



#### Vision

*The North Dakota Hospital Association will take an active leadership role in major Healthcare issues.*

#### Mission

*The North Dakota Hospital Association exists to advance the health status of persons served by the membership.*

**2021 House Bill No. 1511**  
**Joint Technical Corrections Committee**  
**Representative Robin Weisz and Senator Judy Lee, Chairmen**  
**November 9, 2021**

Chairmen Weisz and Lee and members of the Joint Technical Corrections Committee, I am Chris Meeker. I am a board-certified emergency physician and I serve as chief medical officer at Sanford Health Bismarck. I am here to testify on behalf of the North Dakota Hospital Association in opposition to House Bill 1511. I respectfully ask that you give this bill a **Do Not Pass** recommendation.

“Real liberty for all could not exist under the operation of a principle which recognizes the right of each individual person to use his own, whether in respect of his person or his property, regardless of the injury that may be done to others.”

Justice John Marshall Harlan

Jacobson v. Massachusetts, 197 US 11 (1905)

This bill would take away the ability of hospitals to require staff be vaccinated against SARS-CoV-2 and seriously impair the ability of health care providers to protect their patients and employees. We know at Sanford Health that 9 out of 10 people hospitalized are unvaccinated; 19 out of 20 in an intensive care unit are unvaccinated, and 98 out of 100 on ventilators are unvaccinated. Studies show that unvaccinated people are 5 times more likely to acquire COVID, 10 times more likely to be hospitalized, and 11 times more likely to die than their vaccinated peers. The vaccinated do not contract and transmit at the same rate as unvaccinated. Studies vary, but the mRNA vaccines have maintained around 70% effectiveness against mild disease. That means, in a given population over a given time, there will be a 70% reduction in transmission of the Sars-CoV-2 virus. Boosters show a return of effectiveness into the 90s.

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Vaccinated people may acquire and spread the virus, but only for an average of 3 to 5 days versus 7 to 10 days for unvaccinated people. With more than 750,000 people dead and counting, health care providers must be part of the solution and be able to protect their patients, employees, and communities.

An analysis of records from Florida, California, and Medicare patients in all states in 2020 showed more than 10,000 cases of hospital acquired COVID. From April to September, 2020, 21% of people with hospital-acquired COVID died. This context explains why exceptions to vaccination contained in the bill are so problematic in that they do not sufficiently protect patients. Sanford Bismarck has experienced employee to employee transmission. In fact, we've had more employees out at one time with COVID than failed to comply with our vaccine mandate. Outbreaks occurred in department clusters, indicating employees acquired it from other employees. Our goal in healthcare is to cause zero harm – which includes healthcare-acquired, vaccine-preventable diseases. We've seen significant progress in the reduction of healthcare acquired conditions, including infectious diseases and we believe vaccines are integral to patient and staff safety. It's imperative that healthcare organizations and clinicians are free to follow best practices as driven by science unrestricted by regulations that do not put patient safety first.

We have specific concerns with two portions of the bill. First is the provision in Section 1 that prohibits a private business located in this state from requiring a patron or customer to provide documentation certifying COVID-19 vaccination, the presence of COVID-19 pathogens, antigens, or antibodies, or COVID-19 post-transmission recovery to gain access to, entry upon, or services from the business. If this language is passed, would a physician be prohibited from asking a patient if he or she has been vaccinated against COVID-19 when having a routine discussion about vaccinations? Would a physician be allowed to ask the patient, for example, if she would like to receive an influenza, shingles, or tetanus shot but not discuss COVID-19 vaccination status?

Our main concern, however, is with the prohibition in Section 2 which would restrict a business from requiring any of its employees to be vaccinated against COVID-19 unless certain exemptions are allowed. Individual businesses should have a right to choose if or what mandates are best for their business. Health care providers especially should be free to determine without state interference the best way to protect the health of their patients and

employees. Hospitals and health care workers have a shared responsibility to prevent occupationally acquired infections and avoid causing harm to patients. Vaccinations aren't always strictly for patient safety – they also protect the health care worker. Healthcare workers are at risk for exposure to serious, and sometimes deadly, diseases. If they work directly with patients or handle material that could spread infection, they should take appropriate steps to reduce the chance that they will get or spread diseases.

Vaccine mandates aren't new to health care facilities. Hospitals have long required employees to be vaccinated against a number of infectious diseases such as influenza, measles, mumps, and polio. We have always offered exemptions for those with sincerely held religious beliefs and for those who are medically unable to be vaccinated. Those who can be vaccinated but refuse should be free to do so, but they do not have a right to work in a health care setting if that's what they choose.

The exceptions will require an employer to allow an employee to forego vaccination if the employee submits proof of COVID-19 antibodies and that proof has to be accepted for 12 months from the date of the antibody test. This is very concerning because scientists do not yet know the level of antibodies needed to provide protection from COVID-19. Both the federal Centers for Disease Control and Prevention and the Food and Drug Administration advise against using antibody tests to determine one's level of immunity against COVID-19. So does the Infectious Disease Society of America, which represents infectious disease specialists. New research also shows that up to 36% of people who test positive for COVID will not have antibodies on subsequent testing. Our relatively short experience with COVID-19 means we do not yet know what value means immunity. Without knowing what level of antibodies provides immunity or the parameters—especially the timing—of testing people, such a measure may not provide the protection suggested. We may someday know what level of antibodies correlates with fewer hospitalizations and deaths, but we are not there yet.

The bill will also allow an exception to vaccination if an employee gets periodic COVID-19 tests. We know from experience in health care settings such as long-term care that periodic COVID-19 testing is not as protective against the spread of infection as is vaccination. Mass testing of employees also places a burden on staff for collection and processing of specimens, time better spent on patient care. The bill provides additional exceptions for “philosophical” and “moral” beliefs. As already noted, hospitals already provide medical and religious exemptions. Allowing

additional exceptions for “philosophical” and “moral” beliefs would gut a vaccination requirement and allow anyone who simply does not want to be vaccinated to claim such beliefs. A mandate with a philosophical exemption is not a mandate. Health care providers should have the right to decide the best way to protect their patients and employees from infectious diseases based on current scientific data. Employees have the right to choose to work in a different setting if they do not agree with an employer's vaccination requirements.

We believe this bill would also put health care providers in a legal quandary – violate the federal requirement that all health care workers be vaccinated or violate state law. The federal rule requiring COVID-19 vaccination for all eligible employees at health care facilities that participate in Medicare and Medicaid was released last week. Under that regulation, health care workers must be vaccinated by January 4. Only employees who qualify for a medical or sincerely held religious belief exemption may skip the immunization. There are no exceptions for testing in lieu of vaccination. Nor are there exceptions for “philosophical” or “moral” objections.

Health care providers who do not comply may be subject to civil monetary penalties, denial of payment for new admissions, or termination of their Medicare/Medicaid participation. To be clear, the implications of a hospital losing Medicare/Medicaid eligibility would be devastating. More than 60 percent of hospital services in North Dakota are paid for by Medicare and Medicaid.

In summary, this bill would have too many negative consequences for health care providers. And that is why we oppose the bill and ask that you give it a Do Not Pass recommendation. I would be happy to respond to any questions you may have. Thank you.

Respectfully Submitted,

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