



2023 House Bill 1301
House Human Services Committee
Representative Robin Weisz, Chairman
January 24, 2023

Chairman Weisz and members of the House Human Services Committee, I am Melissa Hauer, General Counsel/VP of the North Dakota Hospital Association (NDHA). I testify in opposition to House Bill 1301 and ask that you give the bill a **Do Not Pass** recommendation.

NDHA opposes this bill for various reasons, some of which are specific to how it will interfere with health care decision making by parents for their children and some of which are related to provisions regarding legal actions. There are several providers that will address the health care issues so I will limit my comments to the concerns we have regarding the creation of a new legal action that may be brought against health care providers, their employers, and even parents.

North Dakota already has existing laws governing medical negligence, comparative fault, and damages. There is a specific statute of limitations for such actions (generally two years) that the legislature has decided is appropriate. Current law also requires certain steps that a plaintiff must complete in order to maintain such a lawsuit against a health care provider, such as the filing of an affidavit in which a qualified medical expert attests to his or her opinion that negligence was committed by the named health care provider. This bill will throw that process out for health care provided for gender dysphoria treatment. A thirty-year statute of limitations is highly unusual in any civil action. If this bill became law, it could also have a strong effect on the cost of medical malpractice insurance coverage. This bill is also at odds with other parental consent laws already on the books. North Dakota law allows a parent to consent to a 16 or 17 year old's marriage but that same parent would not be allowed to consent to any health care treatment or procedure if it is gender identity-related care.

Other states have addressed this type of legislation. In Alabama, the law that prohibits this type of therapy was found to violate parents' fundamental right to autonomy of obtaining medical treatment for their children subject to medically accepted standards. The court further found that the law is unconstitutional sex discrimination in violation of the 14th Amendment's equal protection clause because the law denies medically necessary services only to transgender minors, while allowing those services to cisgender minors. The Alabama law is on appeal to the 11th Circuit. In Arkansas, its law is on appeal to the 8th Circuit. That court upheld an injunction prohibiting enforcement of the law stating that statutes such as this one that discriminate based on sex must be supported by an "exceedingly persuasive justification". The court found there was substantial evidence to support the conclusion that because the biological sex of the minor patient is the basis on which the Arkansas law distinguishes between those who may receive certain types of medical care and those who may not, it is discrimination on the basis of sex. Twenty states have filed an amicus opposing the law, with nineteen states filing an amicus brief supporting Arkansas.

This bill makes evidence-based medical decision making and treatment of transgender individuals unavailable to North Dakotans. There are physicians here today to testify as to the details of that treatment, and why patients would be harmed if this bill was passed.

NDHA requests a **DO NOT PASS** recommendation on the bill. Thank you.

Respectfully Submitted,

Melissa Hauer, General Counsel/VP
North Dakota Hospital Association