2023 Senate Bill no. 2199
Senate Judiciary Committee
Senator Diane Larson, Chairman
January 18, 2023

Chairman Larson and members of the Senate Judiciary Committee, I am Tim Blasl, President, of the North Dakota Hospital Association (NDHA). I testify in opposition to Senate Bill 2199 and ask that you give the bill a **Do Not Pass** recommendation.

The bill is so broadly written that it would apply to virtually all health care providers in North Dakota, because most receive state funding through the Medicaid program or by accepting state grants or contracts. The bill would require that words referring to a person must be used in the context of that person's sex as determined at birth. It would dictate how health care facilities must refer to a patient's gender no matter what the circumstances may be.

While sex at birth is primarily understood in terms of physical and biological features such as genitals and hormones, gender is a multidimensional concept that is influenced by several additional factors, including cultural and behavioral norms, and self-identity. Hospitals desire to treat all patients with empathy, equality, and dignity. Assignment of a biological sex at birth may or may not align with what is going on with a person's body, how they feel, or how they identify. However, when "male" or "female" is recorded on a birth certificate, it is recording an infant's biological sex that has been assessed by an inspection of their genitals. However, this does not mean that the assessment is always right, as there are certain intersex conditions not apparent at birth that may result in misclassification.

This bill would also mandate that a health care provider ignores a patient's own internal sense of gender identity, and it would dictate how a person's genitalia and health data must be described– both of which our society say are private matters. In the end, a legal mandate about how gender must be documented will not resolve the philosophical controversy regarding transgender identity or expression.

Dictating that a medical record may only describe gender as that assigned at birth could lead to interference with appropriate health care. Allowing only sex as assigned at birth could mean that certain services or treatment are not viewed as being necessary. For example, it is well documented that transgender individuals suffer from a higher prevalence of clinical depression and anxiety, report higher use of drugs and alcohol, and are at a significantly increased risk of suicide. If a provider cannot properly describe a patient in medical records, the patient may not receive appropriate screenings or treatment. Health care barriers and are already magnified for transgender persons. An inaccurate medical record should not be an additional barrier to necessary health care.

We are also concerned with the $1,500 fine that the bill requires for a violation. Is the fine per violation? Per provider? Who will determine if a fine is appropriate? Which government entity will enforce the fine?

For these reasons, we ask that you give the bill a **Do Not Pass** recommendation.

Respectfully Submitted,

Tim Blasl, President
North Dakota Hospital Association