



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 1510
Joint Technical Corrections Committee
Representative Robin Weisz and Senator Judy Lee, Co-Chairmen
November 9, 2021

Chairmen Weisz and Lee and members of the Joint Technical Corrections Committee, I am Melissa Hauer, General Counsel/VP, North Dakota Hospital Association. I am here to testify in opposition to House Bill 1510. I respectfully ask that you give this bill a **Do Not Pass** recommendation.

House Bill 1510 provides it is an unlawful discriminatory practice for an employer to refuse employment to an individual, to bar an individual from employment, or to discriminate against an individual in compensation or in a term, condition, or privilege of employment based on the individual's vaccination status or whether the individual has an immunity passport. The bill will not allow a hospital to ask any employee if he or she is immunized against any infectious disease. For example, a hospital could not ask whether the nurse taking care of you as an inpatient, or the phlebotomist drawing your blood, or the surgeon who is about to perform open heart surgery has been vaccinated against measles, polio, mumps, or influenza or any other communicable disease against which we have immunizations available. Hospitals have long been required to have infection prevention control programs designed to provide a safe environment to help prevent the development and transmission of disease. This bill would be a major step back in that effort.

The bill provides an exception for health care, but only allows a health care facility to ask an employee to "volunteer" the employee's vaccination or immunization status if the inquiry is for the purpose of determining whether the health care facility should implement "reasonable accommodations" to protect the safety and health of employees, patients, visitors, and other individuals from communicable diseases.

The bill exempts nursing homes, long-term care, basic care and assisted living facilities if it would result in a violation of regulations or guidance issued by CMS. It does not, however, exempt hospitals, clinics, or any other health care providers.

This bill will put health care providers in the impossible position of having to choose between complying with federal law and state law. The Centers for Medicare and Medicaid Services (CMS) issued an interim final rule on November 5 which requires all health care employees to be vaccinated against COVID-19. The CMS rule requires health care employers to provide appropriate accommodations for employees who request and receive exemption from vaccination because of a disability, medical condition, or sincerely held religious belief. The rule makes it clear that it preempts any inconsistent state or local laws, including laws that ban or limit an employer's authority to require vaccination.

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.

You may be opposed to the current mandate of the CMS rule but placing additional mandates on employers at the state government level is not a solution. Please vote no on this bill and others that limit an employer's right to do what is in the best interests of their employees and of those to whom they provide services. This bill will force healthcare providers to take a huge step backward in proven infection control practices, hamstringing providers at a time when every hospital in the state is stressed trying to keep up with demand for hospital and emergency care.

I would be happy to stand for any questions.

Respectfully Submitted,

Melissa Hauer
General Counsel/VP