

Testimony on HB 1505
House Human Services Committee
February 7, 2023

Good morning, Chairman Weisz and members of the House Human Services. My name is Shelly Peterson, President of the North Dakota Long Term Care Association. We represent 192 assisted living, basic care, and skilled nursing facilities in North Dakota. I am here to testify in opposition to HB 1505.

We rise in opposition because nursing facilities are required by federal regulation to vaccinate their staff to prevent the spread of Covid-19. Line 7 of the bill states, “notwithstanding law to the contrary, a person may not require an individual to undergo a vaccination,” so we don’t have a law stating we must comply with the vaccine requirement, but our federal rule has the effect of a law. We believe HB 1505 could adversely impact those with a vaccine requirement.

If we violate or don’t adhere to the federal requirements we can, at the very worst, be fined and closed and at the least receive notification of non-compliance. A deficiency of non-compliance requires corrective action, showing how you will comply. If you don’t comply and continue to ignore the federal regulations, you will be shut down, as we would lose all Medicaid funding. If that occurs, I’m not sure what would happen to the residents who depend on us to care for them.

Regarding vaccination, on November 2, 2021, CMS issued an interim final rule with comment period, (86 FR 61555), titled “Medicare and Medicaid

Program; Omnibus Covid-19 Health Care Staff Vaccination”, (also referred to as the “staff vaccination requirement”). This interim final rule revised the requirements to establish Covid-19 vaccination requirements for staff at applicable Medicare and Medicaid certified providers and suppliers. The staff vaccination requirement for all CMS certified providers and suppliers has been enforced in all states since February 20, 2022.

CMS expects all providers and suppliers staff to have received the appropriate number of doses of the primary vaccine series unless exempted as required by law, or delayed as recommended by CDC.

Facility staff vaccination rates under 100% constitute non-compliance under the rule. Non-compliance does not necessarily lead to termination, and facilities will generally be given opportunities to return to compliance. But you must have a plan of achieving compliance.

Regarding who the vaccination requirement applies to within a nursing facility:

- 1) Facility employees
- 2) Licensed practitioners
- 3) Students, trainees, and volunteers, and
- 4) Individuals who provide care, treatment or other services for the facility and/or it’s residents, under contract or by other arrangements.

As you know, the Public Health Emergency is ending on May 11, 2023. We are excited to see an end to the many restrictions facilities are still required to comply with. We are not sure the impact the end of the Public Health Emergency will have on the vaccination requirement for our skilled nursing facilities. We do know we must comply with the federal regulations if we wish to operate as a skilled nursing facility. We urge you to vote no on this legislation.

I would be happy to answer any questions.

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