2021 SB 2334
House Human Services Committee
Representative Robin Weisz, Chairman
March 17, 2021

Chairman Weisz and members of the House Human Services Committee, I am Steven Weiser, MD, President of Altru Health System in Grand Forks. I appear before you to testify regarding 2021 Senate Bill 2334 and ask that you give this bill a **Do Not Pass** recommendation.

I have been an emergency medicine physician for 26 years, having practiced in Canada before coming to the United States. I have also been in hospital administration for approximately 4 years and President of Altru for over a year. I am familiar with many different types of health care provider facilities, such as general acute care hospitals, specialty hospitals, and ambulatory surgical centers (ASC), but had not heard of the new health care entity this bill would create - an extended stay center (ESC). I understand that the supporters of the bill are asking you to allow these centers, which would provide medical and nursing services to a patient recovering from a surgical procedure performed in an ASC if certain conditions are met.

I want to first say that I recognize the importance of ASCs in our health care system and am not here to diminish that in any way. They play a key role in patient satisfaction and convenience as well as helping to keep health care costs low. An extended stay center, however, is a new and an unknown facility. I have concerns about those unknowns, particularly how they may impact patient safety. I think some background on ASC's is important to understanding those concerns.

As you probably know, federal Medicare participation requirements mandated by the Centers for Medicare & Medicaid Services (CMS) drive much of the structure of our health care system. Medicare defines an ASC as a distinct entity that operates exclusively for the purpose of providing surgical services to patients who will not require hospitalization as a result of the surgery. The Medicare rules specify that an ASC must be certified and meet the Conditions for Coverage (CfCs). And surgeries performed in an ASC must be limited to those that ordinarily would not require the patient to be kept at the ASC for more than 24 hours. In this way, ASCs are appropriately limited to cases where the risk

of complications or serious medical episodes is low. The 24-hour limitation flows from the fact that an ASC does not have the same emergency capabilities as hospitals and patients are at risk if their condition worsens beyond the capability of the ASC.

ASCs are also subject to regulatory oversight by the state. For example, states are allowed to limit the duration of an ASC stay to something less than 24 hours if they choose, but the stay cannot be more than that time period. For example, some states define the duration of an ASC service to be no more than four hours for the procedure and four hours for supervised recovery. Current North Dakota law and administrative regulations require any institution that maintains and operates organized facilities for the diagnosis, treatment, or medical care of two or more persons where care is rendered over a period **exceeding 24 hours,** including outpatient facilities and surgical centers, to secure a hospital license.[1]

It is important to understand that ASCs and hospitals are very different in the services they provide patients and the capabilities they have and, so, are also regulated very differently. Because they generally do more simple surgeries, ASCs operate under fewer patient-safety laws and regulations and may provide surgeries that are less complicated and on patients with lower health risks. But where does an ESC fall within that continuum of care? And how will ESCs be regulated? Will they be subjected to something less than full hospital licensing requirements? Who will judge and oversee their quality? Who will determine which procedures are safe to perform in an ESC? What standards of infection control would apply? Will the ESC safety plan for patients who crash essentially be “call an ambulance and transfer to a hospital”?

Because ESCs are only recognized by a few states, regulation of them is very new. Unlike ASCs and hospitals, an ESC is not certified, or even recognized, by CMS and there are no rules of participation that govern them. It is unclear what kind of regulatory process ESCs would be subject to if this bill passes. It is, however, clearly spelled out in the bill that they would not have to be licensed as hospitals are. They would only have to secure “registration” from the ND Department of Health, with the requirements to be determined at a later date in administrative rules.

I do not believe it constitutes good patient care to allow an ESC to expand the surgical risk profile or the procedures permissible in an ASC. I am concerned that allowing ASCs to offer extended services

[1] NDCC 23-16-01; ND Admin. Code 33-07-01.1-01

such as proposed by this bill entices surgeons to perform higher acuity (more difficult and therefore riskier) cases in the ASC. These are cases that should be performed within a hospital - a setting that has the ready resources to address an untoward outcome. An ESC may be appropriate for patients who need extra time for managing pain or bodily functions or who may require extended travel time to return home after a surgical procedure, but they should not be the place of care for a patient who is likely to experience complications. When these patients do crash, they are admitted to a hospital. This lapse of time and the lack of immediately available resources can and has had an untoward outcome for the patient. ASCs were never intended, or equipped to, safely care for patients experiencing serious medical episodes or complications and expanding care with so many unknowns puts patients at risk.

If an ASC wants to keep patients longer than the 24 hours currently allowed under state law and under the CMS definition, why should they not also be required to comply with current hospital level licensure standards? The legislature should not allow ASCs to expand the types of services they perform, or the length of patient recovery needed without proper oversight. If these facilities wish to provide more complex care than can be provided in an ASC, they should seek licensure as a hospital and meet the hospital standards.

Because of limited experience with ESC's, we just do not have data on the effect these facilities may have on the safety and appropriateness of surgeries in such a setting. Existing data is either noncomparative or focused on patients and procedures that are not appropriate for ambulatory surgery without ESCs or similar facilities. The evidence and supplemental resources currently available are simply insufficient to guide decisions on patient characteristics and surgical procedures that may be appropriate for ASCs and ESCs. Maybe this is an area that could be studied to allow consideration of evidence from other states' experience in regulating these new health care entities.

It is for these reasons that I must express my concern that this arrangement does not represent good patient care. Should you wish to proceed, I ask that you instead consider studying and developing an appropriate regulatory framework before authorizing this new type of health care entity. I ask that you give this bill a Do Not Pass recommendation. Thank you.

Respectfully Submitted,

Steven Weiser, MD, President
Altru Health System