



U.S. Department of Justice

Civil Rights Division

*Disability Rights Section – 4CON
950 Pennsylvania Ave, NW
Washington, DC 20530*

January 16, 2025

By First Class Mail and Electronic Mail

Governor Brad Little
State Capitol
PO Box 83720
Boise, ID 83720
Email: Emily.Callihan@gov.idaho.gov

Re: United States’ Investigation Under Title II of the Americans with Disabilities Act of Idaho’s Long-Term Care Service System for Adults with Physical Disabilities

Dear Governor Little:

We write to report the findings of our investigation of Idaho’s long-term care system¹ for adults with physical disabilities. In response to complaints from individuals receiving services in the State’s long-term care system, we assessed the State’s compliance with Title II of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12131–12134, as interpreted by the Supreme Court in *Olmstead v. L.C.*, 527 U.S. 581 (1999), which requires public entities to administer services to individuals with disabilities in the most integrated setting appropriate to their needs. Title II authorizes the U.S. Department of Justice (the Department) to investigate, make findings of fact and conclusions of law, attempt to secure voluntary compliance, and file a lawsuit if violations are found. 28 C.F.R. § 35.172.

We have determined that Idaho is violating the ADA by administering its long-term care system in a way that unnecessarily segregates individuals with physical disabilities in nursing facilities and places others at serious risk of such unnecessary segregation. This letter describes the Department’s findings and outlines steps the State can take to remedy the ADA violations we identified.

We would like to first thank the State for its cooperation and acknowledge the courtesy and professionalism of the State officials who participated in this investigation. We hope to continue our collaborative and productive relationship as we work together to resolve the violations described below.

¹ In this context, “long-term care system” refers to State-administered long-term care services provided to adults with physical disabilities in nursing facilities and community-based settings.

I. Summary of Findings

We found that Idahoans with physical disabilities want to live in their own homes and communities. Yet with limited access to community-based services, hundreds, if not thousands, of Idahoans are relegated to living in nursing facilities when they could otherwise live at home. Many nursing facility residents would prefer to live in the community. Idaho offers the necessary services for adults with physical disabilities to live in the community: caregiving services, skilled nursing, case management, transition services, housing modification services, and housing services, including housing assistance coupled with supports, also referred to as permanent supportive housing. These services are funded by Medicaid and other federal and State funds. However, Idaho limits access to these services. As a result, very few Idaho nursing facility residents receive access to community-based service options to transition to the community. When asked by nursing facility staff, approximately 65% of Idahoans in nursing facilities reported that their goal is to discharge to the community. Yet 82% of nursing facility residents did not have an active discharge plan according to an October 2024 report.²

Many nursing facility residents in Idaho, including the many residents who are relatively young or have low care needs, could live in the community with appropriate supports.³ For example, one nursing facility resident entered the nursing facility in his 20s, and remains there today, over a decade later, despite his stated desire to return to the community. Compared with other states, Idaho has a high proportion of nursing facility residents with low care needs,⁴ many of whom would require little support to live in the community. Even those with more significant care needs could live in their own homes and apartments with services if Idaho made those services available in the community.

Idaho ranks 42nd in the country for access to and affordability of long-term services and supports, including community-based services for people with physical disabilities.⁵ It has limited the capacity of services in its community-based service system and over-relies on institutional settings to meet the long-term care needs of people with disabilities. For example, Idaho has decreased its spending on community-based services for the average enrollee on the Aged & Disabled (A&D) waiver in recent years while rapidly increasing its spending on the average nursing facility resident. In 2017, the State's Medicaid program spent an average of \$21,944 per person on community-based services for those enrolled on the A&D waiver and spent \$70,368 per person to serve people in nursing facilities.⁶ By 2022, the amount spent on the average A&D waiver enrollee living at home had dropped to \$13,463, while the amount spent on the average

² Centers for Medicare and Medicaid Services (CMS), MDS_Frequency_Q3_2024 (on file with DOJ) [hereinafter MDS_Frequency_Q3_2024].

³ For example, a substantial number of Idaho nursing facility residents are under the age of 65. *Id.*

⁴ AARP Found., Long Term Services and Supports Scorecard app. K (Sept. 2023), <https://ltsschoices.aarp.org/sites/default/files/documents/2023-09/2023%20LTSS%20Scorecard%20Full%20Appendices.pdf> (last visited Jan. 7, 2025).

⁵ *Id.* app. G.

⁶ CMS, CMS 372 Annual Report on Home- and Community-Based Waivers for Report Period 2017 (on file with DOJ).

nursing facility resident had increased to \$85,800.⁷ Community-based services exist, but low provider capacity means that Idahoans with disabilities do not receive the services they need.

As a result of Idaho's policies and practices, there are a limited number of home health providers, particularly in rural areas. Idaho's low Medicaid reimbursement rates make it difficult for agencies to recruit and retain providers.⁸ Availability of community-based services is further depressed by the State's failure to authorize the personal care service hours and other community-based services that Idahoans with disabilities need to live in the community. Idaho is thus paying more for its citizens to receive nursing facility care, even though many would prefer less expensive services at home. But by failing to invest in its community-based workforce or authorize community-based services, Idaho leaves individuals with disabilities no choice but to turn to more expensive nursing facilities to receive care.

People with disabilities also remain trapped in nursing facilities because of the State's failure to provide adequate case management and transition services to move those interested out of nursing facilities and to enable others hoping to avoid nursing facilities to remain in the community. While Idaho previously invested in case management and transition services, as well as other community-based services, the State's financial support plummeted in recent years. From 2018 through 2023, the utilization of and expenditures for transition services remained relatively low.

Idaho could remedy the violation and comply with the ADA by making changes to its existing service system for individuals with physical disabilities, including: (1) increasing access to necessary community-based services; (2) expanding the State's community-based service capacity; (3) ensuring that individuals can access case management services; (4) providing effective transition services; and (5) improving access to housing services to enable individuals in nursing facilities to return to the community. These changes would enable Idaho to transition nursing facility residents who are appropriate for and desire community-based services to the community, help them remain in the community, and prevent others from becoming unnecessarily segregated in nursing facilities.

II. Investigation

The Department opened its investigation in response to multiple complaints alleging that the State's long-term care system unnecessarily segregates individuals with physical disabilities in nursing facilities and places other individuals at serious risk of unnecessary segregation. In April 2024, we notified the State that we had opened a statewide investigation into whether Idaho serves adults with physical disabilities in the most integrated setting appropriate to their needs. During our investigation, we interviewed Idahoans with physical disabilities residing in nursing facilities, and people who are currently living in the community and unable to access the services they need. We interviewed providers, caregivers, and advocates across the State, including case

⁷ CMS, CMS 372 Annual Report on Home- and Community-Based Waivers for Report Period 2022 (on file with DOJ) [hereinafter CMS 372 Annual Report on Home- and Community-Based Waivers for Report Period 2022].

⁸ *E.g.*, Office of Performance Evaluation (OPE), Sustainability of Idaho's Direct Care Workforce at 43 (Feb. 2023), <https://legislature.idaho.gov/wp-content/uploads/OPE/Reports/r2202.pdf> (last visited Jan. 7, 2025).

managers and transition managers; social workers; and administrators and staff at nursing facilities and hospitals. Finally, we requested and reviewed information from the State about the administration of its long-term care system for adults with physical disabilities and interviewed State administrators and staff.

III. Idaho's Long Term Care Services System

The Idaho Department of Health and Welfare (IDHW) administers the State's Medicaid program, which covers long-term care for Idahoans with physical disabilities in nursing facilities and in the community.⁹ IDHW sets the amounts that Medicaid providers get paid. While many individuals receive long-term care for which IDHW pays service providers directly (fee for service), certain populations, such as those who qualify for both Medicaid and Medicare, receive these services paid through an intermediary managed care plan. IDHW contracts with managed care plans to manage these individuals' services.¹⁰ The State funds community-based services in part through its Aged & Disabled (A&D) waiver program, but severely limits the availability of such services. As a result, hundreds if not thousands of Idahoans receive services in nursing facilities despite many being appropriate to receive services at home and wanting to live at home with services.

A. Idaho's Nursing Facilities

Over 4,000 Idahoans receive Medicaid-funded services in the State's nursing facilities.¹¹ IDHW licenses and regulates these facilities.¹² It also sets the fee schedule for nursing facility services¹³ and the daily payment rate for nursing facilities.¹⁴ In addition to this daily Medicaid

⁹ *E.g.*, Idaho Code § 56-255(3)(d) (medical assistance provided under the State's Medicaid program includes nursing facility services and community-based services).

¹⁰ *See* IDHW, Medicaid/Medicare Participants, <https://publicdocuments.dhw.idaho.gov/WebLink/DocView.aspx?id=29987&dbid=0&repo=PUBLIC-DOCUMENTS> (last visited Jan. 7, 2025) (discussing the Medicare Medicaid Coordinated Plan and the Idaho Medicaid Plus program); *see also* Idaho Code § 56-263 (governing Idaho's Medicaid Managed Care programs).

¹¹ MDS_Frequency_Q3_2024, *supra* note 2.

¹² *E.g.*, Idaho Admin. Code § 16.03.02.050 (governing the licensure of skilled nursing facilities).

¹³ IDHW, April to June 2024 Fee Schedule, <https://publicdocuments.dhw.idaho.gov/WebLink/DocView.aspx?id=29550&dbid=0&repo=PUBLIC-DOCUMENTS> (last visited Jan. 7, 2025) (setting the fees for a range of services, including certain services provided in nursing facilities).

¹⁴ Idaho Code § 56-117 (authorizing the payment of "special rates" to facilities); Idaho Admin. Code § 16.03.10.270.06(c) (governing the special rate add-on amounts for nursing facility residents who are ventilator dependent or receive tracheostomy care); IDHW, SNF 2025 Per Diem Rates (Oct. 1, 2024), <https://publicdocuments.dhw.idaho.gov/WebLink/DocView.aspx?id=31543&dbid=0&repo=PUBLIC-DOCUMENTS> (last visited Jan. 7, 2025).

payment, nursing facilities can also receive hundreds of extra dollars per day¹⁵ to care for residents who require ventilators or tracheostomy care.¹⁶

B. Idaho’s Community-Based Services

IDHW offers community-based services to adults with physical disabilities through its Medicaid State Plan and through the A&D waiver. The Medicaid State Plan covers up to 16 hours per week of personal care services to help with activities like bathing and dressing for adults with physical disabilities who qualify for Medicaid.¹⁷ The A&D waiver extends an additional set of services to adults with physical disabilities who qualify for a nursing facility level of care. While Idaho Medicaid thus covers a range of community-based services for adults with physical disabilities, limitations on the availability of such services make them illusory for many individuals.

The goal of the A&D waiver is to allow Idaho residents with physical disabilities who would otherwise require a nursing facility level of care to be able to live in the community.¹⁸ The waiver offers an array of caregiving services, including: chore services, attendant care, homemaker, and companion services.¹⁹ Chore services include services that are needed to maintain safe use of the home, such as yard work and sidewalk maintenance. Like personal care services, attendant care services assist individuals with their activities of daily living; attendant care services “are provided when personal care services furnished under the approved State plan limits are exhausted.” Homemaker services include tasks like laundry, meal preparation, and other routine housekeeping duties. Finally, “companion services include non-medical care, supervision, and socialization provided to a functionally impaired adult,” such as those who have a tendency to wander or are at risk for a sudden health event.

The A&D waiver does not include a stated limitation on the number of hours per day of waiver services an individual can receive. The only limitation is that Idaho can refuse entrance to

¹⁵ Daily payment rates are typically in the \$200–300 range, and facilities can receive an extra \$348.07 or \$205.97 per patient requiring ventilator or tracheostomy care, respectively. IDHW, Medicaid Nursing Facilities, <https://healthandwelfare.idaho.gov/providers/idaho-medicaid-providers/medicaid-nursing-facilities> (last visited Jan. 7, 2025).

¹⁶ IDHW also administers a Nursing Facility Quality Payment Program that provides nursing facilities a supplemental payment based on certain quality measures. Idaho Code § 56.1511(6); IDHW, State Plan Attachment 4.19-D Section 449, Supplemental Payments (Jan. 1, 2022), <https://publicdocuments.dhw.idaho.gov/WebLink/DocView.aspx?id=20783&dbid=2&repo=PUBLIC-DOCUMENTS> (last visited Jan. 7, 2025).

¹⁷ Idaho Admin. Code § 16.03.10.303(05)(a) (“Adults who receive [personal care services] under the State Medicaid Plan option are limited to a maximum of sixteen (16) hours per week per participant”); IDHW, Idaho Medicaid Provider Guidelines (June 26, 2024), <https://www.idmedicaid.com/Provider%20Guidelines/Agency%20Professional.pdf> (last visited Jan. 7, 2025) (“This section covers services provided under Personal Care Services (PCS), which is a state plan service, not a waiver service. For adults receiving services under the State Medicaid Plan Option, service delivery is limited to a maximum of 16 hours per week per participant.”).

¹⁸ IDHW, Application for 1915(c) HCBS Waiver: ID.1076.R07.01 (Apr. 1, 2024) [hereinafter Application for 1915(c) HCBS Waiver: ID.1076.R07.01].

¹⁹ *Id.* at 59, 69, 74, 76 (defining these services).

the A&D waiver if an individual's care in the community would exceed the cost of nursing facility care.²⁰ But because nursing facility care is so costly, it is unlikely that individuals' care would cost more in the community.²¹

In practice, waiver services are difficult to access. While waiver participants may theoretically receive a combination of community-based services that covers much of the day, even up to 24 hours per day, the great majority receive relatively few hours of services.²² Idaho authorizes fewer hours of community-based services than individuals report they need. Further, Idaho fails to maintain a statewide network of Medicaid providers of community-based services, so individuals cannot find providers to fulfill the hours of services they are authorized to receive. Community-based providers throughout the State report that they turn away people seeking services funded by Medicaid because they don't have the capacity to serve them. They struggle to recruit and maintain staff because the State sets such low Medicaid payment rates.²³

C. Transition Services

Idaho offers a variety of services that can help individuals transition and access housing. Using federal funds, the State operates the Idaho Home Choice Money Follows the Person program to help individuals leave nursing facilities and instead receive services in their own homes or apartments. But in recent years, Idaho limited these transition services to a very small number of people per year. This transition program provides individuals who want to move out of nursing facilities up to \$2,000 toward certain costs of transitioning from a nursing facility to the community, such as a housing security deposit, and access to a transition manager to help coordinate their transition.²⁴ The program also provides up to 72 hours of assistance from a transition manager to help individuals transition home with the services and equipment they need.²⁵ Recent reports indicate that the program serves only a fraction of the people who could benefit from such services, and that individuals in the program receive only a fraction of the money available to them under the program.²⁶ The State continues to anticipate low transition numbers through 2028, and projected that only a small number of waiver enrollees would transition each year, with an average cost of \$1,079 per individual.²⁷

²⁰ *Id.* at 26 (“Pursuant to 42 CFR 441.301(a)(3), the state refuses entrance to the waiver to any otherwise eligible individual when the state reasonably expects that the cost of the home and community-based services furnished to that individual would exceed 100% of the cost of the level of care specified for the waiver.”).

²¹ CMS 372 Annual Report on Home- and Community-Based Waivers for Report Period 2022, *supra* note 7.

²² Claims data provided by State (on file with DOJ).

²³ OPE, *supra* note 8, at 33 (Feb. 2023).

²⁴ Blue Cross of Idaho, Accessing Idaho Home Choice Program Workflow (on file with DOJ); IDHW, Idaho Home Choice Transition Benefits Summary (on file with DOJ).

²⁵ *Id.*

²⁶ *E.g.*, CMS, CMS 372 Annual Report on Home- and Community-Based Waivers for Report Period 2021, at 9 (on file with DOJ); CMS 372 Annual Report on Home- and Community-Based Waivers for Report Period 2022, *supra* note 7, at 9.

²⁷ Application for 1915(c) HCBS Waiver: ID.1076.R07.01, *supra* note 18, at 220, 235, 241–60.

D. Case Management Services

In addition to the Idaho Home Choice Money Follows the Person transition program, Idaho recently started to offer Medicaid-funded case management to A&D waiver enrollees. These case managers can help individuals apply for and access Social Security and other benefits to pay rent, and to access housing, including housing provided through Idaho’s federally-funded programs. However, these case management services are limited to no more than two hours per month per enrollee. To receive more than two hours in a given month, the participant must be experiencing a “crisis,” and request and be approved for “crisis case management.”

E. Housing Services

Idaho offers several housing services to adults with physical disabilities. The A&D waiver offers Medicaid-funded housing modification benefits. Idaho also administers federally funded permanent supportive housing, which provides rental or leasing assistance and supportive services to help individuals with a disability achieve housing stability.²⁸ Finally, Idaho has federal and local housing subsidies and incentive programs to provide housing vouchers and encourage developers to build new integrated, affordable, accessible housing. The State’s Five-Year Consolidated Plan identified “three ‘Priority Housing Needs’ populations: Elderly (age 62+), Disabled, and Extremely-Low Income” for these programs.²⁹ Yet in a 2022 study, Idaho stakeholders surveyed, including disability advocates, low-income households, and other advocates and residents from across Idaho described the availability of affordable and accessible housing units for persons with disabilities as “wildly insufficient.”³⁰ An overwhelming majority of stakeholders agreed that “state and local policies *do not* sufficiently encourage the placement of persons with disabilities in apartments, single family homes and other integrated community settings.”³¹ Many nursing facility residents report a need for housing services. Yet Idaho does not make these various housing services available to the vast majority of individuals who need them to leave nursing facilities.

IV. Findings

Idaho fails to provide services to individuals with physical disabilities in the most integrated setting appropriate to their needs, in violation of Title II of the ADA. 42 U.S.C. § 12132; 28 C.F.R. § 35.130(d). The State plans, administers, and funds its long-term care services in a

²⁸ Idaho Housing and Finance Association (IHFA), Homelessness Assistance, <https://www.idahohousing.com/homelessness-services-programs/house-idaho-collaborative/> (last visited Jan. 7, 2025) (“Idaho Housing and Finance Association is the recipient of the majority of federal homelessness assistance funds awarded to Idaho and is responsible for the grant administration and oversight of several predominant programs. . . . that include[] homelessness prevention, emergency shelters, rapid re-housing, and *permanent supportive housing*.”) (emphasis added).

²⁹ IHFA, 2023 Annual Action Plan for Idaho’s Federal Community Development and Affordable Housing & Development Programs, at 7 (Feb. 17, 2023), <https://commerce.idaho.gov/content/uploads/2023/02/2023-Unique-Appendices-DRAFT.pdf> (last visited Jan. 7, 2025) [hereinafter IHFA 2023 Annual Action Plan].

³⁰ Root Policy Research, State of Idaho: Analysis of Impediments to Fair Housing Choice § V, at 1–2 (Mar. 1, 2022), <https://www.idahohousing.com/documents/state-of-idaho-analysis-of-impediments-2022-draft.pdf> (last visited Jan. 7, 2025).

³¹ *Id.*

manner that unnecessarily segregates many individuals with physical disabilities in nursing facilities, and places other individuals at serious risk of such segregation. *See* 28 C.F.R. § 35.130(b)(3), (d). Many Idahoans with physical disabilities currently in nursing facilities could be appropriately served in the community and would prefer to live at home with appropriate services. Many Idahoans with physical disabilities currently in the community are at serious risk of segregation in nursing facilities because they cannot access the community-based services necessary to avoid nursing facility admission.

Title II of the ADA prohibits public entities from discriminating on the basis of disability. 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a). Public entities may not, based on disability, exclude qualified individuals from participating in, or deny them the benefits of, the entity’s services, programs, or activities. *Id.* In passing the ADA, Congress explicitly found that segregation of people with disabilities is a “form[] of discrimination.” 42 U.S.C. §§ 12101(a)(2), 12101(a)(5). Title II thus requires states to “administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.” 28 C.F.R. § 35.130(d). The “most integrated setting” is one that “enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible.” 28 C.F.R. pt. 35, app. B, at 711. A state therefore violates the ADA when it administers and funds services for people with disabilities in a manner that unnecessarily segregates them. *See* 42 U.S.C. § 12132; 28 C.F.R. § 35.130(d).

In *Olmstead*, the Supreme Court held that the ADA prohibits unjustified isolation of people with disabilities. 527 U.S. at 597. Public entities that provide services to individuals with disabilities must offer those services in integrated settings when (1) such services are appropriate to the individuals’ needs; (2) the individuals do not oppose integration; and (3) the entity can make reasonable accommodations to provide services in integrated settings, given its available resources and the needs of other individuals with disabilities. *Id.* at 607. A public entity must modify its policies, practices, and procedures to avoid discrimination on the basis of disability, unless the entity can show that the modifications would fundamentally alter the nature of its services, programs, or activities. 28 C.F.R. § 35.130(b)(7)(i).

Below we describe our findings relating to Idaho’s violation of Title II’s integration mandate. Idaho unnecessarily relies on segregated settings—nursing facilities—to serve people with physical disabilities who are appropriate for community-based care, and would prefer, to receive services in integrated settings. Idaho covers personal care services and other services necessary to appropriately serve individuals with physical disabilities at home under its Medicaid program. But the State has limited the capacity of its community-based services. As a result, there are too few community providers to make the services actually available to those who qualify to receive them. Even though Idaho’s current rules allow the State to authorize enough community-based services to meet most individuals’ needs in the community, the State limits individuals’ community-based hours, and so many must enter nursing facilities to get the care they need. Idaho also fails to provide sufficient access to transition services, case management services, and permanent supportive housing. Idaho can and should modify its service system to help people with physical disabilities access services in the community.

A. Idaho Is a Public Entity, and Idaho’s Nursing Facilities Are Segregated Settings.

The State of Idaho is a public entity under the ADA. 42 U.S.C. § 12131(1). Public entities, like Idaho, must ensure that their services, programs, and activities comply with Title II, even when those services are operated by private entities through contracts or other arrangements. 28 C.F.R. § 35.130(b)(3).

It is well established that nursing facilities are segregated settings. *E.g.*, *Day v. District of Columbia*, 894 F. Supp. 2d 1, 22–23 (D.D.C. 2012); *Rolland v. Cellucci*, 52 F. Supp. 2d 231, 237 (D. Mass. 1999); *see also, e.g.*, *M.R. v. Dreyfus*, 697 F.3d 706 (9th Cir. 2012) (recognizing integration mandate claim on behalf of plaintiffs at serious risk of entering nursing facilities); *Cota v. Maxwell-Jolly*, 688 F. Supp. 2d 980 (N.D. Cal. 2010) (same). Idaho’s nursing facilities are large institutional settings that only serve individuals with disabilities. Idaho Code § 39-1301(b) (outlining the nursing facility level of care). The only individuals without disabilities who residents encounter are staff or visitors. Residents thus have very few opportunities to interact with nondisabled persons and are segregated from the community.

B. Community-Based Service Settings Are Appropriate for Idahoans with Physical Disabilities.

Idahoans with physical disabilities currently in nursing facilities and those at serious risk of entering such facilities can appropriately be served in community-based settings. Many individuals currently in nursing facilities have conditions and needs similar to those living in community-based settings. *See Disability Advocates, Inc. v. Paterson (DAI II)*, 653 F. Supp. 2d 184, 245–46 (E.D.N.Y. 2009) (evidence that individuals with similar disabilities were living and receiving services in integrated settings demonstrated appropriateness), *overruled on other grounds by Disability Advocates, Inc. v. Cuomo*, 675 F.3d 149 (2d Cir. 2012). For individuals currently in the community but at serious risk of segregation in nursing facilities, their authorization for services that they cannot access and their history of living in the community demonstrate their appropriateness to remain in such settings. *See, e.g.*, *Radaszewski v. Maram*, 383 F.3d 599, 612–13 (7th Cir. 2004) (finding appropriateness based on plaintiff’s years of living at home with community-based services); *Cota*, 688 F. Supp. 2d at 994 (plaintiffs currently in their homes were appropriate for community-based placement).

Although Idahoans in nursing facilities have a range of conditions, their needs can ordinarily be met with appropriate community-based services. For individuals who need assistance with activities such as medication management, bathing, grooming, housekeeping, shopping, and meal preparation, personal care services and similar waiver services in the community can provide assistance. In-home nursing services can help individuals with more intensive needs, including transfers, catheter care, and those with tracheostomies or medical devices. Medical records and the State’s data confirm that individuals in nursing facilities in Idaho have conditions and needs that are similar to those currently living in community settings. Thus, individuals in nursing facilities could have their needs appropriately met by community-based services. As such, “nothing about their disabilities necessitates living in” segregated settings and they could be appropriately served in the community. *DAI II*, 653 F. Supp. 2d at 256.

This finding is especially unsurprising in Idaho, where approximately 19% of nursing facility residents are under the age of 65 and 13.8% have low care needs.³² Other residents previously lived at home with assistance from a paid caregiver. Of those, most reported a positive experience in the community. But many entered a facility because they required more hours of care than the State authorized them to receive at home and/or the State’s community provider network was unable to staff their authorized hours.

C. People with Disabilities Receiving Services in Idaho’s Long Term Care System Prefer Community-Based Settings.

Many Idahoans with physical disabilities in nursing facilities would prefer to receive services at home, in community-based settings. Medicaid data confirms that a significant portion of residents are interested in leaving the facility and receiving services in the community, thus confirming widespread non-opposition.³³ Even more individuals would likely choose community-based services if offered them and if such services were in fact available. *See, e.g., DAI II*, 653 F. Supp. 2d at 263 (people reporting “a preference to move out of their [segregated setting] is merely ‘a floor’ with regard to who would truly be willing to move if given” information and support needed to make a “true choice”).

D. Idaho’s Administration of Its Long-Term Care System Leaves People with Physical Disabilities with Little Choice but to Enter Nursing Facilities to Receive Necessary Services.

Idaho administers its long-term care system in a way that causes unnecessary segregation of individuals with physical disabilities and puts others at serious risk of such segregation, in violation of the ADA. *See* 42 U.S.C. § 12132; 28 C.F.R. § 35.130(d); *Olmstead*, 527 U.S. at 587. Specifically, Idaho limits access to community-based services by limiting the capacity of community-based services and failing to authorize such services. Even though a report commissioned by Idaho’s Legislature acknowledged the insufficiency of its community-based services, the State has failed to remedy the problem.

Limiting Authorization of Community-Based Services

Idaho has a practice of not authorizing enough hours of community-based services for individuals to remain in the community, even though many prefer services at home. Despite having no stated hourly cap for services other than personal care services, Idaho sets unofficial limitations on the total hours of services. Adults with physical disabilities who reside in nursing facilities report that it was difficult to receive authorization for the number of hours they needed to live safely in the community. Thus, the nursing facility was their only option to get the services they needed, regardless of their preference to stay at home.

³² MDS_Frequency_Q3_2024, *supra* note 2; AARP Found., *supra* note 4, app. K.

³³ MDS_Frequency_Q3_2024, *supra* note 2.

Limiting Capacity of Community-Based Service Providers

Idaho lacks sufficient capacity of community-based service providers to meet demand. Nursing facility residents described a lack of community-based services as a significant factor in their admission to, and continued stay in, the facility. As of 2023, the Idaho Legislature’s Office of Performance Evaluation (OPE) reported that, by conservative estimates, Idaho was about 3,000 workers short of national staffing levels, and that number is expected to grow to 9,500 by 2032.³⁴

As the State’s own report acknowledges, the State’s policy decisions prevent it from maintaining a larger workforce to provide services to individuals with physical disabilities at home. OPE found that while “there is a nationwide shortage of direct care workers, . . . state policy decisions have contributed to a worse situation in Idaho.”³⁵ As the primary payer of community-based services, OPE concluded that “Idaho’s Medicaid rates do not support sustainable competitive wages for direct care workers.”³⁶ Direct care workers “reported that low pay was the main reason they did not intend to keep working in [the field].”³⁷ For comparison, Idaho pays at a rate that translates to less than \$15 per hour reaching community-based nursing assistants in Idaho — other staff providing community-based services receive as little as \$11.49 per hour.³⁸ OPE further noted that, in contrast, these workers could earn nearly \$20 an hour and \$15 hour, respectively, if they left direct care.³⁹ Despite the acknowledged need for additional community-based service providers, the State allocates a significant amount of its long-term care spending to nursing facilities. In 2022, the State spent only 16% as much serving Idahoans in the community as the State’s Medicaid program spent serving them in nursing facilities on a per person basis—an average of \$13,463 on each person on the A&D waiver compared to \$85,800 on the average nursing facility resident.⁴⁰

Limiting Transition Services

The State’s transition services do not ensure that individuals who are appropriate for and do not oppose community-based services can access those services and transition to the community. Although hundreds of nursing facility residents reported having the goal of returning to the community, a vast majority of interested nursing facility residents did not receive help to transition.⁴¹ Few residents seem to be aware of the transition programs, and even fewer are referred for such programs. For those who do receive transition services through these programs, the services are often inadequate due to a lack of funding and support for transition programs. For

³⁴ OPE, Sustainability of Idaho’s Direct Care Workforce, at 5, 15 (Feb. 2023), <https://legislature.idaho.gov/wp-content/uploads/OPE/Reports/r2202.pdf> (last visited Jan. 7, 2025).

³⁵ *Id.* at 3.

³⁶ *Id.* at 6.

³⁷ *Id.* at 5.

³⁸ *Id.* at 5–6.

³⁹ *Id.* at 6.

⁴⁰ CMS 372 Annual Report on Home- and Community-Based Waivers for Report Period 2022, *supra* note 7.

⁴¹ See e.g., MDS_Frequency_Q3_2024, *supra* note 2 (approximately 65% of Idahoans in nursing facilities say their goal is to discharge to the community, but 82% of them do not have an active discharge plan).

example, individuals may require more than the State's cap of 72 hours of services to help them successfully transition back home with all the services and equipment they need.

The lack of access to Idaho's transition program and the State's limitations on transition services leave individuals stuck in nursing facilities even though many would prefer to transition and could safely do so with services that exist in Idaho's system.

Lack of Case Management

Many Idahoans with physical disabilities require, but do not receive, case management services to help them navigate the State's community-based service system, find and retain home health staff, and access housing services. Many Medicaid recipients — those receiving personal care services and A&D waiver services — have historically been denied access to case management. Many only became eligible for case management services earlier this month, as the result of a new budget appropriation. Even with the recent addition of case management services, such participants must opt-in to the service and will only receive two hours per month of case management. These two hours are to include conversations between case manager and client, as well as any work the case manager does on behalf of the client. While the expansion of eligibility for case management is a positive step, the State must connect individuals to case management services and ensure that it is sufficient to meet the needs of people with disabilities.

Limiting Access to Housing Services

Barriers to housing services also prevent nursing facility transitions. Idaho has a variety of services designed to help individuals with disabilities access integrated, affordable, accessible housing that could help address unnecessary institutionalization in nursing facilities.

These services include permanent supportive housing; A&D waiver home modification services to help individuals add wheelchair ramps, grab bars, and other modifications to make their homes or apartments physically accessible; and cash assistance to pay security deposits and other costs of moving from a nursing facility to the community. Case management and transition services can help individuals apply for subsidized housing, access Social Security benefits and other resources to help pay rent on private apartments. Finally, Idaho has access to federal and local subsidies and tax programs to develop additional units of integrated, affordable, accessible housing for this population.

But Idaho limits the availability of these services by failing to connect adults with physical disabilities to these services. Lack of access to housing services prolongs unnecessary segregation of individuals in nursing facilities and contributes to nursing facility admissions for individuals with unstable housing or housing that becomes unsuitable when they develop accessibility needs.

Idaho has recognized that individuals with disabilities struggle to access permanent supportive housing as an alternative to institutionalization. The State's Five-Year Consolidated Plan for affordable housing and development prioritizes providing Idaho's housing resources to

the following populations: “Elderly (age 62+), Disabled, and Extremely-Low Income.”⁴² Many adults with physical disabilities in Idaho fall into all three categories. A 2022 comprehensive study prepared for the Idaho Housing and Finance Association and Idaho Commerce listed “[a]ffordable housing for people with disabilities leaving institutional settings” and “[a]ffordable, integrated housing for residents needing supportive services” among “stakeholders’ top ranked needs.”⁴³ Yet nearly 75% of those who responded to relevant questions in the study “articulated that state and local policies *do not* sufficiently encourage the placement of persons with disabilities in apartments, single family homes and other integrated community settings.”⁴⁴ In fact, Idaho has not used all of its allotted federally-funded housing vouchers.⁴⁵

V. Idaho Could Remedy These Violations

Idaho can implement reasonable modifications that would remedy these violations without fundamentally altering the State’s service system. *See* 28 C.F.R. § 35.130(b)(7)(i) (a public entity must modify its policies, practices, and procedures to avoid discrimination on the basis of disability, unless the entity can show that the modifications would fundamentally alter the nature of its services, programs, or activities). Idaho does not need to develop new services to serve individuals with physical disabilities in the community. Instead, Idaho could remedy the violation by modifying its existing services and policies. These modifications, outlined below, would allow more Idahoans to access community-based services that are typically less costly than nursing facility services.

Idaho could (1) increase access to community-based services by authorizing sufficient service hours; (2) improve access to community-based services by expanding the capacity of community-based service providers; (3) ensure that individuals can access case management services, including person-centered planning, to better help individuals access and maintain community-based services and supports available to them; (4) improve its transition services to make it easier for individuals in nursing facilities to transition to community-based settings; and (5) improve access to housing services.

Increase Access to Community-Based Services

Idaho could ensure that participants in its long-term care service system are authorized to receive services at the level necessary for them to live safely in the community. Idaho could take

⁴² IHFA 2023 Annual Action Plan 29, *supra* note, at 7.

⁴³ Root Policy Research, Presentation: 2022-2027 Analysis of Impediments (AI) to Fair Housing Report, at 5, https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Ffairhousingforum.org%2Fwp-content%2Fuploads%2FIdaho-AI-executive-summary_with-infographics-002.pptx&wdOrigin=BROWSELINK (last visited Jan. 7, 2025).

⁴⁴ *Id.*

⁴⁵ Department of Housing and Urban Development, Housing Choice Voucher Data Dashboard, https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/dashboard (last visited Jan. 7, 2025) (select “SPV report in bottom left corner; then “Select a Public Housing Authority” and choose “ID901 – Idaho Housing and Finance Association) (showing, statewide, number of unused housing vouchers, administered by the State, and by local city and county governments. E.g., the State has 35 unused “Mainstream vouchers” and 33 unused “Non-Elderly Disabled Vouchers.”).

further steps to provide person-centered service planning to identify a person’s service needs, document them in a written services plan, and authorize the full range and amount of services identified, with changes to the plan and services as needed. These steps would help ensure that individuals are obtaining access to their needed services.

Expand the Capacity of Community-Based Services

Idaho could expand the capacity of community-based services by allocating resources to its community-based service system. While Idaho has taken some steps recently to expand capacity, including outreach efforts to recruit more workers and a recent but insufficient rate increase, the State could do more to capitalize on recent efforts and improve capacity. Reports commissioned by the State Legislature include dozens of specific recommendations to accomplish these outcomes, such as incorporating regional rate adjusters, adjusting rates annually, and improving transparency. Idaho could also take other steps to increase the availability of services, including by continuing to implement strategies to increase recruitment, training, and retention of community provider staff.

Ensure Individuals Can Access Case Management Services

Idaho could modify its case management service system to ensure that nursing facility residents receive person-centered planning to educate residents about community-based services and promptly conduct transition planning if appropriate. Effective and appropriate case management services would help current nursing facility residents transition to community-based settings and help other individuals maintain sufficient community-based services and supports. Federal law already requires that individuals in nursing facilities receive discharge planning, which is necessary to arrange services to ensure a successful transition.⁴⁶ And, under Medicaid waiver rules, Idaho is already obligated to engage in person-centered service planning for individuals under the A&D waiver.⁴⁷ Idaho could ensure that case managers and social work staff follow through with connecting residents to community-based services and housing. Idaho could similarly modify its case management services to help prevent further unnecessary nursing facility admissions and re-admissions by helping individuals in the community to access all necessary community-based services.

Provide Effective Transition Services

Idaho could help Idahoans with physical disabilities transition to community-based settings by modifying its transition services. Idaho could modify its transition services by expanding its use of the State’s Money Follows the Person program and ensuring that each Idahoan with physical disabilities in nursing facilities who expresses interest in moving to the community is assigned a transition coordinator who will develop a transition plan in a timely manner.

⁴⁶ 42 C.F.R. § 483.20(b)(1)(xvi).

⁴⁷ 42 C.F.R. § 441.301 (requiring such planning for 1915(c) waivers).

Improve Access to Housing Services to Enable Individuals in Nursing Facilities to Return to the Community

Idaho could expand access to housing services for individuals with disabilities in several ways. By expanding access to housing services and permanent supportive housing, the State could improve outcomes and likely reduce Medicaid expenditures.⁴⁸ Idaho could also expand the use of housing modification programs, including those available in the A&D waiver, which help individuals alter their own homes or a family member's home so they can live there, such as by adding a wheelchair ramp or grab bars in the bathroom. And Idaho could leverage existing housing development and housing choice voucher programs in ways that prioritize housing for the Idahoans with physical disabilities currently in nursing facilities.

VI. Conclusion

We look forward to working with you to resolve the Department's findings. We hope to enter settlement negotiations with Idaho and agree on changes that the State will make to remedy the violations. If Idaho will not negotiate or if our negotiations fail, the United States may take appropriate action—including initiating a lawsuit—to remedy Idaho's ADA violations.

This letter is a public document and will be posted on the Civil Rights Division's website. Please contact Janelle Geddes, Trial Attorney in the Disability Rights Section of the Civil Rights Division, Janelle.Geddes@usdoj.gov, (202) 679-7026, within two weeks of receiving this letter if Idaho is interested in working with the Department to reach a solution along the lines described above.

Sincerely

/s/ Kristen Clarke
Kristen Clarke
Assistant Attorney General
Civil Rights Division

cc: Alex J. Adams, Director, Idaho Department of Health and Welfare

⁴⁸ See generally CSH, The Idaho Business Case for a Supportive Housing Services Benefit (2022), <https://www.csh.org/wp-content/uploads/2023/03/ID-Medicaid-Business-Case-December-2022.pdf> (last visited Jan. 7, 2025).