

ND Department of Health and Human Services

**Outlier Policy**

**Who can request an outlier?**

An Outlier Request is a temporary adjustment and may be initiated by the client, legal decision maker, or the provider agency serving the client. The request must include the decisions of the team, which consists of the client, legal decision maker, DD Program Manager (DDPM), and the provider(s).

Based on the client's assessment (Support Intensity Scale (SIS) or Inventory for Client and Agency Planning (ICAP)), an amount of assessment score hours is assigned to determine direct support staffing for specific core services.\* The core services included ICF/IID; Residential Habilitation; Independent Habilitation; Day Habilitation; Prevocational Services; Small Group Employment Support; Individual Employment Support (*see separate policy for Individual Employment Support Outlier Requests*). An Outlier Request is additional direct support staffing above and beyond the core service(s) a client is receiving.

*\*If a client does not have an assessment, the team may submit an Outlier Request prior to the assessment being completed. The request will be based and reviewed on the outlier qualifying criteria. Since assessment score hours are not available, exact outlier hours will not be defined as it is unknown how many hours the assessment score will provide. However, if the outlier is approved, the approval will define the level of staffing. Outlier hours will be allotted once an assessment is completed and in effect.*

**Team Planning Considerations Prior to Requesting an Outlier Request**

Teams must meet to discuss a potential Outlier Request. It can be up to the team if that is in person, email, or via phone, however it must be documented. The team should consider what method is most appropriate for them and this decision should be individualized. All Outlier Requests must be unique to the client and the request must specify how the need for additional hours distinguishes the person from others at the same resource allocation level.

Requests must not be submitted unless other options (i.e., natural supports, sharing staff time, environmental modifications, and learning skills) have been explored prior to the request. Thorough planning and identification of what is needed by the client on a typical basis, how certain supports will be offered, frequency of the supports, and a reflection of the person's actual routine is critical.

The service plan must also identify who/what provides the various supports needed throughout the day (e.g., paid staff, family, friends, community members, other service entities, technology, etc.). Supports for clients may be accessed through various ways and systems that work to promote autonomy, independence, skills building, community inclusion, and achievement of personal goals.

Those who know the client should focus on the client's perspective, priorities, and preferences for their services and supports, not team members' own opinions. There must be recognition that everything a client or team may want is not practical or achievable. Family members, providers, and friends do not always share the same perspective as clients on the care and

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supports they receive. The support team helps the client in sorting through personal goals to focus on the highest priority outcomes and ensure that alternative strategies for achieving personal outcomes are reviewed and understood during the planning process. It is also important for the team to consider that increased staffing hours may not be appropriate. Having increased staff hours could be considered restrictive or intrusive to the individual and could potentially have a negative effect.

Clients with significant behavioral issues must have a functional assessment and behavioral support plan that is being implemented to address the concerns identified. All appropriate environmental or adaptive equipment and technology have also been obtained and utilized.

Opportunities to share supports must be explored as an option, unless it is contraindicated. Sharing supports provides opportunities for a person to get to know others, expand a client's social network, and increase community integration. Sharing supports also provides opportunities for sharing monthly living expenses including rent, utilities, and food costs, which may result in improved housing options and having additional funds for recreation, leisure, and personal activities. Sharing supports may lead to learning opportunities through exposure to other people, customs, and ways of life.

Prior to submitting a request for an outlier, the client, legal decision maker, and/or provider must consider whether the request is truly an Outlier Request or if the situation is a major life changing event triggering a new SIS or ICAP assessment. See applicable Assessment Policy.

### **Criteria to Request an Outlier**

If a client's needs exceed the hours identified by the multiplier calculation the client may qualify for an Outlier Request if they meet **all** four of the following criteria:

1. Meet one of the medical or behavioral qualifiers outlined below;
2. Poses an imminent risk of harm to the health and safety of self and/or others\*;
3. Support needs exceed hours identified by the multiplier calculation; and
4. Other mitigation options were pursued and/or implemented prior to a request for additional support hours (i.e. shared staffing, positive reinforcement, environmental change/modification, etc.).

*\*This does not include behavior that may be considered "lack of good judgment" and/or "poor choices" by some. For those who are able to understand the risk, the rationale, and understanding of their behavior, they should have the right to make choices and be subject to the natural consequences of their behavior. Additionally, this would not include situations that might occur (e.g.- individual might elope but has not in 10 years with no attempts) or situations that are per provider policy (e.g.- every site has awake night staff whether needed or not).*

**Requests for an outlier should typically not be submitted for the following situations, as other options must be considered (i.e., shared supports, environmental modifications, assistive technology, teaching skills, etc.)**

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1. Independent Habilitation, Residential Habilitation, ICF/IID:
  - If the teams recommended number of hours exceeds the multiplier calculation by less than two hours per day, the team must consider other options to meet the client's needs.
2. Day Habilitation, Prevocational Services, Small Group Supported Employment, Individual Supported Employment:
  - If the teams recommended number of hours exceeds the multiplier calculation by less than a half hour per day, the team must consider other options to meet the client's needs.

### **Overnight Hours**

Awake overnight staffing is overnight assistance and supervision provided by a staff in the person's residence when the person has a determined need. This does not include:

- Use as a preventative service.
- Use as assumptive safety services (i.e., based on an assumption the person might need it).
- Support to a person who sleeps through the night, or who wakes up overnight but does not need assistance.
- Payment for asleep overnight staffing.

Direct service hours for the overnight would be for awake overnight staffing needs. Funding for sleep overnight hours is included within the daily rate for Residential Habilitation and not included in the calculation for direct service hours each month.

### **Outlier Request Qualifiers**

#### Medical qualifiers:

- Uncontrolled seizure disorder
  - A client has an uncontrolled seizure disorder, which is defined as frequent, typically daily seizures, uncontrolled by medication, and the person requires supervision all times to prevent injury due to the frequency or severity of seizure activity and potential for status epilepticus.
- Respiratory (trach care, vent care, chest PT)
  - A client has need for respiratory care (trach, vent care, chest PT) and uses life sustaining equipment and/or respiratory treatment such as deep suctioning or chest percussion that is required on an as needed basis requiring close monitoring.
  - Does not include Oxygen to a stable individual and oxygen setting is well established where staff assist a client with tank change, position nasal cannula and adjust to an established setting.
- Gastrointestinal Does not include regular established tube feedings (G or J) with bolus feeding to a stable individual.
  - May include additional monitoring and cares for a newly placed feeding tube.
  - May include additional monitoring and cares for a previously placed feeding tube that requires additional staff intervention (e.g.- frequent feeding adjustments, frequent dressing changes, etc.).
    - Does not include nursing interventions.
- Genitourinary

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- Does not include regular catheter care for a stable client such as cleaning the area, draining the catheter, recording input/output etc.
  - May include intermittent catheterization via clean method.
- Infection (active resistant infection)
  - A client who has a highly contagious disease or serious immune deficiency condition which may require frequent dressing changes and monitoring for infection. Basic universal precautions will not maintain health and safety for the individual or his/her roommate.
    - CDC Basic Universal precautions:  
<https://www.cdc.gov/infectioncontrol/basics/standard-precautions.html>

#### Behavioral qualifiers:

- Inappropriate sexual behavior – i.e., predatory, or sexual offending behavior
  - A client who has a history of sexual offending behavior and has been convicted of a crime or pled guilty to a sexual offense, but not convicted. Restrictions are still required in the person's service plan for convictions or admissions that happened longer than a year ago.
  - A client who has a well-documented history and currently displays inappropriate sexual behavior or pre-cursor behavior.
- Self-injurious behavior
  - A client has frequent and ongoing self-injurious behavior (i.e., head banging, skin cutting, biting self, etc.) that have the potential to result in severe injury to self unless continuous staff supervision and physical intervention is provided and may have the potential for frequent medical intervention (not including First Aid).
- Physical aggression
  - A client with frequent high intensity aggressive episodes that have resulted in injury or were life-threatening particularly if directed towards other people or resulting in significant property destruction or the potential for eviction.
  - A client needing to live alone to avoid significant physical aggression with a history of significant altercations or injury to roommates.
- Elopement
  - A client has a significant history of wandering/elopement that necessitates staff search and chase for extended periods of time unless there is another mechanism for locating the missing client. In these situations, the client is at risk and is unaware of the safety skills necessary to be safe in the community.
  - This does not include:
    - Situations when the person demonstrates understanding of the risks and rules of community safety but intentionally chooses not to follow the rules.
    - Situations where an individual is not trying to elope but doing a task without notifying staff (e.g.- individual goes to the bathroom in the same location without notifying staff where they are going).
- Criminal activity – an illegal act or violation of law in for which there is the potential for consequences or conviction by a court.
  - This does not include clients who exhibit inappropriate boundary issues due to lack of social skills/sexuality training, who can make an informed decision and understand the nature and consequences of their behavior and engage in illegal activity. This behavior may be considered “lack of good judgment” and/or “poor

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choices” by some. Opportunities for client’s ongoing teaching, training, programming, counseling, and information/education are the focus in these situations not extraordinary staffing. *For those who are able to understand the risk, the rationale, and understanding of their behavior, they should have the right to make choices and be subject to the natural consequences of their behavior.*

- Taking money, items, or food within the client’s own home does not constitute criminal activity.

#### Special Considerations:

These qualifiers are not an exclusive listing and the Department has the discretion to approve Outlier Requests that are similar in severity to other qualifiers. This will only be considered in the most rare and severe cases. A special consideration may include situations where no more than one client is receiving services in the geographical area.

#### Life Skills Transition Center (LSTC) or the North Dakota State Hospital (NDSH) qualifiers:

If a client coming from the LSTC or the NDSH and returns to the previous provider, he/she must have been in the LSTC or the NDSH for a minimum of 6 months to qualify for consideration as an Outlier Request. This 6 month timeframe is not applicable for delays in discharge (i.e., time to find staff, obtaining new home, etc.) when the reason for the continued stay is not related to the reason for admission.

If the client is leaving the LSTC or the NDSH and enrolling with a new provider, there is no minimum timeframe. Clients coming from the LSTC or the NDSH are not required to meet the imminent risk condition. Transitions from the LSTC and NDSH do not automatically qualify for outlier approval. The team will need to demonstrate how the client’s needs are in excess of the approved assessment score hours.

Requests for outlier consideration may be made at any time after the client leaves the LSTC or the NDSH, but the availability of Outlier Request consideration expires after 12 months (if the request is made two months after leaving the LSTC or the NDSH, it still expires 12 months after leaving the LSTC or the NDSH). After 12 months, the client must meet one of the medical or behavioral qualifiers in order to be considered as an Outlier Request. Clients leaving the LSTC or the NDSH may still qualify for an Outlier Request consideration under one of the other criteria.

#### **Outlier Request Process and Documentation Requirements:**

If the team decides an Outlier Request is needed, the SFN 1835 – Outlier Request Form must be filled out and submitted.

*Link to Outlier Request Form* <https://www.nd.gov/eforms/Doc/sfn01835.pdf>

The information in the Outlier Request must include information specific to the service(s) being requested and the reason for the request (e.g., if requesting for both residential habilitation and day habilitation, behavioral and medical needs must be identified for each setting). The Individual Service Plan (ISP) must reflect the authorized service(s) in the Outlier Request. Information in the form must also outline other attempts at providing supports or alternatives to assist the client in addressing the need.

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The person-centered service plan must contain all the information for the behavior or medical need(s). The service plan must also include up to date supporting documentation (e.g., RMAP, Behavior Support Plan, seizure protocol, and other protocols for health and safety) attached to the plan to justify the increased need. Team meeting discussion on the Outlier Request must be documented in the person-centered service plan.

The Request form must include a summary containing each of the Behavioral and/or Medical Needs being requested, when the needs began, how long since the last occurrence, frequency, and etc. Data and other information to justify the request must also be provided and separated out by the qualifiers being requested.

If the information can be found in the web-based case management system, it does not need to be sent with the Request Form, but the location must be indicated on the Outlier Request form. If the information cannot be found, it must be included with the request. Documentation must reflect the risk(s) associated with the medical and/or behavior qualifiers.

Examples of data may include, but are not limited to:

- Seizure logs
- Data tracking
- Medical assessments
- Nursing care plans
- Psychiatric assessments
- Behavior support plans (data tracking required)
- GER's (provide dates relevant to request)
- RMAP
- Person Centered Service Plans
- Team meeting minutes
- Medication lists
- QDDP monitoring
- Staffing schedules/documentation
- Any other information and data related to the request for each identified service

***\*For the purpose of Outliers, Tlogs are not an acceptable form of data tracking.***

If a person has minimal behavioral occurrences as a result of the staffing patterns, the provider must justify the continued need by having data showing the number of attempts or precursor behavior requiring direct staff intervention.

Outliers are a temporary adjustment. Teams are expected to develop a fading plan that will assist the client to live as independently as possible and to continuously explore alternative options. Some examples may include, but not limited to: technology, staff sharing, alone time, etc.. The fading plan should be a measurable plan and include the process staff will use to assess the effectiveness of these options while maintaining health and safety and the timeline that these opportunities will be trialed. Trials of this plan should be performed while an Outlier is in place and can be small increments of time. The fading plan must be documented in the Outlier Request along with any trials and outcomes.

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### **Submission and Approval of the Outlier Request:**

The Provider CEO will sign the completed Outlier Request Form. The following Department timelines will be effective when a completely executed outlier request and documentations are received. All requests must be typed and submitted to: [dhsddreq@nd.gov](mailto:dhsddreq@nd.gov).

The Outlier Request will be reviewed by the DD Outlier Committee where an approval or denial decision will be made within 15 business days of receipt if the Outlier Request contains the needed information to make a determination. **If the documentation to support the request is not submitted, the Outlier will be denied.** The DD Outlier Committee will notify the provider, the DDPA, DDPM, the client, and/or legal decision maker of the decision within 5 business days including the reason for the approval, denial, or incompleteness. If the Outlier Request is approved, it will be entered into the web base case management system. **If the Outlier Request is denied, appeal rights will be provided based on N.D. Administrative Code 75-04-06-07.**

**If the submitted SFN 1835 form is not completed in its entirety, the Outlier Request will be determined incomplete, and a notice will be sent back to the provider for the required information. The provider will have 10 business days from the date of the notification to submit the completed Outlier Request form to the Outlier Committee. If the completed form is not submitted within the 10 business days, the outlier request will be considered denied. If the need is still present, a new Outlier Request will need to be submitted.**

The effective date of the approved Outlier Request will be one of the following:

- The date the completed request was received by the DD Section. This would be applicable for a new outlier request for any currently authorized services.
- Start date of a newly enrolled authorized service in the ISP. This would be applicable to align the Outlier with the start date of a new service.
- The day following the end date of a previously approved Outlier to maintain continuity of the Outlier. The completed request would need to be received by the DD Section prior to the end date of the previously approved Outlier, otherwise the effective start date, if approved, would be the date the DD Section received the completed request.

The provider will be reimbursed beginning on the identified effective start date of the approved Outlier. If the request is denied, payment will not occur after the end date of the prior approved Outlier Request.

If an Outlier Request is denied, it can only be re-submitted if there is new information and documentation for review that wasn't included in the previous request. If an Outlier Request is re-submitted there must be discussions among the team members to ensure all are aware of the re-submission, and the team has reviewed and discussed the proposed changes or additional information submitted. If no new information is submitted, the original Outlier Request decision will be upheld.

Outlier Requests will only be approved for 6 to 12 months; however, the timeframe will be based on the specific needs of the client and may be shorter to align with the person-centered service plan date. An Outlier Request does not automatically renew. Teams need to meet to discuss if an Outlier Request continues to be needed. If the team determines that an Outlier Request is still necessary, the request must be submitted in advance of the end date of the Outlier and to allow for review timelines ensuring continuity of services. If an Outlier Request is not submitted within the timeframes, there may be a lapse in the continuity of **the outlier**.

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If a new SIS or ICAP assessment becomes available during the approved Outlier timeframe, the approved Outlier amount may need to be adjusted to reflect the same approved hours. The team must discuss the changes resulting from the new assessment and determine if the need for an Outlier Request remains or if any modifications to the plan are needed to address the delivery of services.

Outlier Requests are not transferrable (between service locations or providers) and a new Outlier Request will need to be submitted.

### **Appeals**

Outlier Requests are a temporary adjustment to meet the client's needs within a specified time frame. An Outlier Request is additional support above and beyond the core service(s) a client is receiving. A denial of an Outlier Request is not considered a denial, reduction, or termination of the client's core service(s). **A denial of an Outlier Request is appealable under N.D. Administrative Code 75-04-06-07. The expiration of the Outlier Request is not considered a denial, reduction, or termination of services and is not appealable.**

**Clients and/or legal decision makers have the right to request an informal conference and/or file a formal appeal under N.D. Administrative Code 75-04-06-07. -The decision notice contains information on the right and how to appeal. Provider agencies do not have the right to request a reconsideration or appeal.**