2025 SB 2244
House Education Committee
Representative , Chairman
March 12, 2025

Chairman Heinert and members of the House Education Committee, I am Melissa Hauer, General Counsel/VP of the North Dakota Hospital Association (NDHA). I testify in opposition to Senate Bill 2244 and ask that you give this bill a **Do Not Pass** recommendation.

We are concerned that the bill is based on a misinterpretation of how consent for health care of a minor is secured and that it will prevent providers from giving health care in a number of critical situations. It is a long-established principle that before providing treatment a health care provider must obtain the patient's consent. The idea that parents should have the right to make health care decisions for their children is well established. It is already the law and is standard medical practice that before treating a minor, consent must be obtained from a parent or guardian. There are exceptions to this general rule which are explained below. Some provisions of the bill would change these longstanding North Dakota laws regarding minors' ability to consent to their own treatment in certain circumstances. Other provisions of the bill are simply unworkable.

Hospitals are concerned that the bill will overturn current laws that govern when minors may consent to their own health care or when consent is implied. The legislature has determined that, in certain circumstances, it may be more important for a young person to have access to confidential medical services than it is to require that parents be informed of the situation. These laws imply consent or give minors the right to consent to treatment in a few specific situations:

1. N.D.C.C. § 14-10-17 provides that any person 14 years or older may receive examination, care, or treatment for sexually transmitted disease, alcoholism, or drug abuse without permission, authority, or consent of a parent or guardian.

2. N.D.C.C. § 14-10-17.1 provides that if a minor has an emergency medical condition or the potential for one, consent to emergency examination, care, or treatment of the minor is implied if reasonable steps to contact the parent or guardian are unsuccessful. It also provides that a health care provider may provide emergency medical care or forensic services to a minor who is a victim of sexual assault without the consent of the minor's parent or guardian. Reasonable steps must be taken to notify the minor's parent or guardian of the care provided.

3. N.D.C.C. § 14-10-18.1 provides that an individual who is at least 16 years of age may donate blood on a voluntary and non-compensatory basis without obtaining parental consent.

4. N.D.C.C. § 14-10-19 provides limited prenatal care, pregnancy testing, and pain management related to pregnancy for a minor without a parent's consent if, after a good-faith effort, the health care provider is unable to contact the minor's parent or guardian. The health care provider must encourage the minor to involve her parents or guardian. A health care provider may inform the parent or guardian of pregnancy care services in certain circumstances.

5. N.D.C.C. § 14-10-20 allows an unaccompanied homeless minor to consent to health care (other than an abortion).

This bill would override these longstanding laws that imply consent or allow minors to consent to their own health care in certain limited circumstances. For example, in an emergency involving a minor, consent is implied so that necessary, life-saving treatment may be given immediately. What will happen in these emergencies situations, such as, for example, when a child is involved in an accident while in a school bus and a parent cannot be immediately contacted for consent? If the health care provider treats the child, he or she may be subject to a lawsuit filed by a parent. In the other exceptions listed above such as for addiction treatment and sexually transmitted diseases, while health care providers agree that parental involvement is desirable and ideally parents and teenagers would work together to make well thought out health care decisions, the reality is that if we take away access to confidential health care in certain situations teenagers simply will stop seeking the care they need. This is not good for the teenager but has negative public health implications as well.

It is my understanding that some amendments may be proposed to specifically exclude the statutes listed above, with the exception of N.D.C.C. § 14-10-17 which provides that any person 14 years or older may receive examination, care, or treatment for sexually transmitted disease, alcoholism, or drug abuse without permission, authority, or consent of a parent or guardian. The amendments do not alleviate our concerns about the bill. We do not support overriding any minor consent statute currently in effect.

In addition to these concerns, it is unclear what the bill accomplishes. The bill adds a heightened level of judicial scrutiny when a state or local government does anything to "…burden substantially a parent's fundamental right to exercise primary control over the care, supervision, upbringing, and education of the parent's child…" It then goes on to state that any such law must be subject to strict judicial scrutiny whereby the state bears the burden to show the law is essential to further a compelling state interest and is the least restrictive means of furthering that compelling state

interest (Section 1, p. 1 lines 19-20 and p. 2, lines 1-4). This is, however, already the law and adding it to the North Dakota Century Code is unnecessary. The United States Supreme Court long ago determined that a parent's right to the care, custody and control of his or her child is a fundamental, constitutionally protected right.[1] And this concept has been upheld in numerous Supreme Court cases since.[2] The North Dakota Supreme Court has also recognized a parent's fundamental right in the care, custody, and control of children that may not be infringed without due process of law and subject to strict judicial scrutiny by which the state bears the burden of proving that such deprivation is narrowly tailored to achieve a compelling state interest.[3] This means that any state or federal law depriving a parent of these fundamental rights is already subject to strict judicial scrutiny. It is, therefore, unclear what this bill would actually accomplish.

The bill also has conflicting provisions regarding parental consent to health care. Depending on the kind of health care given, the provider may be able to rely on verbal consent but, in other situations, written consent is required. Section one states that parents have the fundamental right to make and consent to a physical or mental health care decision for the child and access and review any health record relating to the child. This presumably means a health care provider can secure the required consent by verbal permission only. However, this section also requires written consent from a parent before a biometric scan of the child is allowed and before a record of the child's blood or deoxyribonucleic acid is created, stored, or shared, unless authorized pursuant to a court order. Anytime a child's blood is drawn, for example, it would require advanced written consent of a parent. In an emergent situation, prior consent of a parent is not always possible. Even in non-emergent circumstances, it will significantly slow routine health care to a child and create another administrative burden on the health care system to ensure providers know when they are required to secure written consent rather than just verbal consent and then ensure that written consent is secured before treating a child. Prior, written consent for such circumstances is simply not practical and adds another burden to the health care system. Even if these two subsections are removed, we have concerns about other portions of Section 1, including the right of a parent to access and review any health or medical record relating to their child. This provision will allow unfettered access of a parent when it may not be in the best interest of the child, for example, when the parent seeking access to the record is abusing the child.

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[1] *Meyer v. Nebraska***,** 262 U.S. 390 (1923). The Court held that the Due Process Clause of the Fourteenth Amendment protects this liberty, incorporating "the right to marry, establish a home, and bring up children."

[2] *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Prince v. Commonwealth of Massachusetts*, 321 U.S. 158 (1944); *Ginsberg v. New York*, 390 U.S. 629 (1968); *Cleveland Board of Education v. LaFleur*, 414 U.S. 632 (1974); *Smith v. Organization of Foster Families*, 431 U.S. 816 (1977); *Santosky v. Kramer*, 455 U.S. 745 (1982); *Reno v. Flores*, 507 U.S. 292 (1993); *Washington v. Glucksburg*, 521 U.S. 702 (1997); *Troxel v. Granville*, 530 U.S. 57 (2000).

[3] *Hoff v. Berg*, 1999 ND 115.

The bill is unclear regarding whether consent of both parents or just one parent is required before a health care provider may treat a minor. Section one creates a right of all parents to make and consent to health care decisions. The bill states that the consent of a parent is needed before proceeding with treatment. But it also creates a cause of action if a parent believes this right has been violated. It is unclear if two-parent consent is thus required. It will be risky for a health care provider to treat a minor unless both parents give consent. For example, if a divorced father takes his child to a health care provider and consents to routine immunizations but the mother does not believe in immunizations and is upset when she learns of them. The mother could sue the provider for failing to secure her consent. Providing health care without the consent of both parents will expose health care providers to lawsuits, costs and attorney's fees for doing nothing more than providing health care to a child based on the consent of one, rather than both, parents.

The bill would ignore the medical needs of children. Instead of putting the child first when providing medical care, providers will be more concerned about being sued by parents. This will leave health care providers vulnerable to manipulation by parents. Health care providers regularly encounter situations where parents are not working together for the best interest of their child. Some parents are uninterested in their child's life or are completely absent. Others are more interested in causing each other frustration than in cooperating to make important decisions about their child's health care. These problems can delay care while the health care provider is left to sort out parents who are truly not acting in the best interests of their child.

In summary, we are concerned with the negative effects this bill would have on medical care for children, including delaying care and inviting litigation against health care providers. If the purpose of the bill is to deal with a concern that a specific health care provider is improperly denying the right of a parent to direct medical treatment for a child, then there are means to deal with that such as by the appropriate professional licensing board or the hospital or clinic administration. We are not aware of any specific problems in North Dakota that this legislation would address.

For these reasons, we ask that you give the bill a **Do Not Pass** recommendation. I would be happy to respond to any questions you may have. Thank you.

Respectfully Submitted,

Melissa Hauer, General Counsel/VP
North Dakota Hospital Association