

**Testimony**  
**House Bill 1134 – Department of Human Services**  
**House Human Services Committee**  
**Representative Robin Weisz, Chairman**  
**January 9, 2017**

Chairman Weisz, and members of the House Human Services Committee, I am Tina Bay, Director of the Developmental Disabilities (DD) Division of the Department of Human Services (Department). I am here today in support of House Bill 1134, which was introduced at the request of the Department.

This bill will revise thirteen sections of North Dakota Century Code chapter 25-01.2, two sections of chapter 25-04, two sections of chapter 25-16, two sections of chapter 25-16.1, and one section of chapter 25-18.

During the drafting of this bill the Department was looking at the changes as the licensing division for service providers. The Department and Protection and Advocacy were unable to meet on this bill before it was submitted. Since then both agencies have met and have prepared an amendment for the Department to request the committee to adopt.

Section 1, definitions were added. These changes are related to changes in federal regulation, specifically the Home and Community-Based Services (HCBS) final rule, to ensure resident rights for licensed providers and to separate licensed and non-licensed providers. The [proposed amendment](#) does not make any additional changes to this section.

Section 2 updates language to ensure all individuals have the rights identified including individuals residing in individualized settings. This

change is necessary to comply with the HCBS final rule. The proposed amendment does not make any additional changes to this section.

Section 3 updates language to include all forms of communication and ensures these rights apply to individuals residing in individualized settings. These changes are necessary to comply with the HCBS final rule and expand client rights. The proposed amendment ensures that an individual with a developmental disability, whether they are receiving services from a licensed or non-licensed provider has the right of private, unimpeded, and uncensored communication, including visitation. In addition, any restrictions of these rights by licensed providers must be documented in the individual's person-centered service plan.

Section 4 updates language to ensure client rights regarding personal property includes individuals residing in individualized settings. These changes are necessary to comply with the HCBS final rule and expand client rights. The proposed amendment ensures that an individual with a developmental disability, whether they are receiving services from a licensed or non-licensed provider must be permitted to receive, possess and use lawful personal property. In addition, any restrictions of these rights by licensed providers must be documented in the individual's person-centered service plan.

Section 5 updates language to ensure client rights regarding labor, wages and money includes individuals residing in individualized settings. These changes are necessary to comply with the HCBS final rule and expand client rights. The proposed amendment ensures that an individual with a developmental disability, whether they are receiving services from a licensed or non-licensed provider, must be permitted to seek employment

and work in integrated settings. In addition, any public or private agency or organization licensed by the Department to provide services to individuals with a developmental disability must document any restrictions of these rights in the individual's person-centered service plan.

Section 6 updates language to ensure clients residing in an individualized setting are not administered any drug or medication, or be chemically restrained without being authorized by a licensed physician and documented in the person-centered service plan. These changes are necessary to comply with the HCBS final rule and expand client rights. The proposed amendment ensures that an individual with a developmental disability, whether they are receiving services from a licensed or non-licensed provider are not administered any drug or medication, or be chemically restrained without being authorized by a licensed physician. In addition, any restrictions of these rights by licensed providers must be documented in the individual's person-centered service plan.

Section 7 updates language to ensure clients residing in an individualized setting are not subject to punishment, isolation, physical restraints, psychosurgery, sterilization and shock treatment except as allowed in the century code. These changes are necessary to comply with the HCBS final rule and expand client rights. The proposed amendment ensures that all individuals with a developmental disability, whether they are receiving services from a licensed or non-licensed provider are afforded these rights.

Section 8 updates language to ensure clients receiving services by a licensed provider may not be placed in seclusion and what process must be followed if a client is physically restrained. These changes are necessary to comply with the HCBS final rule and expand client rights. The proposed amendment changes the process a licensed provider must follow in order to use a physical restraint and states that the restraint must be in compliance with the individual's person-centered service plan or done in accordance with the public or private agency's or organization's emergency restraint policy.

Section 9 expands individual rights regarding psychosurgery, sterilization, or research.

Section 10 updates language regarding diet and access to food for clients. These changes are necessary to comply with the HCBS final rule and expand client rights. The proposed amendment ensures that every individual with a developmental disability receiving residential services in an institution, facility, or individualized setting be allowed access to food at any time. In addition, any restrictions of these rights by licensed providers must be documented in the individual's person-centered service plan.

Section 11 updates language to reflect current terminology regarding the person-centered service plan. The proposed amendment ensures that any public or private agency or organization that provides services to an individual with a developmental disability have a written individualized habilitation, person-centered service, or individual educational plan.

Section 12 updates language regarding the right to refuse services to include parents or custodian if the client is a minor.

Section 13 updates language to ensure any public or private agency or organization that provides services to individuals with a developmental disability in an institution or facility post a summary of rights.

Sections 14 and 15 update language to reflect people first language. The proposed amendment will change the term nonhandicapped children in section 15 to children with disabilities.

Section 16 updates language to reflect the entities the Department licenses to provide services to individuals with developmental disabilities.

Section 17 changes the language regarding inspections by the Department. In many cases sanitation and fire inspections are required by the appropriate city entities. In these situations the Department would not need to conduct an inspection as these inspections are ensuring that the facility is fit, safe and sanitary.

Section 18 cleans up language to reflect the entities the Department licenses to provide services to individuals with developmental disabilities.

Section 19 makes a grammatical change.

Section 20 updates language to reflect the entities the Department licenses to provide services to individuals with developmental disabilities.

This concludes my testimony. I would be happy to answer any questions the committee may have. Thank you.