

**Testimony**  
**Senate Bill 2041 – Department of Human Services**  
**Senate Human Services Committee**  
**Senator Judy Lee, Chairman**  
**January 10, 2017**

Chairman Lee, members of the Senate Human Services Committee, I am Tina Bay, Director of the Developmental Disabilities (DD) Division for the Department of Human Services (Department). I am here today to provide information on Senate Bill 2041 for your consideration as you review this bill.

Before an individual can access long term care services available through the DD system, two eligibility determinations are required. The first is the eligibility per NDAC 75-04-06 that would allow the individual access to state-funded DD services and coordination of services through DD Program Management. NDCC 25-01.2-01 definition of “developmental disability” is referenced in NDAC 75-04-06. To meet the eligibility in NDAC 75-04-06, an individual must have a diagnosis of intellectual disability or have a condition other than mental illness that results in a developmental disability, which results in impairment of general intellectual functioning or adaptive behavior similar to that of an individual with the condition of intellectual disability.

If the individual wishes to access long term care services that are funded through the Centers for Medicaid and Medicare Services (CMS) Home and Community Based Services waiver, the individual must meet the Intermediate Care Facility for Individuals with an Intellectual Disability (ICF/IID) level of care. States are advised that this level of care is defined in 42 CFR §440.150(a)(2) as serving persons with “intellectual

disability or persons with related conditions.” 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. Persons who qualify as having a “developmental disability” under the Federal Developmental Disabilities Assistance and Bill of Rights Act of 2000 may not meet ICF/IID level of care. While “developmental disability” and “related conditions” overlap, they are not equivalent. The definition of related conditions is at 42 CFR §435.1009, and is functional rather than tied to a fixed list of conditions.

It appears Senate Bill 2041 is intended to create automatic eligibility for individuals with Down Syndrome by changing the definition of developmental disability in NDCC 25-01.2-01 and therefore automatic eligibility via 75-04-06, access to the waiver and then Medicaid. For individuals who do not have a diagnosis of intellectual disability, they must meet the definition of related condition under 42 CFR §435.1009 to qualify for level of care and waiver services. CMS does not allow states the option of automatically eligible diagnoses for the waiver.

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