



House Education Committee

SB 2244

March 12, 2025

Chairman Heinert and Committee Members, I am Courtney Koebele and I serve as Executive Director for the North Dakota Medical Association. The North Dakota Medical Association is the professional membership organization for North Dakota physicians, residents, and medical students.

The North Dakota Medical Association opposes 2244, increasing paperwork and red tape.

Under long-standing policies and procedures, all hospitals, clinics and physicians obtain consent from the parent when treating a minor, with exceptions set forth in North Dakota Century Code. This bill would overturn longstanding laws passed by the North Dakota legislative assembly that govern when minors may consent to their own health care or when consent is implied, such as when there is an emergency involving a minor and the parent is not there to give immediate consent. The legislature determined that, in certain circumstances, it may be more important for a young person to have access to confidential medical services than it is to require that parents be informed of the situation.

The bill states that the consent of a parent is needed before proceeding with treatment but has conflicting provisions regarding whether the consent of both parents or just one parent is required before a healthcare provider may treat a minor. The bill creates a cause of action for a parent if the parent believes this right has been violated. This inconsistency means it will be unwise for a healthcare provider to treat a minor unless both parents give consent. To do otherwise would expose the physician to a lawsuit by a parent who claims the provider did not meet the requirements of Section 1.

The bill requires written consent from a parent in other circumstances. For example, a parent must consent in writing before a biometric scan of the child is made, shared, or stored and any time before a record of the child's blood or deoxyribonucleic acid is created, stored, or shared, unless authorized pursuant to a court order. So, anytime a child's blood is drawn, for example, it would require advanced written consent of a parent. In an emergent situation, prior consent of a parent is not always possible. Even in non-emergent circumstances, it will significantly slow routine health care to a child and create another administrative burden on the health care system to ensure

health care providers know when they are required to secure written consent rather than just verbal consent and then ensure that written consent is secured before treating a child.

Prior written consent for such circumstances is simply not practical and adds another burden to our healthcare system. This is an unnecessary additional requirement in an already highly regulated and monitored environment.

The North Dakota Supreme Court has also recognized a parent's fundamental right in the care, custody, and control of children that may not be infringed without due process of law and subject to strict judicial scrutiny by which the state bears the burden of proving that such deprivation is narrowly tailored to achieve a compelling state interest.¹ This means that any state or federal law depriving a parent of these fundamental rights is already subject to strict judicial scrutiny, meaning that the state bears the burden of proving such deprivation is narrowly tailored to achieve a compelling state interest.

It is, therefore, unclear what this bill really intends to accomplish.

NDMA urges a DO NOT PASS of SB 2244. I would be happy to answer any questions. Thank you.

¹ *Hoff v. Berg*, 1999 ND 115.