

**Testimony**  
**Senate Bill 2145 – Department of Human Services**  
**Senate Human Services Committee**  
**Senator Judy Lee, Chairman**  
**January 18, 2021**

Chairman Lee, members of the Senate Human Services Committee, for the record my name is Chris Jones, Executive Director of the Department of Human Services. I am here today to provide pertinent background information and associated content surrounding Senate Bill 2145. The Department is remaining neutral on this bill.

Since the declaration of a national emergency in March, skilled nursing, basic care, and assisted living facilities across North Dakota have faced great impacts as a direct result of COVID-19. Throughout the pandemic's duration, North Dakota has worked diligently to thread the delicate needle between ensuring resident's safety by saving lives and maintaining individual's psychosocial well-being within our states 215 skilled nursing, basic care, and assisted living facilities. Immediately after Governor Burgum issued executive order 2020-22 on April 6<sup>th</sup> to restrict visitation in these facilities, discussions proactively begin on how to best manage the COVID-19 response within these entities where our states most vulnerable population resides, including how safe reunification of residents and families could transpire. In short order, the state of North Dakota formulated the Vulnerable Population Protection Plan (VP3). The VP3 is composed of clinical professionals with immense experience in both the long-term care and acute care realms, in order to help facilitate that a safe, resident centered, and

evidenced based approach governed these congregate living settings during the COVID-19 pandemic. The VP3 team employed a multi-faceted methodology in order to assist our states facilities with responding to and effectively mitigating the spread of COVID-19. Key mitigation strategies that were imperative to this effort, included:

- Participation in rapid response calls
- Deployment of professional cleaning services
- Coordination of staffing needs via the distribution of CNA's, LPN's, and RN's to fill open shifts
- Providing advisement, consultation, and support services to facilities navigating a COVID-19 outbreak
- Securing of grant funds to help facilities install Halo Air Purification systems to assist with removing virus infected particles from the air

As a direct result of these proactive measures, North Dakota was able to pave the way in allowing for the safe resumption of visitation within these congregate living settings, nearly three months earlier than any federally issued easing of visitation restrictions occurred. On June 5<sup>th</sup> Governor Burgum officially amended executive order 2020-22, resulting in the allowance of visitation to resume within these facilities in accordance with the states VP3 plan and associated North Dakota Smart Restart Long-Term Care Reopening Guidelines. This phased reopening approach allowed North Dakota to be a national leader in the early reunification of residents with their families via progressively lifting restrictions in skilled nursing, basic care, and assisted living facilities across the state. Initial lifting of restrictions focused on an internal approach in

phase 1 and ultimately evolved to incorporate external components in phases 2 and 3. A vast array of factors were evaluated when determining entrance for gating criteria into the three tiered plan, including: COVID-19 case status in the county, COVID-19 case status in the facility, adequate staffing levels, access to testing, ability to screen residents/visitors, adherence to universal source control measures, availability of adequate PPE, and local hospital capacity. Over the summer months, facilities across the state steadily progressed through the various phases and ultimately most were able to graduate from outdoor to internal visitation. In doing so, numerous residents and families across the state were able to partake in visitation months ahead of our sister states and the entire nation. Furthermore, it is important to note that facilities maintained the ability to be more stringent if they deemed it necessary to safeguard the residents entrusted to their care.

Nonetheless, as community prevalence of COVID-19 rose in mid-Fall, there was a direct correlation with increased cases amongst both healthcare workers and residents who reside within these congregate living settings where our states most vulnerable population resides. Sadly, to date there has been 830 North Dakotan's who have lost the battle to COVID-19 within our states skilled nursing, basic care, and assisted living facilities (456 from skilled nursing facilities and 374 from basic care/assisted living). With that being said, the states approach to keeping all levels of care under the same guidance has been vital to mitigating the spread of COVID-19 amongst our whole vulnerable population, largely due to its robust testing strategy and associated visitation/service guidelines. This unified approach was further supported and praised

by Dr. Deborah Birx, Coronavirus Response Coordinator for the White House COVID Task Force, during her visits to North Dakota. Since many of our state's facilities house multiple service lines within a single building, historically this approach has also avoided having to differentiate restrictions by level of care, which would be an extremely daunting task to successfully achieve for administration. Both Minnesota and South Dakota have also opted to maintain visitation guidance that is consistent between skilled nursing and their assisted living communities, even though CMS doesn't govern assisted living.

In light of the guidance released by the Centers for Medicare & Medicaid Services (CMS) related to visitation for nursing homes in QSO 20-39-NH on September 17<sup>th</sup>, key North Dakota stakeholders had been working with CMS to request modifications to align more closely with our current visitation plan (N.D. was far less stringent than the new Federal requirements). Unfortunately, CMS verified on October 16<sup>th</sup> that North Dakota would have to conform to the new guidelines and communications then ensued to notify the public that North Dakota would be tightening up their visitation for skilled nursing facilities effective immediately. Nonetheless, as the state ultimately holds oversight of basic care and assisted living entities, we were able to modify these guidelines to promote the allowance for some form of indoor visitation to occur within all these facilities since early November. To reiterate that point, all basic care and assisted living facilities which are overseen by the state, from the states perspective can have indoor visitation in either a safe, designated indoor space or in their own room depending on the facilities status today (current data reflects that 85%

can have in-room visitation, with only 19 facilities having to engage in indoor visitation within a safe, designated indoor space due to either the county positivity rate or having a COVID-19 case within the past 14 days). In contrast, both Minnesota and South Dakota have elected to mirror the stringency within CMS QSO 20-39-NH for skilled nursing facilities and apply this directly to their assisted living communities as well. In fact, Minnesota goes as far to specifically state in their assisted living visitation guidance that, “In an effort to be consistent with CMS guidance, MDH will consider essential caregiver visits as a type of compassionate care visit”. Alas, an approach that North Dakota avoided and as a result has been able to safely achieve the more open visitation scheme shared above. Therefore, our existing guidance allows for more than a “essential caregiver” and we are unsure of how the proposed legislation would further enhance the existing guidelines without superseding federal regulation and potentially causing a false public perception of increased hope surrounding visitation changes.

I would be happy to answer any questions that you may have.