate from \$3.53 / 15 min unit of service for both individual and agency QSPs to \$4.79 for individual QSPs and \$6.58 for Agency QSP / 15 min unit of service.	\$152,158	\$10,075	-	\$162,233
Rental Assistance	Budget estimate would allow for approximately 375 months of housing assistance over the course of the biennium.	\$300,000	-	-	\$300,000
Settlement Administration and Reporting	1 FTE in Aging and Adult Services (funded by Money Follows the Person grant dollars for this biennium)	-	-	\$150,000	\$150,000
Annual Level of Care Screening - Nursing Facility Residents	Increased volume of level of care assessments, completed via contract	\$50,000	\$150,000	-	\$200,000
Claims system integration	System enhancements	\$16,465	\$49,395	-	\$65,860
TOTAL		\$2,564,017	\$2,508,591	\$150,000	\$5,222,608



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

