

**Section 1.** Chapter 75-02-02.4 is created as follows:

**CHAPTER 75-02-02.4**  
**HOME AND COMMUNITY-BASED SERVICES INFORMED CHOICE REFERRALS**

Section

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**75-02-02.4-01. Definitions.**

As used in this chapter, unless the context or subject matter otherwise requires:

1. “Case manager” means the individual who coordinates and leads the person-centered planning process, and who provides each target population member with information about and assistance in accessing home and community-based services.
2. “Community provider” means an individual or entity that provides one or more home and community-based services, paid in whole or part by the department, to target population members.
3. “Department” means the North Dakota department of human services.
4. “Home and community-based services” means department-administered long-term services and supports that target population members are eligible to receive, and which are determined to be necessary through a person-centered planning process to serve target population members in the community.
5. “Informed choice” means:
  - a. The process by which the department ensures that target population members have an opportunity to make an informed decision about where to receive services;
  - b. A choice made after the department has provided virtual or face-to-face person centered planning and information about the benefits of integrated settings; which may include facilitated visits or other

experiences in such settings; and offered opportunities to meet with other individuals with disabilities who are living, working, and receiving services in integrated settings, with their families, and with community providers; and

c. Making reasonable efforts to identify and address any concerns or objections raised by the target population member or another relevant decision-maker.

6. “Most integrated setting” means a setting, determined through person-centered planning, that enables individuals with physical disabilities to interact with non-disabled persons to the fullest extent possible. The most integrated setting for a target population member will usually be a private residence owned or rented by the individual or their family member and in which the individual or their family member has property rights.

7. “Nursing facility level of care” means criteria that an individual shall meet to be eligible to receive services provided by a nursing facility, pursuant to section 75-02-02-09.

8. “Person centered planning” means:

a. A Medicaid-mandated process, which is driven by the individual, that identifies supports and services that are necessary to meet the individual’s needs in the most integrated setting;

b. The individual directs the process to the maximum extent possible and is provided sufficient information and support to provide informed choice; and

c. The process is timely and occurs at times and locations convenient to the individual; reflects the cultural and linguistic considerations of the individual; provides information in plain language and in a manner that is accessible to individuals within the target population; and includes strategies for resolving conflict or disagreement that arises in the planning process.

9. “Physical disability” means an impairment, including age related impairments, that substantially limits a major life activity, including one or more major bodily functions, that the individual meets nursing facility level of care.

10. “Public and private entities” include those organizations enrolled as North Dakota Medicaid providers who submit nursing facility level of care determinations for target population members in need of long-term care.

11. “Target population member” means an individual with a physical disability over the age of twenty-one who is eligible or likely to become eligible to receive Medicaid long-term services and supports and is likely to require such services for at least ninety days.

**History:** Effective January 1, 2021.

**General Authority:** NDCC 50-06-16; 50-06.2-03(6)

**Law Implemented:** 42 USC 12102; 28 CFR 35, Appendix B; 28 CFR 35.108; 42 CFR 441.725; S.L. 2019, ch. 37, § 44

#### **75-02-02.4-02. Informed choice for target population members.**

The department will work with public and private entities in identifying target population members in order to inform them about home and community-based service options. A public or private entity may not require target population members and their guardians or legal representatives to consent to the referral or sign a release of information before a referral is made. However, target population members and their guardians or legal representatives may refuse to participate in the informed consent process. The target population is comprised of:

1. Individuals with physical disabilities who are at serious risk of entering nursing facilities to access Medicaid-funded long-term care composed of individuals with physical disabilities who:
  - a. Have been referred for a level of care determination screening to access nursing facility services and are likely to require long-term services and supports;
  - b. Need services to continue living in the community, have impairments that make them likely to screen at a nursing facility level of care, and have been determined eligible for service payments for the elderly and disabled with less than twenty-five thousand dollars in assets; or
  - c. Need home and community-based services to continue living in the community and currently have a case management provider or have contacted the North Dakota aging and disability resource link; and
2. Individuals with physical disabilities who:
  - a. Are receiving Medicaid-funded nursing facility services and are likely to require long-term services and supports; or
  - b. Are receiving nursing facility services, are likely to become eligible for Medicaid within ninety days, have submitted a Medicaid

application, and seeking approval for a long-term nursing facility stay.

**History:** Effective January 1, 2021.

**General Authority:** NDCC 50-06-16; 50-06.2-03(6)

**Law Implemented:** S.L. 2019, ch. 37, § 44

### **75-02-02.4-03. Powers and duties of the department.**

The department has the following powers and duties under this chapter:

1. To assign a case manager to complete the informed choice process.
2. To provide information through a person-centered planning process led by the case manager to target population members and their guardians or legal representatives about home and community-based service options and the benefits of integrated settings.
3. To ask target population members or their guardians or legal representatives to provide written or verbal confirmation that they received information through a person-centered planning process, or that they waive their right to receive such information. Department shall retain documentation of the consent or waiver.
4. To determine and develop the type of information necessary to provide the target population members or their guardians or legal representatives with an opportunity to decide whether they oppose receiving services in the least integrated setting appropriate to meet their needs.
5. To provide information about transition supports that may be available to target population members individuals already receiving services in a nursing facility who do not oppose receiving services in the community.
6. To not unnecessarily delay the hospital discharge or nursing facility admission process of target population members if an appropriate referral has been made by a public or private entity to the North Dakota aging and disability resource link or through the request for a level of care determination no later than the day a request for a nursing facility level of care determination is submitted for approval.
7. To assist target population members in accessing home and community-based services if the target population member or their guardian or legal representative do not oppose receiving services in the community and services are appropriate to meet their needs.
8. To not impede any decision made to receive services in a nursing facility for those target population members or their guardians or legal

representatives who determine after receiving information about home and community-based options to receive or continue to receive services in a nursing facility.

**History:** Effective January 1, 2021.

**General Authority:** NDCC 50-06-16; 50-06.2-03(6)

**Law Implemented:** S.L. 2019, ch. 37, § 44

#### **75-02-02.4-04. Powers and duties of public and private entities.**

Public and private entities enrolled as North Dakota Medicaid providers have the following powers and duties to assist the department in identifying target population members and informing target population members about home and community-based service options:

1. To make a referral in a form and manner determined by the department to the North Dakota aging and disability resource link or through the request for a level of care determination for all target population members and their guardians or legal representatives who formally request or are referred for placement in a nursing facility or who are screened for a continued stay in a nursing facility. Nursing facility level of care screening determinations will not be made for target population members unless an appropriate referral has been submitted to the aging and disability resource link or through the request for a level of care determination.
2. To make a referral as soon as the target population member or their guardian or legal representative formally requests or is referred for placement in a nursing facility but no later than the day when a nursing facility level of care is submitted for approval.
3. To inform target population members, or their guardians or legal representatives, in a form and manner determined by the department, that a referral to complete the informed choice process must be made.
4. To afford case managers full access to target population members who are residing in or currently admitted to their facility to complete the informed choice process.
5. To not prevent or impede the informed consent process or attempt to influence in any way the decision of a target population member or their guardian or legal representative to receive services in the most integrated setting appropriate to meet their needs.

**History:** Effective January 1, 2021.

**General Authority:** NDCC 50-06-16; 50-06.2-03(6)

**Law Implemented:** S.L. 2019, ch. 37, § 44

#### **75-02-02.4-05. Service availability.**

The extent to which appropriate services other than informed consent services are available to target population members are dependent upon legislative appropriations and resources. Eligibility for informed consent services does not create an entitlement to services other than information about home and community-based service options if resources are not available.

**History:** Effective January 1, 2021.

**General Authority:** NDCC 50-06-16; 50-06.2-03(6)

**Law Implemented:** S.L. 2019, ch. 37, § 44

#### **75-02-02.4-06. Disclosure.**

Public and private entities may disclose target population members individually identifiable health information to the department or its contractors for referral purposes and the disclosure is a disclosure for treatment, including the provision, coordination, and management of health care.

**History:** Effective January 1, 2021.

**General Authority:** NDCC 50-06-16; 50-06.2-03(6)

**Law Implemented:** S.L. 2019, ch. 37, § 44