

Testimony
Engrossed Senate Bill 2256 - Department of Human Services
House Human Services Committee
Representative Robin Weisz, Chairman
March 9, 2021

Chairman Weisz, and members of the House Human Services Committee, I am Tina Bay, Director of the Developmental Disabilities Division for the Department of Human Services (Department). I am here today in support of Engrossed Senate Bill 2256.

North Dakota Century Code chapter 25-01.2 defines developmental disability using the federal definition of developmental disability with the addition of specifically citing Down Syndrome as a developmental disability.

North Dakota Century Code section 25-01.2-02 states “all individuals with developmental disabilities have a right to appropriate treatment, services and habilitation for those disabilities. Treatment, services and habilitation for individuals with a developmental disability must be provided in the least restrictive appropriate setting”. This section of Century Code does not identify one agency or program solely responsible for this section of law.

The Department has a variety of services that individuals with developmental disabilities may utilize. Examples of these services include six Medicaid 1915(c) waivers; Vocational Rehabilitation; Medicaid; Children’s Health Insurance Program; Children with Disabilities Medicaid Buy-In; Early and Periodic Screening, Diagnostic and Treatment; 1915(i) services; home health; and personal care. In addition, other state agencies such as the Department of Health and Department of Public Instruction have service options available to individuals with developmental disabilities.

In 2017, the Department requested technical assistance through a grant offered by the Centers for Medicare and Medicaid Services. There were five tasks included in the technical assistance request, one of which was to conduct a comprehensive review of the state's Medicaid waiver programs to identify potential paths for eligibility for non-intellectually or developmentally disabled individuals and provide program recommendations.

As noted in the final report, states can determine eligibility criteria, target groups, definitions, etc. and eligibility in one state does not equate to eligibility in all states. The Department has made several changes to the waiver and state plan programs since the issuance of the report. Examples include enhanced funding for individuals with complex medical conditions in the Traditional Individuals with Intellectual/Developmental Disability (IID/DD) waiver, changes to the capacity for the Medically Fragile waiver, added 24-hour residential habilitation to the Home and Community Based Services Aged and Disabled waiver, and the implementation of the 1915(i) state plan amendment for individuals with behavioral health needs.

As previously noted, services must be provided in the least restrictive appropriate setting. The purpose of a 1915(c) waiver is to assist Medicaid beneficiaries to live in the community and avoid institutionalization. For any waived service, a state must choose a level of care (intermediate care facility, nursing or hospital) and then design the waiver program to address the needs of the waivers' target population, in keeping with federal requirements related to the purpose of Medicaid waived services. The guiding principle for the development of a waived service is as follows: but for the availability of the services made available by the waiver, the individual being served would need institutional care.

Although the Department received technical assistance in 2017, Engrossed Senate Bill 2256 is not a duplication and would include a study that examines eligibility considerations for a broader swath of the state's existing programs, going beyond the six Medicaid waivers. Additionally, the study would analyze efforts and services

offered by other states; identify necessary planning and implementation processes; and define the number of individuals who may be affected by a change in state eligibility guidelines, as well as a cost and timeline for implementation of those changes. Engrossed Senate Bill 2256 recognizes that waived services are an important part of our state's continuum of care, but they are not the only service option available to people with developmental disabilities. This study has the potential to identify intersections between service options to help the State better understand how eligibility guidelines shape availability of services in North Dakota.

This concludes my testimony, and I am happy to answer any questions you may have.