


## ND State Legislative Update and Emerging Issues in Medicine


Courtney Koebele, JD  
Executive Director, NDMA

1



## Objectives

- Review of NDMA's 2023 legislative priorities
- Discuss bills filed by the interim committees
- Understand the implications of the change in leadership and makeup of the legislative body



2

## Objectives - continued

- Explain Prior Authorization Initiative
- Understand the telehealth payment parity environment
- Identify developing issues around reproductive rights legislation




3

## Special Session - update

November 2021


- Re-districting
- ARPA funds - \$1 billion awarded to North Dakota
  - Infrastructure and one-time funding needs
- Anti-vaccine mandate bills
- Medicaid for post-partum women extended to 120 days



4

## Anti Vaccine Mandate Bills

- Relating to COVID-19 vaccination requirement limitations on recipients of state and local tax incentives and exemptions
- Relating to discrimination based on vaccination status or possession of an immunity passport
- Relating to pharmacist dispensing of ivermectin
- Relating to liability of employers requiring COVID-19 vaccines
- Relating to employer-required COVID-19 vaccinations



5

- Vaccine Mandate bill: very generous exemptions including religious, and moral are allowed, unless under a federal mandate. State Department of Health is prohibited from created QR code for vaccines
- Ivermectin bill: Pharmacists, nurses and physicians cannot be disciplined solely for prescribing ivermectin
- 12 months post-partum Medicaid coverage

## What Passed?

6


## The Problem With Immunization Bills

- Immunization was never a popular topic
- Now the politicization of COVID-19, high resistance to science-based arguments
- The more logical the argument, the more push-back from libertarian minded legislators
- “We have to give them something”

7

## ND Legislative Leadership Changes


- Senate Majority Leader Rich Wardner - retired
- House Majority Leader Chet Pollart - retired
- Senate Minority Leader Joan Heckaman - retired
- Senate Appropriations Chair Ray Holmberg - retired
- House Appropriations Chair Jeff Delzer - defeated



8

## Make up of House and Senate North Dakota Legislature


- Senate
  - 40 Republican
  - 7 Democrat (likely 5 in 2023)
- House
  - 80 Republican
  - 14 Democrat



9

## Interim Studies


- Telehealth: barriers for providers and patients
- Narrow network study
- Acute psychiatric hospitalization study
- Medication optimization study



10

## Interim Committee Bills

- Health Care Committee:
  - Relating to a community health worker task force
  - Relating to a prescription drug reference rate pilot program
  - Relating to regulation of community health workers and Medicaid reimbursement for community health worker services
- Human Services Committee - no bills
- Acute Psychiatric Hospitalization Committee - no bills, but expect legislation



11

## 2023 NDMA Legislative Priorities

- Prior Authorization
- Truth in Advertising
- Fix Abortion Law
- Assault Against Healthcare


12

## 2023 NDMA Legislative Priorities


- Medicaid Expansion
- Medicaid
- UND School of Medicine and Health Sciences

13

## Other Priorities




- Support patient safety issues.
- Support independent judgment of physicians.
- Support public health initiatives.
- Support physician scope of practice and oppose inappropriate challenges to scope of practice.



14

## Prior Authorization Initiative


- Number 1 complaint of physicians
- No policy in North Dakota Statute
- NDMA is partnering with hospital systems to develop a policy that would make sense for North Dakota
- Progress made at the federal level



15

## Prior authorization - principles include


- Clinical validity. This includes concepts such as utilization management (UM) criteria being based on up-to-date clinical criteria and never cost alone.
- Continuity of care. Utilization-review entities should offer a minimum of a 60-day grace period for any step-therapy or prior-authorization protocols for patients who are already stabilized on a particular treatment upon enrollment in the plan.



16

## More Prior Authorization


- Transparency and fairness - accurate and up-to-date formularies that include prior authorization and step therapy requirements in electronic health record (EHR) systems
- Timely access and administrative efficiency. This includes principles that establish maximum-response times for UM decisions
- Alternatives and exemptions. This category includes a call for health plans to offer at least one alternative to prior authorization, such as a "gold card" program.



17

## Telehealth

- North Dakota has coverage parity in statute
- During the 2021 legislative session, NDMA partnered with Essentia Health and ND Psychiatric Society to file a bill in support of telehealth payment parity
- During COVID-19, CMS created a fast-track to expand telehealth services for federal plans and reimburse at payment parity rates (Medicare and Medicaid). In many states, private payors are following suit by participating in payment parity, but in North Dakota this is not the case.
- Telehealth waiver may be made permanent on a federal level
- Still considerable resistance from commercial insurance/private payors.



18

## Telehealth - what's next?

- Acute Psychiatric Committee
  - One of the recommendations from the consultant was to embrace telehealth parity.
- Health Care Committee
  - Received extensive testimony on the barriers to telehealth by healthcare professionals: cost was the number one barrier



19

## Reproductive Rights

- Dobbs v. Jackson overturned Roe v. Wade on June 24, 2022
- North Dakota has a trigger law that was triggered on this event
- Currently on hold pursuant to a state court injunction
- NDMA is working with hospital association and providers across the state to produce a solution



20

## ND Trigger Law

- Class C Felony for performance of abortion
  - Definition of abortion is different than that in the abortion control act - does not protect ectopic
- Affirmative defenses
  - Life of the mother
  - Rape or Incest
  - At the direction of a physician



21

- *Health and life-threatening conditions for pregnant women requiring treatment are not protected under the Trigger Law:*
  - Ectopic Pregnancy
  - Pre-Prom (Premature rupture of membranes)
  - Pre- eclampsia
- *An affirmative defense is not an exception.* A physician may be charged and go through an entire criminal trial before being able to plead and prove an affirmative defense.
- *Forcing physicians to use an affirmative defense eliminates the concept of innocent until proven guilty* and shifts the burden on the defendant to prove their treatment was life-saving; or rape or incest. Physicians are guilty until they prove themselves innocent.



22

## Advocacy is more than Legislation

ND Supreme Court - Upholding Damages Cap

Regulatory Issues - Pathology Testing

NDMA is involved in nearly every North Dakota private and public health-related policy committee

Appointment to Boards and Commissions

Officer Leadership within District and NDMA

23

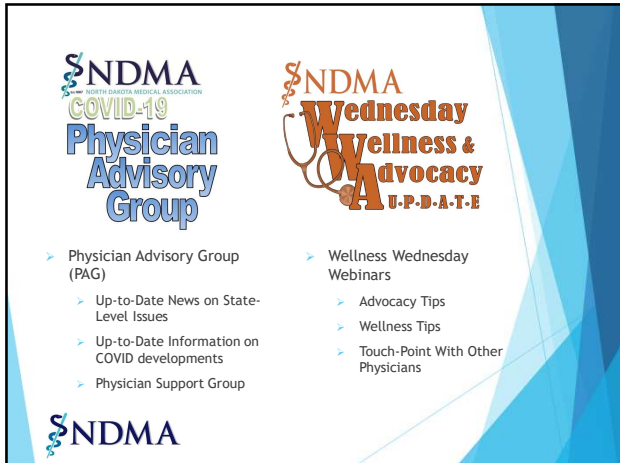
## 2022 Policy Forum Topics



- Prior Authorization
- Non-profit employment of physicians
- Protection of physician autonomy and opposition of criminal sanctions for accepted medical care



24



**NDMA**  
NORTH DAKOTA MEDICAL ASSOCIATION  
**COVID-19**  
**Physician Advisory Group**

- Physician Advisory Group (PAG)
  - Up-to-Date News on State-Level Issues
  - Up-to-Date Information on COVID developments
  - Physician Support Group

**NDMA**  
**Wednesday Wellness & Advocacy**  
**U-P-D-A-T-E**

- Wellness Wednesday Webinars
  - Advocacy Tips
  - Wellness Tips
  - Touch-Point With Other Physicians

**NDMA**

25



**Join the NDMA Commission on Legislation**

- Chaired by Sarah Schatz, MD - Jamestown
- Meets on a monthly basis
- Help draft NDMA policy priorities
- Call or email NDMA office 701-223-9475; [ckoebele@ndmed.com](mailto:ckoebele@ndmed.com)

**NDMA**

26



**NDMA**  
**Contacts**

- ▶ Courtney Koebele, JD  
Executive Director  
[ckoebele@ndmed.com](mailto:ckoebele@ndmed.com)  
701-400-6222 cell
- ▶ Leann Benson  
Chief Operating Officer  
[leann@ndmed.com](mailto:leann@ndmed.com)
- ▶ Donna Thronson  
Communications Director  
[donna@ndmed.com](mailto:donna@ndmed.com)

Office number: 701-223-9475

**NDMA**  
NORTH DAKOTA MEDICAL ASSOCIATION  
EST. 1887

**Join today!**  
Your membership helps us do our job, so you can do yours!

<https://www.ndmed.org/membership/join-ndma/>

27