



Joint Technical Corrections Committee

HB 1511

November 9, 2021

Chair Lee, Chairman Weisz and Committee Members, my name is Joan Connell. I am a pediatrician in Bismarck and I'm president of the North Dakota Medical Association's 6th District Medical Society. I present this testimony on behalf of the North Dakota Medical Association. The North Dakota Medical Association is the professional membership organization for North Dakota physicians, residents, and medical students.

NDMA opposes this bill based on three main issues, and requests there be an exemption for health care in the bill.

First, lines 10-11 on page 2 should not be crossed out. The exemption for health care providers is incredibly important during times of crisis. It was placed there last session based on the request of health care providers and should remain in law. Hospitals, clinics, and nursing homes take care of the sickest and oldest people, and the requirements regarding COVID-19 vaccination are essential there. Right now, hospitals and clinics do not ask about vaccination status, but at some point, during this pandemic it may become an issue. They should not be prohibited from asking for documentation in case the need arises.

Second, the federal exemption language is unclear. Direct financial losses shouldn't need to be proved if a health care provider is under a federal mandate. Late last week CMS issued details on the emergency regulation requiring COVID-19 vaccination for health workers. The regulation covers what most people would consider traditional health care settings, including long term care. Among the information distributed, it is CMS opinion that under the Supremacy Clause of the U.S. Constitution, this regulation pre-empts any state law to the contrary. U.S. Const. art. VI § 2.

This CMS regulation is not being challenged at this time, so federal rulings and lawsuits against the Executive Order on Ensuring Adequate COVID Safety Protocols for Federal Contractors or the OSHA COVID-19 Healthcare Emergency Temporary Standard do not apply. If a facility takes Medicaid or Medicare – which is a large majority in our state – this regulation applies. We would suggest exemption language in the bill deferring to those federal requirements.

Third, Section 2 of the bill, the exemption for vaccine mandates isn't accurate or supported by the evidence. Right now, hospitals requiring a vaccine mandate are offering two exemptions – medical and religious. And both of those are being generously granted. These two exemptions are what is required under federal law and what will be offered for those under the mandate. We would also suggest that federal pre-emption language be placed in section 2 of the bill, because if subject to the federal regulation, the entities must offer only those two exemptions, and not those contained in the bill.

The two times a week testing option isn't practical, in that COVID-19 tests are hard to come by, and the staff to administer the tests are not available. Further, currently there is no clear evidence to support using antibody testing as a safe alternative to vaccination. We have known since summer 2020 that antibody testing is not reliable due to the high number of false positives. Putting this into legislation would force companies or individuals to pay for something that is not useful and not protective. Based on what we know now, COVID-19 infection provides some protection against reinfection, but we do not know the durability of protection nor the level of protection. When testing for natural antibodies, the presence of antibodies does not necessarily mean one is immune, and the absence of antibodies does not mean an individual has no immunity. It would not be wise to put into statute the twelve months exemption from immunization when it isn't supported by any science and the actual data to prove immunity is not established.

While federal law will supersede state law in many instances for COVID-19 vaccine mandates, individual businesses not impacted by federal mandates should have a right to choose if or what mandates are best for their

business, and state government should not interfere. NDMA requests for a DO NOT PASS recommendation on this bill.

Thank you for the opportunity to testify today. I would be happy to answer any questions.

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