

# North Dakota Special Legislative Session 2021

The North Dakota 67<sup>th</sup> legislative assembly held a special session starting on Monday, November 8, 2021. The pace was all-out. In only five days, the legislature took up various topics, including redistricting, appropriation of federal coronavirus funds, tax relief, and COVID-19 vaccine-related bills. The session ended on Friday, November 12.

During and leading up to the special session, NDHA worked closely with key legislators, state agencies, the Governor's office, and other health care stakeholders to represent the interests of our members, their patients and communities across North Dakota. Our main goal was to emphasize the importance of recognizing that the health care environment is unique, and hospitals must have the resources and freedom to determine how best to protect patients and employees not only against COVID-19 but all infectious diseases.

## COVID-19 VACCINATION

NDHA focused on three policy bills that related to COVID-19 vaccination issues: a vaccination mandate prohibition ([HB 1511](#)), a vaccination documentation prohibition ([HB 1510](#)), and the right to try off-label drugs ([HB 1514](#)). These bills were heard by the Joint Technical Corrections Committee, which was made up of eight House members and eight Senate members. Bills received only one hearing - instead of the usual two – because the committee had representation from both chambers. The fast pace along with much testimony from all sides made for long and interesting days.

Along with other health care stakeholders, NDHA provided testimony that emphasized the importance of allowing health care providers to be free to determine without state interference the best way to protect the health of their patients and employees. Our message was that hospitals must be able to require vaccination against SARS-CoV-2 to protect patients as well as employees. We also pointed out that passage of vaccine restrictions would put health care providers in a legal quandary – violate the federal CMS requirement that all health care workers be vaccinated or violate state law.

Dr. [Chris Meeker](#) provided testimony on behalf of NDHA in opposition to HB 1511. The testimony focused on how the bill would take away the ability of hospitals to require staff be vaccinated against SARS-CoV-2 and seriously impair the ability of health care providers to protect their patients and employees. The bill that ultimately passed bans state and local governments from requiring COVID-19 vaccinations or documentation of an individual's COVID-19 status and provides that any employer that requires an employee, prospective employee, or independent contractor to be vaccinated against COVID-19 allow proof of antibodies to substitute for vaccination. Such proof is valid for six months from the date of antibody testing. The bill also allows "periodic" COVID-19 testing as well as medical issues and religious, philosophical, or moral objections to substitute for vaccination.

NDHA fought for language to be added to the bill to ensure health care providers are not caught between the requirements of federal mandates and state law. The bill's final language includes an exception for an employer or independent contractor that is required to comply with federal law, rules, or guidance (e.g., the CMS rule) relating to requirements for vaccinations for COVID-19. There is federal litigation challenging the CMS rule as well as the other federal COVID-19 vaccination mandates for federal contractors and employers with over 100 employees. We will be watching them carefully in case they stay or strike down the federal mandates, thus triggering the requirement to comply with HB 1511.

[HB 1510](#), which would have prohibited vaccination documentation requirements, was defeated and [HB 1514](#), which would have provided patients with the right to try any off-label drug prescribed by a provider, was

amended to instead prohibit the licensing boards of physicians, physician assistants, APRNs, and pharmacists from taking disciplinary action solely based on the prescribing or dispensing of ivermectin for the off-label treatment or prevention of SARS-CoV-2. The licensing boards are not limited from taking disciplinary action, however, on another basis, such as unlicensed practice, inappropriate documentation, or substandard care, or any basis that would harm the patient.

## APPROPRIATIONS

The legislature also considered how to spend one billion dollars of federal American Rescue Plan Act (ARPA). The legislature wanted to focus on one-time spending of funds that needed to be allocated before the legislature convenes next in January 2023. Several health-related appropriations were approved as summarized below.

### SB 2354:

- Veterans' Affairs Fargo medical center: \$500,000 for construction, \$147,000 for transportation;
- North Dakota Department of Health: \$15M for state lab improvements;
- UND School of Medicine and Health Sciences: \$2.1M for hyperbaric oxygen therapy;
- State Hospital: \$350,000 for nursing staff retention;
- Pierce County hospital: \$1M;
- North Dakota Department of Human Services: \$4M for community based behavioral health, \$3M for substance use disorder treatment voucher system grants, \$1.5M for alternatives to abortion services, and \$2.5M for DD providers.

HB 1505: Coronavirus Capital Projects Fund and federal state Fiscal Recovery Fund, including \$88 million to the Department of Career and Technical Education for the purpose of a statewide area career center initiative grant program. HB 1506 included \$600,000 to the North Dakota Department of Human Services for a Medicaid postpartum coverage program and \$3.3 million for the free through recovery program. Funds were also approved for workforce community development.