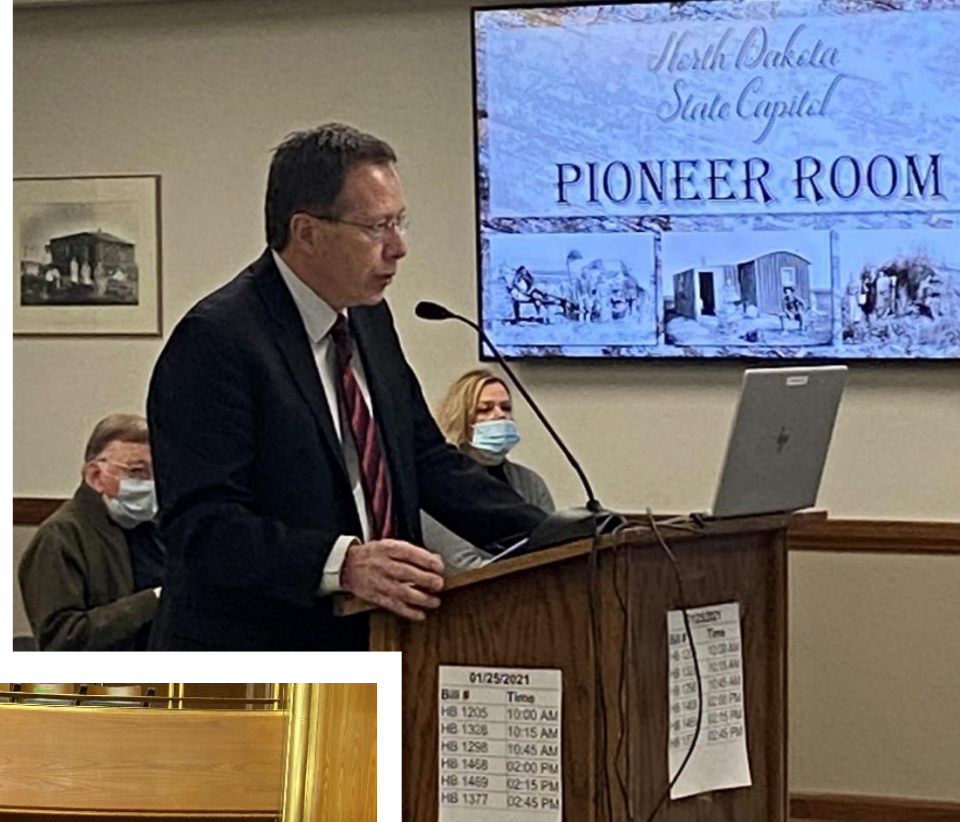




# 67th Legislative Session In Action <sup>2021</sup>



# ND 2021 Legislative Session

- ▶ 2021 Session:
  - ▶ 847 bills and 61 resolutions
  - ▶ 60% from the House; 40% from the Senate
- ▶ NDMA tracked 197 bills – of those 117 passed
- ▶ Bill tracker was updated daily on [ndmed.org](http://ndmed.org)
- ▶ Total bills passed - 500

# 2021 Session - Funding Abundance

- ▶ The total budget for the 2021-23 biennium amounts to \$16.9 billion, which is \$3.2 billion more than the budget for the 2019-21 biennium budget.
- ▶ Most of the large increase is due to the state receiving a large amount of federal funding related to the pandemic.

# HB 1431 - Bonding

- ▶ Authorizes the state to issue \$680 million of bonds:

» Fargo Diversion Project	\$435.5 Million
» Resources Trust Fund for Mouse River Flood Control	\$74.5 Million
» Infrastructure Revolving Loan Fund	\$50.0 Million
» Highway Fund for State Highway Bridges and Matching Federal Funds	\$70.0 Million
» NDSU Agricultural Products Development Center	\$50.0 Million

# Legacy Fund Streams Bill

- ▶ How to allocate the earnings from the Legacy Fund.
- ▶ Created in 2010, the Legacy Fund is the savings account in which 30% of oil and gas extraction taxes are placed.
- ▶ Has grown to nearly \$8 billion by the start of the 2021 Legislative Session.
- ▶ The Fund now produces earnings from the investments to the tune of nearly \$400 million per year.

# Where Will the Money Go?

- ▶ \$150 million – Legacy sinking fund. This is the debt service payment on the \$680 million bond bill (HB 1431)
- ▶ Any amounts above the first \$150 million will be transferred to the Public Employees Retirement System to continue to fill the unfunded liability in the PERS.
- ▶ \$60 million – Highway Distribution Fund. Since the legislature chose not to raise the gasoline tax, this was a key part to fill the funding gap needed for the state's roads and bridges maintenance.
- ▶ The remainder of the earnings in any given biennium will be allocated under “legislative discretion” and will include:
  - Up to \$50 million to a tax relief fund
  - Up to \$30 million to the clean sustainable energy program
  - Up to \$30 million for university research, innovation and workforce enrichment programs

# Medicaid Expansion

- ❖ The budgeted amount for the 2021-23 biennium is \$703 million which represents a huge impact on North Dakota's healthcare infrastructure.
- ❖ The Governor's budget proposed dropping expansion rates to traditional Medicaid rates for a cost savings to the state of \$10.7 million, which results in a \$125 million loss to health care.
- ❖ **STATUS: PASSED WITH EXPANSION INTACT**

# Medicaid

## ❖ HB 1012 Medicaid Reimbursement

- ❖ Health care operates on a fixed reimbursement system, meaning providers cannot increase charges to offset increasing labor costs.
- ❖ Reimbursement rates must be equitable to the cost of care. NDMA supports sustainable payments to providers.
- ❖ PASSED WITH 2/.25 INFLATOR.
- ❖ Legislature may consider an additional 2nd year inflationary increase based on extension of COVID-19 enhanced FMAP.

# Medicaid - More on Funding

- ▶ The State Hospital was approved funding of \$3 million for architectural reviews and the development of detailed plans for the construction of a new hospital.
- ▶ Funding for the substance use disorder voucher more than doubled from current funding of \$8 million to \$17 million for the 2021-23 biennium.
- ▶ Tribal FMAP share was changed to 80/20

# Medicaid Reimbursements

- ❖ Medicaid Reimbursement For:
  - ❖ SB 2205 Interpreters
  - ❖ HB 1288 Continuous Glucose Monitors
  - ❖ SB 2224 Metabolic Supplements
  - ❖ SB 2133 Community EMS personnel

# Telemedicine

- ❖ **Telemedicine:** In the 2017 session, the Legislature passed a bill requiring health insurers to provide coverage of health services delivered by means of telehealth and NDMA has since worked with stakeholders to obtain payment parity.
- ❖ Current North Dakota legislation provides **coverage parity** but fails to address **payment parity**.
- ❖ The Senate amended bill into a mandatory study; the House added a parity pilot project, which included payment parity through the study period.
- ❖ On the House floor, a \$2.5-million fiscal note was highlighted from state health insurance plan.

# UND School of Medicine and Health Sciences

- ❖ Received a needs-based budget in the higher education budget.
- ❖ **Challenge Grants:** This bill makes some changes to the state challenge grants, requiring matching funds 2 to 1 from state educational institutions.
  - ❖ Two sessions ago the medical school was excluded from challenge grants.
- ❖ NDMA successfully removed the exclusion contained in the higher education budget bill.
- ❖ UND SMHS was awarded \$1.5 million in Challenge grant opportunities.

# Maternal Mortality Review Committee (MMRC)

- ❖ North Dakota's maternal mortality review committee has been conducted by the ND Society OBGYN since 1954.
- ❖ For better communication with CDC, other states, and immunity protections, MMRC is going into statute.
- ❖ Housed with the UND SMHS OB/GYN Department.



**State of North Dakota**  
**Office of the Governor**  
Doug Burgum  
Governor

*Doug Burgum*

# COVID Liability Relief - Passed

- ❖ This large umbrella relief bill provides immunity for businesses throughout the state with specific provisions to protect healthcare.
  - ❖ Sponsored by the Greater ND Chamber and supported by 30 associations.

## WHAT IT DOES:

- ❖ Protection for business owners, property owners and tenants from frivolous civil liability lawsuits who acted in good faith and followed COVID-19 applicable laws, regulations and orders;

# COVID Liability Relief (continued)

- ❖ Civil accountability for business owners, property owners, and tenants if they acted with malice and/or total disregard of the laws during the COVID-19 pandemic;
- ❖ Protection for health care facilities and providers who responded quickly with uncertain guidance and limited resources.

# Health Care Specific:

- ▶ A health care provider or health care facility is immune from civil liability for any act or omission in response to COVID - 19 that causes or contributes, directly or indirectly, to the death or injury of an individual;
- ▶ An act or omission while providing a health care service to an individual unrelated to COVID - 19 if the act or omission supports the state's response to COVID - 19, including delaying or canceling a nonurgent or elective dental, medical, or surgical procedure; delaying the diagnosis of an individual; or altering the treatment of an individual.

# COVID-19 LIABILITY RELIEF



# Scope of Practice

- ❖ **Chiropractors Conducting Sports Physicals:** This would have expanded the scope of practice for chiropractors by allowing them to conduct sports physicals. **This section was successfully amended and removed from the bill.**
- ❖ **Physical therapists** can now order x-rays (SB 2122).
- ❖ **Pharmacy assistants** can give vaccinations to persons aged 3 and up (SB 2221).
- ❖ **Pharmacists** can administer COVID-19 tests (HB 1492).

# Scope of Practice (continued)

- ❖ **Relating to the Scope of Practice of a Naturopath:**  
Authorizes naturopaths to prescribe, dispense or administer legend prescription drugs and testosterone. NDMA worked with partners to defeat this in the House. **STATUS: DEFEATED IN THE HOUSE**
- ❖ Many legislators urged NDMA to work with naturopaths to find an acceptable solution in the upcoming interim session.

# Public Health & Safety

- ❖ **No Mask Mandate Allowed by State and Local Officials:** This bill originally prohibited any state or local official to impose a mask mandate and overrules 23-01-05 (state health officer duties) and 23-07-06 (power of local board of health to quarantine) and 37-17.1 (emergency services). Although it received a DNP out of committee, it passed the House 50-44.
- ❖ In the Senate, it received a DNP 6-1 out of committee, but was amended on the floor of the Senate to only prohibit the governor and the state health officer from issuing a mandate.

# Mask Mandate - Continued

- ▶ The amended bill passed the Senate 30-17.
- ▶ NDMA urged a Governor's veto, which he moved forward with;
- ▶ Unfortunately, both the Senate and the House overrode the veto.
  - ▶ a Governor's veto requires a 2/3s vote to overturn; unfortunately, two senators switched their original vote, which were critical votes to hold the veto in place.

# Miscellaneous Public Health Bills

- ▶ Breastfeeding now is not required to be in a discreet and modest manner (HB 1105)
- ▶ Electrical bike users under 18 must wear a helmet (HB 1148)
- ▶ Needle exchange law was amended to include supplies (HB 1163)
- ▶ Nursing home residents have the right to electronic communication (HB 1343)
- ▶ Ambulance and firefighters on duty may carry concealed firearms (HB 1463)
- ▶ Only one mandated reporter must report per facility on child abuse incidents (SB 2083)
- ▶ Any member of the public can administer epinephrine (SB 2248)

# Physician Practice Issues

- ❖ **Freedom of Choice for Health Care Services:** Known as a “any willing provider” bill.
  - ❖ **Passed House as is**
  - ❖ The Senate turned it into a study
  - ❖ Telemedicine amendment put on the bill
  - ❖ Vaccine passport amendment put on the bill
- ❖ **Licensure of Extended Stay Centers:** allows for patients to stay up to 48 hours in a facility separately licensed by the department of health and affiliated with an existing ASC.

# More practice Issues

- ❖ **Biosimilars:** Law was clarified allowing substitution only if the biosimilar is classified as an interchangeable and requiring a 2-day notice to the prescriber.
  - ❖ The original bill coming out of the interim committee had notice just through the medical record.
  - ❖ The bill was amended to require actual notice, which NDMA supported.
- ❖ **Employment of physicians (SB 2128):** In addition to hospitals, new legislation authorized non-profit entities to employ physicians for hyperbaric oxygen therapy

# Pharmacy Optimization Study

- ❖ Review the implementation of a clinical pharmacist-led optimization program.
- ❖ Insurance Commissioner will bring stakeholders together and may request data to complete study.

# Prescription Drugs

- ❖ **Transparency (HB 1032):** This bill came out of the interim health committee. As finally passed, provides for
  - ❖ Drug Manufacturers to disclose wholesale acquisition costs
  - ❖ Pharmacy benefits managers must report certain information to insurance commissioner. Ex. aggregated rebates, fees, price protection payments
  - ❖ Health insurers must report certain information to commissioner. Ex. most frequently prescribed drugs
  - ❖ Insurance commissioner shall develop website to publish information.
- ❖ **Importation (SB 2212):** This bill began as a direct drug importation program but was overhauled to a legislative study of drug pricing, prescription drug importation, the role of PBMs in drug pricing, and reference pricing.

# Epinephrine

- ❖ A health care professional may directly or by standing order prescribe, distribute, dispense epinephrine if training is provided to an individual at risk of severe allergic reaction, or a family member, friend or other assistive person.
- ❖ An individual acting in good faith can provide training to another on the use of, and administer epinephrine to self or other suspected of having a severe allergic reaction
- ❖ Civil and criminal liability immunity applies unless the person's actions constitute recklessness, gross negligence, or intentional misconduct.
- ❖ A health care professional is also immune from civil and criminal liability and professional discipline.

# Vaccine Passport

- ❖ Bill was not accepted by the delayed bills committee
- ❖ Bill was not accepted by the House floor (needed 2/3 vote)
- ❖ Section was amended onto unrelated bill (Any willing provider) stating:
  - ❖ No State government entity nor any of its subdivisions, agents, or assigns may:
  - ❖ a. Require documentation, whether physical or electronic, for the purpose of certifying or otherwise communicating the following before providing access to state property, funds, or services:
    - ❖ (1) An individual's vaccination status;
    - ❖ (2) The presence of pathogens, antigens, or antibodies; or
    - ❖ (3) An individual's post-transmission recovery status;

# Vaccine Passport (continued)

- ❖ A private business located in this state may not require a patron or customer to provide any documentation certifying vaccination or post-transmission recovery to gain access to, entry upon, or services from the business.
  - ❖ This subsection does not apply to a health care provider including a long-term care provider.
  - ❖ Only applies to EUA vaccination status.
  - ❖ Does not apply to K-12 or higher education institutions.
  - ❖ Does not apply during public health emergency.

# Civil Commitment

- ❖ HB 1034: Involuntary treatment (civil commitment) expert examiner report for preliminary hearing must be sent to the petitioner and respondent at the same time it is filed with the court.
- ❖ Except for good cause, the court may not consider medical records unless the respondent receives them at least 24 hours before the hearing.
- ❖ HB 1117: A respondent's refusal to attend a civil commitment hearing is presumed to be a waiver of the right to be present.
- ❖ An order for involuntary treatment following a preliminary hearing may not exceed 14 days. An order following a treatment hearing may not exceed 90 days.

# Participation in Sports

- ❖ HB 1298 prohibited a state or local subdivision from sponsoring or allowing an individual who was assigned the opposite sex at birth to participate on an athletic team sponsored or funded by the state, political subdivision, or entity and which is exclusively for females or exclusively for males.
- ❖ Objections from higher education, from economic development groups; from psychiatrists and many others.
- ❖ ND Activities association has existing policy
- ❖ Amended to just public elementary and secondary and a study was added.
- ❖ Governor vetoed and the veto was not overturned.

# Public Health Emergencies

- ❖ Governor's emergency orders cannot limit sale of alcoholic beverages.
- ❖ If the legislature is not in session, legislative management may vote on whether to request the governor call a special session. If the governor does not call special session within 7 days of a request, the disaster or emergency terminates 30 days later.
- ❖ State Health Officer's written order is limited to the geographical area affected by a communicable disease unless Governor has declared a statewide disaster or emergency.
- ❖ The order is limited in duration to the duration of the declared disaster or emergency unless earlier terminated.
- ❖ HB 1418 Relating to qualifications of the state health officer; requires health officer to be a physician.

# Air Ambulance: Prior Authorization

- ❖ Health care provider must request prior authorization from patient's insurer before arranging for air ambulance services.
- ❖ Health care provider must provide written disclosure and get patient or patient's representative's signature.
- ❖ If the health care provider is unable to provide the written disclosure or get the signature required, must document the reason, which may include the health and safety of the patient.

# Unaccompanied Homeless Minor

- ❖ Unaccompanied homeless minors may have access to health care without parental consent; a healthcare provider cannot be held civilly or criminally liable.
- ❖ Does not allow a homeless minor to consent to an abortion other than as already allowed by law.
- ❖ An unaccompanied homeless minor who is a parent may consent to treatment for the minor's child.

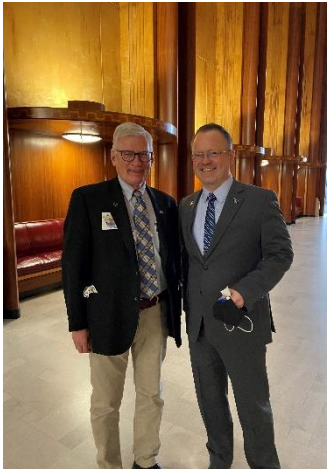
# Tobacco Bills

- ❖ Prohibition of an individual under twenty-one years of age from purchasing, possessing, or using tobacco products or electronic smoking devices: **PASSED**
- ❖ HB 1403 - Relating to an increase in the tax on cigarettes - \$66 million dollar increase to state general fund: **FAILED HOUSE**
- ❖ HB 1422 - Relating to the tax imposed on cigarettes and tobacco products; 89 million dollar increase to state general fund. **STATUS:** **SUPPORT: FAILED HOUSE**

# Merger of the Dept of Health and Dept of Human Services

Major policy change:

- ❖ The director for the Department of Human Services will lead the two combined agencies; the ND Department of Health will become a division of the new agency.
- ❖ The Health Officer will continue to be a member of the Governor's Cabinet and appointed by the Governor.
- ❖ The two agencies will work on their transition plan during the 2021-2023 biennium and will present one combined budget for the 2023-2025 biennium





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