

STUDY OF HOME AND COMMUNITY-BASED SERVICES - BACKGROUND MEMORANDUM

Section 1 of 2013 Senate Bill No. 2375 (attached as an [appendix](#)) provides for a Legislative Management study of home and community-based services in the state. The study must include consideration of the need to expand the home and community-based services Medicaid waiver to cover 24-hour emergency assistance, adult companion service, behavioral programming, chore services, customized living services, environmental modifications, and transition modification support. The Human Services Committee has been assigned this responsibility for the 2013-14 interim.

BACKGROUND

The Department of Human Services Aging Services Division provides home and community-based services to assist individuals to remain in their homes and communities. The division administers the following programs and services:

- Home and community-based Medicaid waiver.
- Service payments for elderly and disabled (SPED).
- Expanded SPED.
- Personal care.
- Technology dependent Medicaid waiver.

Home and Community-Based Medicaid Waiver

The home and community-based Medicaid waiver allows individuals currently on Medicaid to receive a variety of services and support in home and community-based settings rather than in a nursing home, including:

- Adult day care.
- Adult family foster care.
- Case management.
- Chore services.
- Emergency response system.
- Environmental modifications.
- Homemaker services.
- Nonmedical transportation.
- Residential care.
- Respite care.
- Specialized equipment and supplies.
- Supported employment services.
- Transitional living services.

To qualify for services under the Medicaid waiver program, an individual must be:

- A Medicaid recipient;
- Screened at nursing facility level of care;
- At least age 65 or disabled by Social Security disability criteria;
- Capable of directing his or her own care;
- Living in his or her own home or apartment; and
- Able to have his or her services or care needs met within the scope of the waiver.

Service Payments for Elderly and Disabled

The SPED program provides services for elderly and disabled individuals who have difficulty completing tasks that allow them to live independently at home. Covered services include:

- Adult family foster care.
- Case management.
- Chore services.
- Emergency response system (Lifeline).
- Environmental modifications.
- Family home care.
- Homemaker services.
- Personal care.
- Respite care.

Eligibility requirements for SPED include:

- Liquid assets less than \$50,000;
- Inability to pay for services;
- Impaired in four activities of daily living (ADLs) involving basic needs, including bathing, dressing, toileting, eating; or five ADLs that require a higher level of cognitive or physical ability to perform, including driving, managing money, and shopping; and
- Impairments must have lasted or be expected to last three months or longer; or
- If an individual is younger than age 18, is screened for nursing facility level of care, and is not eligible for aged and disabled or traumatic brain injury waivers and is not living in an institution, dormitory, or congregate housing; and
- The need for service is not due to mental illness or mental retardation, and the individual is capable of directing his or her own care or has a legally responsible party, and has needs within the scope of covered services.

Expanded SPED

The expanded SPED program provides in-home and community-based services for individuals who would otherwise receive care in a licensed basic care facility. Covered services include:

- Adult family foster care.
- Case management.
- Chore services.
- Emergency response system (Lifeline).
- Environmental modifications.
- Family home care.
- Homemaker services.
- Respite care.

Eligibility requirements for expanded SPED include:

- Receives or is eligible to receive Medicaid;
- Receives or is eligible to receive Social Security income;
- Is not severely impaired in the ADLs of toileting, transferring, or eating; and
- Is impaired in three of four instrumental activities of daily living (IADLs), including meal preparation, housework, laundry, or taking medications; or

- Has health, welfare, or safety needs, including supervision or structured environment, otherwise requiring care in a basic care facility;
- Is not living in an institution or dormitory; and
- Has needs within the scope of covered services.

Personal Care Services - Medicaid State Plan

Personal care services under the Medicaid state plan include assistance with ADLs, including bathing, dressing, toileting, transferring, eating, mobility, and incontinence care and IADLs in conjunction with the ADLs. All recipients of personal care services under the Medicaid state plan must be Medicaid-eligible.

Functional eligibility for personal care is determined by the level of care needed as follows:

Level A eligibility:

- Impaired in one ADL; or
- Impaired in three of the four following IADLs:
 - Meal preparation.
 - Housework.
 - Laundry.
 - Medication assistance.

Level B eligibility:

- Impaired in one ADL; or
- Impaired in three of the four following IADLs:
 - Meal preparation.
 - Housework.
 - Laundry.
 - Medication assistance.
- Meet level of care screening criteria.

Level C eligibility:

- Impaired in five ADLs;
- Meet level of care screening criteria; and
- Prior approval from the Department of Human Services.

Technology Dependent Medicaid Waiver

An individual may receive attendant care and case management services under the technology dependent Medicaid waiver if the individual is Medicaid-eligible and meets the following functional criteria:

- Meets level of care screening criteria.
- Vent-dependent at least 20 hours per day.
- Medically stable.
- Has an informal caregiver system for contingency planning.
- Is competent to participate in planning.
- If under age 65, the disability must meet Social Security criteria or determined to be physically disabled by the state review team.

Other Services

The Department of Human Services also provides home and community-based services through the children's medically fragile waiver, children's hospice waiver, targeted case management, and the program for all-inclusive care for the elderly (PACE).

Funding for Home and Community-Based Services

The 2013 Legislative Assembly provided funding for home and community-based services as follows:

	General Fund	Other Funds	Total
Home and community-based services Medicaid waiver	\$6,093,666	\$6,138,635	\$12,232,301
SPED	14,545,977	765,584	15,311,561
Expanded SPED	1,356,679		1,356,679
Personal care	14,065,133	14,167,029	28,232,162
Technology dependent waiver	193,586	194,530	388,116
Children's medically fragile waiver	69,342	69,822	139,164
Children's hospice waiver	59,732	60,119	119,851
Targeted case management	852,279	858,533	1,710,812
PACE	5,139,546	5,172,835	10,312,381
Total	\$42,375,940	\$27,427,087	\$69,803,027

Qualified Service Provider System

A qualified service provider (QSP) is an individual or agency providing care for people to enable them to continue to live in their own homes and communities. A QSP does not need a special certificate or license but needs skills necessary to provide care.

Types

There are two types of QSPs:

1. An individual QSP needs to have competency in all the standards to provide a specific service. Individual QSPs are self-employed, independent contractors who are responsible to withhold or pay any Social Security, federal or state income tax, unemployment insurance, or workers' compensation insurance premiums from the payment received as a QSP.
2. An agency QSP hires staff and is responsible for ensuring its staff has the skills necessary to provide a specific service. The agency QSP is also responsible for withholding or paying any Social Security, federal or state income tax, unemployment insurance, or workers' compensation insurance premiums relating to its employees.

Enrollment and Services

To become enrolled as a QSP, an individual or agency must submit appropriate forms to the Department of Human Services. The department will provide the individual or agency with a provider number, instructions on how to bill for services provided, and rules about providing services as a QSP. Enrolled QSPs can choose to have their name added to a public list of QSPs, which is given to clients by county home and community-based services case managers. Home and community-based services recipients use this list to choose an individual or agency QSP. Once chosen, the QSP is authorized to provide services by the county case manager. The authorization provides the amount and type of care the QSP is approved to provide to the client.

Qualified service providers provide care to recipients receiving services from one or more of the following programs:

1. SPED;
2. Expanded SPED;
3. Home and community-based services waiver;
4. Technology dependent Medicaid waiver;
5. Developmental disabilities (DD) Medicaid waiver; and
6. Medicaid state plan personal care.

A QSP may provide the following services:

1. Adult day care.
2. Adult family foster care.
3. Adult residential service.
4. Case management.
5. Chore service.
6. Emergency response system.
7. Environmental modification.
8. Extended personal care/nurse education.
9. Family personal care.
10. Home-delivered meals.
11. Homemaker service.
12. Nonmedical transportation.
13. Personal care.
14. Respite care.
15. Specialized equipment.
16. Supported employment.
17. Transitional living service.

**PREVIOUS LEGISLATIVE STUDIES
2011-12 Interim**

Qualified Service Provider System

The 2011-12 interim Human Services Committee was assigned to study the state's QSP system. The committee learned the Department of Human Services has established a process by which individuals or agencies can report issues with QSPs and QSP care. A complaint can be either verbal or written. Complaints may include allegations of recipient self-neglect or allegations against a QSP, a family member, an agency, or any other individual. The department responds to all complaints within 14 days and seeks a resolution to all allegations.

The committee learned the Department of Human Services is exploring the possibility of providing additional oversight of QSPs by making visits to the clients' homes to ensure that the care being delivered is meeting the competency standards. The additional oversight of QSPs would allow the department to talk with the clients about satisfaction with their care and to view the environment to determine if care is being delivered appropriately.

The committee learned QSPs must agree to keep accurate records regarding services provided and respond to compliance investigations. The Department of Human Services has an annual goal of completing detailed audits of approximately 5 percent of the enrolled QSPs. The department uses a targeted approach to select potential QSPs for audit. Home and community-based care staff refers QSPs for an audit based on irregular and unusual billing patterns, numerous billing errors, and recommendations from case managers. An audit may result in recoupment of funds, technical assistance, or discontinuation of a QSP's employment. The following is an audit summary for 2007 through 2011:

Year	Number of QSPs Audited	Number of QSPs With Errors	Number of QSPs Employment Discontinued
2007	85	74	17
2008	86	71	5
2009	85	66	17
2010	85	68	13
2011	88	44	19

The committee recommended the Legislative Assembly and the Department of Human Services establish a QSP payment rate structure that provides additional funding for mileage. The 2013 Legislative Assembly provided \$2,266,733, of which \$1,714,301 is from the general fund, to the department for providing a mileage payment to QSPs traveling more than 20 miles round trip for serving a client.

PROPOSED STUDY PLAN

The following is a proposed study plan for the committee's consideration:

1. Receive information from the Department of Human Services regarding home and community-based services staffing, number of clients served, cost of providing services, and sources of funding, including third-party reimbursements.
2. Receive information from the Department of Human Services regarding the home and community-based services Medicaid waiver, including eligibility requirements, services provided, and number served.
3. Receive comments by interested persons regarding the study of home and community-based services.
4. Develop recommendations and any bill drafts necessary to implement the recommendations.
5. Prepare a final report for submission to the Legislative Management.

ATTACH:1

**Sixty-third Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 8, 2013**

SENATE BILL NO. 2375
(Senators Axness, Mathern, Murphy, Robinson)
(Representatives Hogan, Strinden)

AN ACT to provide for a legislative management study of home and community-based services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - HOME AND COMMUNITY-BASED SERVICES. The legislative management shall consider studying, during the 2013-14 interim, home and community-based services in the state, including the need to expand the home and community-based services medicaid waiver to cover twenty-four-hour emergency assistance, adult companion service, behavioral programming, chore services, customized living services, environmental modifications, and transition modification support. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-fourth legislative assembly.