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Testimony
Senate Bill No. 2199
Senate Judiciary Committee
Senator Diane Larson, Chairwoman
January 18, 2023

Good afternoon, Chairman Larson, and members of the Committee. My name is Dan Cramer. I am a psychologist and Clinical Director of the behavioral health clinics (regional human service centers) with the Department of Health and Human Services (Department). I am here today to testify in opposition to Senate Bill 2199.

The Department's first concern is about the ethical implications of this bill in the provision of behavioral health care treatment. There are five core Principles within the American Psychological Association's (APA) Ethics Code and Conduct. The first of these (Principle A), is Beneficence and Nonmaleficence. Stated more simply, we are asked as mental health practitioners to always strive to do good and to do no harm. It is my strong belief that attempting to apply Senate Bill 2199 in the practice of behavioral health care, would require us to violate this most basic Ethical Principle.

Transgender individuals have higher rates of mental illness, including depression, suicide, anxiety, posttraumatic stress disorder, and substance use. Specifically with suicide risk, transgender teens have been identified to have 5 times greater likelihood to have thought about suicide and 7.6 times greater likelihood to have attempted suicide than their peers who do not identify as transgender. By choosing to call people by a gender or name they do not endorse, we risk traumatizing them. Additionally, we create a space that is not trauma informed and does not feel safe to

them. This is a barrier to providing effective care to individuals already at high risk and there is greater likelihood they will disengage from treatment increasing the risk of depression, suicide, anxiety, posttraumatic stress disorder, and substance use. Given the risk factors, the potential that we could then be creating unnecessary barriers to service is simply not acceptable.

It is for these reasons identified, as well as likely others, that the American Psychological Association released a Guidelines for the Psychological Practice with Transgender and Gender Nonconforming (TGNC) People. This document was created to serve as guidance to psychologists and includes a series of principles including just a few that are highlighted here:

- Guideline 1: A person's gender identity may not align with sex identified at birth.
- Guideline 11. Psychologists recognize that TGNC people are more likely to experience positive life outcomes when they receive social support or trans-affirmative care.

In addition to the issues of ethical and best practice treatment, it is important to recognize that this bill creates significant problems for the Human Service Centers in meeting accreditation and funding requirements. Per North Dakota Century Code 50-06-05.2, the Regional Human Service Centers were required to become accredited by a nationally recognized accrediting body. To that end, all eight Regional Human Service Centers achieved a four-year accreditation through the Council on Accreditation (COA) in 2020. This is worth noting as COA has multiple accreditation standards that require the human service centers, as accredited entities, to operate in a way contrary to this bill. This

includes, per Mental Health and Substance Use standard 3.02 (Assessments), to assess for factors that include sexual orientation and gender identity. Additionally, under Client Rights and Responsibilities Standard PA-CR 1.03, clients have the right to fair and equitable treatment and among those categories that must be protected from discrimination are race and ethnicity, military status, age, sexual orientation, gender identity, and developmental level. By adhering to the requirements of this bill, we become in jeopardy of not meeting basic standard requirements of our accrediting body.

As this committee may be aware, Senate Bill 2128 was presented before the Senate Human Services Committee on January 11th. This bill would require that all regional human service centers become Certified Community Behavioral Health Clinics. The Department testified in support Senate Bill 2128. It is important to note that CCBHC's require that all behavioral health care is provided with cultural competence. Towards this end, CCBHC requirements specifically identify that staff receive training on issues of race, ethnicity, age, sexual orientation, and gender identity. This requirement could not be fulfilled based on requirements of this bill, which specifically does not allow training on gender identity that recognizes gender identity as something potentially distinct from sex identified at birth.

It is important to recognize that this bill would also place the Department at risk of losing Federal funding. Federal funding requires grantees report on certain process and outcome data. Among these data points includes requirement that we report on count of individuals served based on gender identity. In other words, we must assess and document in record the individuals gender identity to be compliant with federal funding requirements.

Finally, there are some very practical implications of this bill that must be considered. Say, for example, that an individual's gender is not easily identifiable based on appearance. According to this bill, a provider would not be able to presume that what a person was identifying as their gender was accurate. Instead, to avoid a violation and fine, the provider would be required to require a person to obtain a DNA test to confirm that their identified gender was accurate. How would this be operationalized and who would be responsible for obtaining and paying for this test?

Another scenario, if an employer who is receiving state funding, has learned that a staff member may not have been born the gender they are currently identifying as, would this require the business owner to force a staff member to receive a DNA test?

As noted throughout this testimony, the Department is in opposition to Senate Bill 2199 due to ethical concerns of practice, potential harm that may be caused to a high-risk group of people, risk it places to our accreditation standing and federal funding, and finally because of the practical application that will create untenable situations to manage as an employer. If this bill is to move forward, it is the Department's recommendation an amendment be included to identify that it does not apply to the department of health and human services or any entity receiving funding from the department of health and human services.

This concludes my testimony. I would be happy to try to answer any questions the committee may have. Thank you.