

**2021 SENATE HUMAN SERVICES**

**SB 2128**

# 2021 SENATE STANDING COMMITTEE MINUTES

## Human Services Committee Sakakawea Room, State Capitol

SB 2128  
1/25/2021

A BILL for an Act to amend and reenact section 43-17-42 of the North Dakota Century Code, relating to the corporate practice of medicine by nonprofit entities and charitable trusts.

**Madam Chair Lee** opened the hearing on SB 2128 at 2:27 p.m. All members present: Senator Lee, Senator K. Roers, Senator Hogan, Senator Clemens, Senator Anderson, Senator O. Larsen.

### Discussion Topics:

- Corporate practice of medicine doctrine
- Non-profits and charitable trusts
- Study resolution on structure
- HBOT equipment inventory
- Emergency clause

**[2:28] Senator Judy Lee, District 12.** Introduced SB 2128.

**[2:30] Pat Traynor, Dakota Medical Foundation (DMF).** Provided testimony #3067 and #3125 in favor.

**[2:52] Megan Houn, Government Relations, Blue Cross and Blue Shield.** Senator Hogan asked Megan to provide information to the committee.

**Additional written testimony:** N/A

**Madam Chair Lee** closed the hearing on SB 2128 at 2:54 p.m.

*Justin Velez, Committee Clerk*

**Senate Bill No. 2128 Testimony of J. Patrick Traynor**

My name is Pat Traynor and I serve as Executive Director of Dakota Medical Foundation (DMF) which was originally formed in the early 1960s to own and operate Dakota Hospital in Fargo. In 1998, DMF sold its interest in the hospital and transitioned its charitable operations to lead initiatives to continually improve health and access to healthcare in our region. I am also a trustee of the Leland A. Swanson Charitable Trust (Swanson Charitable Trust) which has similar health related purposes and works together with DMF. I have been asked by Senator Judy Lee, Chair of the Human Services Committee, to provide background information on SB2128.

This bill allows nonprofit entities & charitable trusts that are offering hyperbaric oxygen therapy (HBOT) the right to employ their own physicians when the employment relationship between the physician and the nonprofit entity or trust is evidenced by a written contract that includes language protecting the physician's independent judgement in their practice of medicine. Other states in the country have similar exemptions from their corporate practice of medicine laws for nonprofit and other public benefit type organizations.

SB2128 is patterned after the exemption found in NDCC 43-17-42 Section 1 which grants hospitals the right to directly or indirectly employ physicians if they maintain a similar written contract protecting the physicians right to practice medicine according to their own independent judgement.

By way of background, DMF & Swanson Charitable Trust are interested in establishing an HBOT Center of Excellence to provide improved access to HBOT and significant credible research to determine other beneficial uses for HBOT.

It is important to highlight the following medical conditions that HBOT is currently used for and most insurance providers have approved for reimbursement:

1. Necrotizing Soft Tissue Infections
2. Chronic Osteomyelitis (Refractory)
3. Delayed Radiation Injury (Soft Tissue and Bony Necrosis)
4. Arterial Insufficiencies
5. Severe Anemia
6. Intracranial Abscess
7. Compromised Grafts & Flaps
8. Acute Thermal Burn Injury
9. Idiopathic Sudden Sensorineural Hearing Loss

10. Air or Gas embolism
11. Carbon Monoxide Poisoning
12. Clostridial Myositis and Myonecrosis (Gas Gangrene)
13. Crush Injury, Compartment Syndrome and Other Acute Traumatic Ischemias
14. Decompression Sickness

The current intent is to operate several HBOT chambers in Fargo and offer all regional physicians the opportunity to become knowledgeable on the beneficial & reimbursable uses of HBOT and the off label uses that are or will be studied.

These 14 medical conditions listed above currently have very limited access to HBOT in North Dakota. It is my understanding that there are only two HBOT facilities across the state of North Dakota, one located in Jamestown and one in Fargo.

Other medical conditions treated with HBOT but not approved by FDA and third-party payer coverage include:

1. Chronic persistent mild traumatic brain injury (concussion)
2. Treatment of PTSD
3. Operative preconditioning before major surgeries in the elderly
4. Inflammatory bowel disease (persistent flares, refractory)
5. Long bone fractures among athletes (curative and prevention)
6. Vascular dementia
7. Lyme disease
8. Inhibition of restenosis after stent placement following a heart attack
9. Metabolic aging and rejuvenation

It is the intent of DMF and Swanson Charitable Trust to pursue HBOT research within the nine categories listed above. Our current effort underway with the University of North Dakota Medical School and Essentia Health is to conduct credible research for HBOT as a potential treatment for those suffering from concussion injuries.

I am pleased to report that the Swanson Charitable Trust and DMF have committed to funding one HBOT chamber, placed at Essentia Hospital in Fargo to be used for access to HBOT care and ongoing research purposes. Essentia Hospital in Fargo plans to have two HBOT chambers operational by April 1, 2021.

**State Corporate Practice of Medicine (CPOM) Doctrines & Nonprofit Exceptions****Key:**

	States with no CPOM doctrine (17)
	States with a CPOM doctrine and an exception for nonprofits (12)
	States with a CPOM doctrine and an exception for specific types of nonprofits (11)
	States with a CPOM doctrine and no nonprofit exceptions (11)

State	CPOM Doctrine?	Description of Nonprofit Exception
<b>Alabama</b>	No.  Ala. Att'y Gen. Op. No. 2001-089 (Feb. 1, 2001); Declaratory Ruling of the Ala. Med. Licensure Comm'n, Oct. 21, 1992).	N/A
<b>Alaska</b>	No.  Alaska Stat. § 08.64.170.	N/A
<b>Arizona</b>	Yes.  <i>Funk Jewelry Co. v. State ex rel. LaPrade</i> , 50 P.2d 945 (Ariz. 1935); <i>Midtown Med. Grp., Inc. v. State Farm Mut. Auto. Ins. Co.</i> , 206 P.3d 790 (Ariz. Ct. App. 2008).	Nonprofit corporations may engage in the practice of medicine, provided the corporation engages in the practice of medicine only through individuals licensed to practice in Arizona.  Ariz. Rev. Stat. § 10-3301.
<b>Arkansas</b>	Yes.  Ark. Code Ann. §§ 17-95-202; 4-29-309(a); Ark. Att'y Gen. Op. No. 2014-118 (Mar. 10, 2015).	Nonprofits organized as medical services corporations may contract for the services of physicians, but may not directly employ physicians.  See Ark. Code Ann. §§ 23-75-101 to 23-75-122; Ark. Att'y Gen. Op. 1994-204 (Aug. 17, 1994).
<b>California</b>	Yes.  Cal. Bus. & Prof. Code § 2400.	Any licensed charitable and eleemosynary institution, foundation, or clinic may employ physicians and surgeons so long as such institution, foundation or clinic does not require a charge for professional medical services rendered patients.  16 Cal. Code Regs. § 1340; Cal. Bus. & Prof. Code § 2400.
<b>Colorado</b>	Yes.  Colo. Rev. Stat. § 12-240-138(6)(a).	None.  Colo. Rev. Stat. § 25-3-103.7.
<b>Connecticut</b>	Yes.  Conn. Gen. Stat. § 20-9(a); Conn. Att'y Gen. Op. No. 248 (Dec. 2, 1954); Conn. Gen. Stat. §§ 33-182aa, <i>et seq.</i>	Nonprofit medical foundations are not subject to the CPOM prohibition, but the foundation members must be independent practice associations or business entities at least 60% owned and controlled by an independent practice association, a provider, or a professional services corporation/other entity.  Conn. Gen. Stat. § 33-182bb.
<b>Delaware</b>	No.  Del. Code Ann. tit. 24, §§ 1701 <i>et seq.</i>	N/A
<b>District of Columbia</b>	Yes.  D.C. Code §§ 3-1201.02(7)(A), 29-502, 29-503.	None.
<b>Florida</b>	No.  In re: Petition for Declaratory Statement of Conrad Goulet, M.D., Case No. 89-COM-01 (1989)	N/A

State	CPOM Doctrine?	Description of Nonprofit Exception
	(statement published by the Florida Board of Medicine acknowledging Florida has not prohibited the corporate practice of medicine).	
<b>Georgia</b>	Yes.  <i>Sherrer v. Hale</i> , 285 S.E.2d 714 (1982); <i>Health Horizons, Inc. v State Farm Mutual Auto. Ins. Co.</i> , 521 S.E.2d 383 (1999); Ga. Comp. Med. Bd., Monthly Meeting Minutes, Executive Director's Report, para. 9 (June 7-8, 2012).	None.
<b>Hawaii</b>	No.  Haw. Rev. Stat. § 453-2; Haw. Rev. Stat. § 448-15.	N/A
<b>Idaho</b>	No.  Notes of Idaho State Bd. Of Med. Telephone Conference (Mar. 28, 2016).	N/A
<b>Illinois</b>	Yes.  225 ILCS 60/22.	None.  <i>Carter-Shields v. Alton Health Inst.</i> , 777 N.E.2d 948 (Ill. 2002) (refusing to extend the hospital exception to a charitable, nonprofit health organization).
<b>Indiana</b>	Yes.  Ind. Code §§ 25-22.5-1-2(c); 25-22.5-8-1.	Indiana law expressly exempts health care entities from the corporate practice prohibition. Nonprofit incorporated entities are also allowed to employ physicians, as long as the entity does not interfere with the professional judgment of its employed professionals.  Ind. Code § 23-17-4-1; 25-22.5-1-2(c).
<b>Iowa</b>	Yes.          Iowa Code § 147.2; Iowa Att'y Gen. Op. No. 91-7-1 (1992) (republished by the Iowa Board of Medicine August 1, 2015).	Nonprofit corporations do not violate the corporate practice doctrine if the physician retains control over the patient relationship.  In 2015, the Iowa Board of Medicine reaffirmed a prior attorney general opinion that concluded not all employment relationships between a corporation and licensed professional are prohibited in Iowa. Rather, violations of the corporate practice doctrine are based on a case-by-case evaluation of control and dominion in the corporate-physician relationship at issue. Unless prohibited by statute or by public policy considerations against lay control of medical judgment and lay exploitation of the practice of medicine, non-physician corporations may provide medical services through employed physicians.  Although nothing officially extends the same rationale to non-incorporated entities, the attorney general opinion explicitly rejects an interpretation of the doctrine based solely on the profit or non-profit status of a corporation, recitation of the intent regarding the physician's independence, or designation of the physician as an employee.  Given the absence of any express prohibition of employment of physicians by unincorporated entities, the doctrine will likely not apply to any nonprofit entity's employment of a physician where the physician retains control over medical judgments and the patient relationship.  Iowa Att'y Gen. Op. No. 91-7-1 (1992) (republished by the Iowa Board of Medicine August 1, 2015).
<b>Kansas</b>	Yes.  Kan. Stat. Ann. §§ 65-2803, 65-2837, 65-2867.	Only nonprofit hospitals are exempt from the state's corporate practice prohibition.  <i>St. Francis Reg'l Med. Ctr., Inc. v. Weiss</i> , 869 P.2d 606 (Kan. 1994); Kans. Stat. Ann. § 65-28,134.

State	CPOM Doctrine?	Description of Nonprofit Exception
<b>Kentucky</b>	Yes.  Ky. Rev. Stat. § 311.560.	Nonprofit entities providing medical services as a charitable health care provider registered with the state are exempt from the corporate practice prohibitions.  Note that the Kentucky Medical Board has also indicated that it will not enforce the corporate practice prohibition as long as the employer does not interfere with the physician's independent medical judgment.  Ky. Rev. Stat. § 216.940; Ky. Bd. Of Med. Op. No. 36 (Feb. 10, 1995).
<b>Louisiana</b>	Yes.  La. State Bd. of Med. Exm'rs, Statement of Position, <i>Employment of Physician by corporation Other Than a Professional Medical Corporation</i> (Sept. 24, 1992, reviewed Mar. 21, 2001).	The corporate practice doctrine is not violated (by any type of entity) if the employer does not seek to impose or substitute its judgement for that of the physician in patient care and isn't otherwise structured to undermine the essential incidents of the physician-patient relationship.  La. State Bd. Of Med. Exm'rs, Statement of Position, <i>Employment of Physician by Corporation Other Than a Professional Medical Corporation</i> (Sept. 24, 1992, reviewed Mar. 21, 2001).
<b>Maine</b>	No.  Me. Bd. of Licensure, Opinion (Nov. 2, 1992); 13-B Code Me. R. § 1307.	N/A
<b>Maryland</b>	Yes.  Md. Bd. of Physicians, Statement, <i>Information on Corporate Issues</i> , available <a href="#">here</a> .	None.  Md. Code Ann. Health Gen. § 19-351.
<b>Massachusetts</b>	Yes.  <i>McMurdo v. Getter</i> , 10 N.E.2d 139 (1937).	A physician may practice medicine through a nonprofit organization, a nonprofit hospital services corporation, a nonprofit medical services corporation or a similar organization under Maine law or other comparable state law, as long as the entity does not restrict the physician as to methods of diagnosis or treatment.  Mass. Gen. Laws Ch. 176B, § 7; 243 CMR § 2.07(22)(a).
<b>Michigan</b>	Yes.  Mich. Att'y Gen. Op. No. 6592 (Jul. 10, 1989).	Nonprofit hospitals or other nonprofit corporations, as defined in Mich. Comp. Laws Serv. § 450.2101 et seq., may provide medical services through employed physicians.  Mich. St. Att'y Gen. Op. No. 6770 (Sept. 17, 1993).
<b>Minnesota</b>	Yes.  Minn. Op. Att'y Gen. No. 92-B-11 (Oct. 5, 1955); <i>Isles Wellness, inc. v. Progress N. Ins. Co.</i> , 703 N.W.2d 513 (Minn. 2005).	Nonprofit corporations may employ physicians without violating the corporate practice prohibition.  Minn. Op. Att'y Gen. No. 92-B-11 (Oct. 5, 1955).
<b>Mississippi</b>	No.  The Mississippi Board of Medical Licensure announced it won't concern itself with the form of physician business arrangements provided: <ol style="list-style-type: none"><li>1) The physician employed/contracted is licensed in Mississippi;</li><li>2) The method and manner of patient treatment and the means by which patients are treated are left to the sole and absolute discretion of the physician; and</li><li>3) the manner of billing and the amount of fees and expenses charged to a patient for medical services rendered are left solely to the discretion of the physician.</li></ol>	N/A

State	CPOM Doctrine?	Description of Nonprofit Exception
	Miss. Bd. of Med. Licensure, Policy 3.02, <i>Corporate Practice of Medicine</i> (revised Sept. 20, 2001).	
Missouri	No.  <i>State ex inf. McKittrick v. Gate City Optical Co.</i> , 97 S.W.2d 89 (Mo. 1936) (citing <i>State ex inf. Sager v. Lewin</i> , 106 S.W. 581 (Mo. Ct. App. 1907)).	N/A
Montana	Yes.  The Montana statute prohibiting the corporate practice of medicine was repealed in 1995, but the Montana Board of Medical Examiners regulations still provide business arrangements with non-licensed persons constitutes unprofessional conduct (with some exceptions). Mont. Admin. R. 24.156.625(1)(t).	None.
Nebraska	No.  <i>State Electro-Med. Inst. v. State</i> , 103 N.W. 1078 (Neb. 1905).	N/A
Nevada	Yes.  Nev. Rev. Stat. § 89.050; Nev. Att’y Gen. Op. No. 2002-10 (Feb. 26, 2002).	Only nonprofits organized as a medical services corporation may provide services through physicians.  Nev. Rev. Stat. § 695B.020.
New Hampshire	No.  N.H. Rev. Stat. § 293-A:1.01, <i>et seq.</i>	N/A
New Jersey	Yes.  N.J. Admin. Code § 13:35-6.16; <i>Allstate Ins. Co. v. Northfield Med. Ctr., P.C.</i> , 159 A.3d 412 (N.J. 2017).	Only nonprofit corporations sponsored by a union, social or religious or fraternal-type organization providing health care services to members may employ a physician.  N.J. Admin. Code § 13:35-6.16(f)(4)(iii).
New Mexico	No.  N.M. Admin. Code § 16.10.1.13(B).	N/A
New York	Yes.  <i>State v. Abortion Info. Agency, Inc.</i> , 69 Misc. 2d 825 (N.Y. Sup. Ct. 1971); <i>Andrew Carothers, M.D., P.C. v. Progressive Ins. Co.</i> , 128 N.E.3d 153 (N.Y. 2019).	Nonprofit university faculty organizations, medical expense indemnity corporations and hospital service corporations are exempt from the corporate practice prohibition. New York law is silent on how the doctrine applies to other nonprofit entities.  N.Y. Not-For Profit Corp. Law § 1412; N.Y. Educ. Law § 6527(1).
North Carolina	Yes.  N.C. Att’y Gen. Op. No. 43 (Dec. 9, 1955); N.C. Gen. Stat. § 90-18(a).	Charitable nonprofits are exempt from the corporate practice doctrine.  N.C. Med. Bd., Position Statement, <i>Corporate Practice of Medicine</i> (Mar. 2016); N.C. Att’y Gen. Op. No. 43 (Dec. 9, 1955).
North Dakota	Yes.  N.D. Att’y Gen., Advisory Letter to Robert G. Hoy, Cass Cty State’s Atty (October 23, 1990).	None.  N.D. Att’y Gen., Advisory Letter to Robert G. Hoy, Cass Cty State’s Atty (October 23, 1990); N.D. Cent. Code § 43-17-42.
Ohio	Yes.  Ohio Rev. Code § 4731.226.	Physicians may provide medical services through a nonprofit corporation or foundation.  Ohio Rev. Code § 4731.226(A)(1).
Oklahoma	No.	N/A



State	CPOM Doctrine?	Description of Nonprofit Exception
	Okla. Att'y Gen. Op. No. 02-20 (May 8, 2002).	
<b>Oregon</b>	Yes.  <i>State ex rel Sisemore v. Standard Optical Co.</i> , 182 Or 452, 188 P2d 309 (1947); Ore. Att'y Gen. Op. No. 7230 (1975).	None.  Ore. Att'y Gen. Op. No. 5689 (1984).
<b>Pennsylvania</b>	Yes.  <i>Neill v. Gimbel Bros., Inc.</i> , 199 A. 178, 181 (Pa. 1938).	Pennsylvania's Nonprofit Corporation Law provides that a nonprofit corporation may be incorporated for "any lawful purpose," including a "professional" purpose.  63 Pa. Stat. Ann. § 5301(a).
<b>Rhode Island</b>	Yes.  R.I. Gen. Laws § 7-1.2-301.	Nonprofit corporations may be organized for any lawful purpose, including health services.  R.I. Gen. Laws § 7-6-4; <i>RIH Medical Foundation, Inc. v. Nolan</i> , 723 A.2d 1123 (R.I. 1999) (holding that a nonprofit foundation in Rhode Island was not required to be licensed as a health care facility because the "control of the delivery of medical services" remained in the hands of physicians).
<b>South Carolina</b>	Yes.  <i>Baird v. Charleston Cty., S.C.</i> , 511 S.E.2d 69 (S.C. 1999).	Business arrangements with physicians are permissible as long as the arrangement does not allow a person other than a licensed physician to direct, participate in, or interfere with the licensee's practice of medicine and exercise of their independent professional judgement.  S.C. Bd. of Med. Exm'rs, <i>The Supervision of Unlicensed Personnel and the Corporate Practice of Medicine</i> (Oct. 4, 2017).
<b>South Dakota</b>	Yes.  S.D. Codified Laws § 36-4-8.1.	South Dakota law provides corporations (whether for profit or not) may employ physicians as long as the arrangement does not: <ol style="list-style-type: none"> <li>1) interfere or regulate the physician's medical judgement;</li> <li>2) result in profit by charging a greater fee for the physician's services than an independent physician would;</li> <li>3) remain effective for an initial period of more than three years, after which annual renewal is permissible.</li> </ol> S.D. Codified Laws § 36-4-8.1
<b>Tennessee</b>	Yes.  Tenn. Code §§ 63-6-204; 68-11-205.	None.  Tenn. Code §§ 63-6-204; 68-11-205.
<b>Texas</b>	Yes.  Tex. Occ. Code § 155.001, 164.05, 165.156.	The corporate practice doctrine does not apply to nonprofit community hospitals, critical access hospitals, rural health clinics, and health care corporations owned by licensed individuals.  Tex. Occ. Code § 162.001; 22 Tex. Admin. Code § 177.17;
<b>Utah</b>	No.  Utah Code Ann. §§ 58-67-802(1), 58-68-802(1), 58-67-501(1).	N/A
<b>Vermont</b>	No.  Vt. Stat. Ann. tit. 8, § 4581.	N/A
<b>Virginia</b>	No.  Va. Code § 54.111(D); Va. Bd. of Med., Guidance Doc. 85-21 (reviewed and aff'd Oct. 18, 2018).	N/A
<b>Washington</b>	Yes.  Wash. Rev. Code § 18.100.30(1); <i>Columbia Physical Therapy, Inc. v.</i>	None.  <i>Columbia Physical Therapy, Inc. v. Benton Franklin Orthopedic Assocs.</i> , 228 P.3d 1260 (Wash. 2010) ("absent legislative authorization, a business entity

State	CPOM Doctrine?	Description of Nonprofit Exception
	<i>Benton Franklin Orthopedic Assocs.</i> , 228 P.3d 1260 (Wash. 2010).	may not employ medical professionals to practice their licensed professions”).
<b>West Virginia</b>	Yes.  W. Va. Code § 30-3-15; W. Va. Bd. Of Med., <i>Position Statement on the Corporate Practice of Medicine</i> (Mar. 19, 2018).	None.  W. Va. Code § 30-3-15.
<b>Wisconsin</b>	Yes.  Wis. Att’y Gen. Op. No. 39-86 (Oct. 21, 1986).	A nonprofit medical education and research organization may contract with a physician as an employee or to provide consultation services as long as: <ol style="list-style-type: none"> <li>1) the physician is a member of or acceptable to and subject to the approval of the organization’s medical staff;</li> <li>2) the physician is permitted to exercise professional judgement without supervision or interference by the organization;</li> <li>3) the contract establishes the physician’s remuneration; and</li> <li>4) The organization does not limit medical staff membership to employee physicians; and</li> <li>5) Any charges to a patient for the physician’s services designate the name of the physician and that their services are included in the departmental charges.</li> </ol> Wis. Stat. § 448.05(5); Wis. Att’y Gen. Op. No. 31-86 (Sept. 8, 1986) (defining a medical education and research organization as organized for the dominant purpose of providing medical education and conducting medical research and other functions are incidental to that purpose).
<b>Wyoming</b>	No.  Wyo. Stat. §§ 17-3-101 through 17-3-104; Wyo. Att’y Gen. Op. No. 79-17 (1979).	N/A

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## Human Services Committee Sakakawea Room, State Capitol

SB 2128  
1/26/2021

A BILL for an Act to amend and reenact section 43-17-42 of the North Dakota Century Code, relating to the corporate practice of medicine by nonprofit entities and charitable trusts.

**Madam Chair Lee** opened the discussion on SB 2128 at 3:18 p.m. Members present: Lee, K. Roers, Hogan, Anderson, Clemens, O. Larsen.

### Discussion Topics:

- Emergency clause
- Corporate practice of medicine doctrine

**Senator K. Roers** moves to **ADOPT AMENDMENT 21.0389.01001**

**Senator Anderson** seconded.

Voice vote – motion passed

**Senator Anderson** moves **DO PASS, AS AMENDED.**

**Senator Hogan** seconded

Senators	Vote
Senator Judy Lee	Y
Senator Kristin Roers	Y
Senator Howard C. Anderson, Jr.	Y
Senator David A. Clemens	Y
Senator Kathy Hogan	Y
Senator Oley Larsen	N

The motion passed 5-1-0

**Senator Anderson** will carry SB 2128

**Additional written testimony:** N/A

**Madam Chair Lee** closed the discussion on SB 2128 at 3:22 p.m.

*Justin Velez, Committee Clerk*

January 26, 2021

sk  
1/26

PROPOSED AMENDMENTS TO SENATE BILL NO. 2128

Page 1, line 2, after "trusts" insert "; and to declare an emergency"

Page 2, after line 2, insert:

**"SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**SB 2128: Human Services Committee (Sen. Lee, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2128 was placed on the Sixth order on the calendar.

Page 1, line 2, after "trusts" insert "; and to declare an emergency"

Page 2, after line 2, insert:

**"SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

**2021 HOUSE HUMAN SERVICES**

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# 2021 HOUSE STANDING COMMITTEE MINUTES

## Human Services Committee Pioneer Room, State Capitol

SB 2128  
3/16/2021

Relating to the corporate practice of medicine by nonprofit entities and charitable trusts;  
and to declare an emergency

**Chairman Weisz** opened the committee hearing at 2:34 p.m.

Representatives	Attendance
Representative Robin Weisz	P
Representative Karen M. Rohr	P
Representative Mike Beltz	P
Representative Chuck Damschen	P
Representative Bill Devlin	P
Representative Gretchen Dobervich	P
Representative Clayton Fegley	P
Representative Dwight Kiefert	P
Representative Todd Porter	P
Representative Matthew Ruby	P
Representative Mary Schneider	P
Representative Kathy Skroch	A
Representative Bill Tveit	P
Representative Greg Westlind	P

### Discussion Topics:

- Hyperbolic clinic
- Surgery pretreatments
- Hyperbaric oxygen therapy

**Rep. Dick Anderson, District 6 (2:34)** testified in favor and submitted testimony from Patrick Traynor – Executive Director Dakota Medical Foundation - #9624.

**Sen. Judy Lee, District 13 (2:38)** introduced the bill (bill sponsor).

**Chairman Weisz** adjourned at 2:45 p.m.

*Tamara Krause, Committee Clerk*

**Senate Bill No. 2128 Testimony of J. Patrick Traynor**

My name is Pat Traynor and I serve as Executive Director of Dakota Medical Foundation (DMF) which was originally formed in the early 1960s to own and operate Dakota Hospital in Fargo. In 1998, DMF sold its interest in the hospital and transitioned its charitable operations to lead initiatives to continually improve health and access to healthcare in our region. I am also a trustee of the Leland A. Swanson Charitable Trust (Swanson Charitable Trust) which has similar health related purposes and works together with DMF. I have been asked by Senator Judy Lee, Chair of the Human Services Committee, to provide background information on SB2128.

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SB2128 is patterned after the exemption found in NDCC 43-17-42 Section 1 which grants hospitals the right to directly or indirectly employ physicians if they maintain a similar written contract protecting the physicians right to practice medicine according to their own independent judgement.

By way of background, DMF & Swanson Charitable Trust are interested in establishing an HBOT Center of Excellence to provide improved access to HBOT and significant credible research to determine other beneficial uses for HBOT.

It is important to highlight the following medical conditions that HBOT is currently used for and most insurance providers have approved for reimbursement:

1. Necrotizing Soft Tissue Infections
2. Chronic Osteomyelitis (Refractory)
3. Delayed Radiation Injury (Soft Tissue and Bony Necrosis)
4. Arterial Insufficiencies
5. Severe Anemia
6. Intracranial Abscess
7. Compromised Grafts & Flaps
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9. Idiopathic Sudden Sensorineural Hearing Loss



10. Air or Gas embolism
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13. Crush Injury, Compartment Syndrome and Other Acute Traumatic Ischemias
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The current intent is to operate several HBOT chambers in Fargo and offer all regional physicians the opportunity to become knowledgeable on the beneficial & reimbursable uses of HBOT and the off label uses that are or will be studied.

These 14 medical conditions listed above currently have very limited access to HBOT in North Dakota. It is my understanding that there are only two HBOT facilities across the state of North Dakota, one located in Jamestown and one in Fargo.

Other medical conditions treated with HBOT but not approved by FDA and third-party payer coverage include:

1. Chronic persistent mild traumatic brain injury (concussion)
2. Treatment of PTSD
3. Operative preconditioning before major surgeries in the elderly
4. Inflammatory bowel disease (persistent flares, refractory)
5. Long bone fractures among athletes (curative and prevention)
6. Vascular dementia
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8. Inhibition of restenosis after stent placement following a heart attack
9. Metabolic aging and rejuvenation

It is the intent of DMF and Swanson Charitable Trust to pursue HBOT research within the nine categories listed above. Our current effort underway with the University of North Dakota Medical School and Essentia Health is to conduct credible research for HBOT as a potential treatment for those suffering from concussion injuries.

I am pleased to report that the Swanson Charitable Trust and DMF have committed to funding one HBOT chamber, placed at Essentia Hospital in Fargo to be used for access to HBOT care and ongoing research purposes. Essentia Hospital in Fargo plans to have two HBOT chambers operational by April 1, 2021.

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Representative Dwight Kiefert	P
Representative Todd Porter	P
Representative Matthew Ruby	P
Representative Mary Schneider	P
Representative Kathy Skroch	P
Representative Bill Tveit	P
Representative Greg Westlind	P

### Discussion Topics:

- Hyperbaric chamber study
- Dakota Medical Foundation

**Rep. Bill Tveit (2:47)** moved **Do Pass**

**Rep. Mary Schneider (2:47)** second

Representatives	Vote
Representative Robin Weisz	Y
Representative Karen M. Rohr	Y
Representative Mike Beltz	Y
Representative Chuck Damschen	Y
Representative Bill Devlin	Y
Representative Gretchen Dobervich	Y
Representative Clayton Fegley	Y
Representative Dwight Kiefert	Y
Representative Todd Porter	Y
Representative Matthew Ruby	Y
Representative Mary Schneider	Y
Representative Kathy Skroch	Y

Representative Bill Tveit	Y
Representative Greg Westlind	Y

**Motion Carried Do Pass 14-0-0**

**Bill Carrier:** Rep. Mary Schneider

**Chairman Weisz** adjourned at 2:49 p.m.

*Tamara Krause, Committee Clerk*

**REPORT OF STANDING COMMITTEE**

**SB 2128, as engrossed: Human Services Committee (Rep. Weisz, Chairman)**  
recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).  
Engrossed SB 2128 was placed on the Fourteenth order on the calendar.