

**Testimony**  
**Engrossed Senate Bill No. 2335**  
**House Human Services Committee**  
**Representative Weisz, Chairman**  
**March 14, 2023**

Chairman Weisz, and members of the House Human Services Committee, I am Tina Bay, Director of the Developmental Disabilities (DD) Section with the Department of Health and Human Services (Department). I am here today to provide information on Engrossed Senate Bill 2335 for your consideration as you review the Bill.

Section 2 of the Bill, page 1, lines 19 through 21, appears to communicate an intent to create automatic eligibility for Medicaid-funded DD services for individuals diagnosed with Fetal Alcohol Spectrum (FAS) disorders. The Department believes it is not necessary to add a specific diagnosis to this section of the North Dakota Century Code (NDCC) as FAS may be considered a developmental disability if the person meets all criteria identified in this section. It is important to note that the federal definition of developmental disability does not identify specific diagnoses.

If an individual wishes to access DD long term care services that are funded through the Centers for Medicare and Medicaid Services (CMS) the individual must meet the criteria that has been established for the Intermediate Care Facility for Individuals with an Intellectual Disability (ICF/IID) level of care. Under 42 CFR §435.1009 participants linked to the ICF/IID level of care must meet the "related condition" definition when they are not diagnosed as having an intellectual disability. The

definition of related conditions (42 CFR §435.1009) is functional; it is not tied to a fixed list of conditions therefore a change to NDCC will not change the eligibility process for people diagnosed with FAS. CMS does not allow states the option to establish automatic eligible by diagnosis; an individualized determination of eligibility is required.

People who qualify as having a "developmental disability" under the Federal Developmental Disabilities Assistance and Bill of Rights Act of 2000 do not always meet an ICF/IID level of care. While "developmental disability" is a broad term that includes any mental/cognitive and/ or physical disability, it is often interchanged with intellectual disability. However, they are not equivalent as not all developmental disability conditions have the intellectual components closely related to intellectual disability.

Section 3 of the Bill, page 2, lines 15 through 31 and page 3, lines 1 through 17, creates a cross disability advisory council. This language aligned with Section 1 of House Bill 1035, which passed out of this committee but was defeated in the House. Included in HB 1035 was appropriations for a facilitator, consultants to provide expertise on the waiver design and level of care reform, and additional Department staff. The fiscal note for SB 2335 only includes reimbursement for committee members and a third-party facilitator. The Department's ability to move this work forward will depend both on legislation and resources the legislature will make available to support the effort.

Section 4 of the Bill, page 3, lines 22 through 24 directs the Department to integrate a formal FAS screening into the early and periodic screening

diagnostic and treatment (EPSDT) services. Screening for FAS and other developmental delays is currently a covered EPSDT service.

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

