



January 26, 2022

Representative William Infantine, Chairman  
House Labor, Industrial and Rehabilitative Services  
LOB Room 307  
Concord, NH 03301  
Email: [HouseLaborIndustrialandRehabilitativeServices@leg.state.nh.us](mailto:HouseLaborIndustrialandRehabilitativeServices@leg.state.nh.us)

RE: HB 1358 requiring public and private employers to establish procedures and exceptions for the use of mandatory intrusive testing as a condition of new or continued employment

Dear Chairman Infantine and Members of the House Labor, Industrial and Rehabilitative Services Committee:

Bi-State Primary Care Association and our members respectfully request HB 1358, requiring public and private employers to establish procedures and exceptions for the use of mandatory intrusive testing as a condition of new or continued employment, be recommended inexpedient to legislate. Bi-State staff and our members will not attend legislative hearings due to the risk of COVID-19, and we thank you for the opportunity to submit written testimony to your committee electronically. Bi-State and our members write to you in strong opposition of HB 1358 because it interferes with the operations of private businesses, including health care organizations, in a way that endangers the health and welfare of Granite Staters by creating a conscientious objection to the testing of communicable diseases.

Bi-State Primary Care Association (Bi-State) is a 501(c)(3) nonprofit organization, formed by two health and social service leaders in 1986 to advance access to comprehensive primary care and preventive services for all, with special emphasis on those most in need in New Hampshire and Vermont. Today, Bi-State represents 28 member organizations across both states that provide comprehensive primary care services to over 300,000 patients at 146 locations. Our members include community health centers (CHCs), federally qualified health centers (FQHCs), rural health clinics (RHCs), area health education center programs, and Planned Parenthood of Northern New England. New Hampshire's 13 health centers serve approximately 112,000 patients at locations across the state, including in those districts represented by the members of the Labor, Industrial and Rehabilitative Services Committee.

**Bi-State and our members oppose HB 1358 because it interferes with Granite State employers', including health care organizations', ability to maintain safe workplaces, and HB 1358 will needlessly endanger the health and welfare of patients.**

On November 4, 2021, the Centers for Medicare & Medicaid Services (CMS) issued an Interim Final Rule with Comment Period (IFC) requiring that health care workers at Medicare and Medicaid-certified facilities – which include community health centers, federally qualified health

centers, and rural health clinics – be vaccinated against COVID-19.<sup>1</sup> As of January 19, 2022, the CMS vaccine requirement is in effect in all 50 states, Washington D.C., and the territories; and its legal status is not expected to change. The IFC also requires health centers to have a detailed set of policies and procedures relating to the CMS vaccine rules. These policies and procedures must apply to students in training who are working at health care organizations. Students training to be health care professionals receive hands-on training that includes contact with high-risk patients, including children too young to be vaccinated. Both the Medicare and Medicaid statutes contain several provisions that authorize the U.S. Department of Health and Human Services (HHS) to impose requirements necessary “in the interest of the health and safety of beneficiaries.” CMS contends correctly that, under the Supremacy Clause of the U.S. Constitution, this IFC “preempts inconsistent State and local laws as applied to Medicare- and Medicaid-certified providers and suppliers.” While the CMS rules do not allow health care workers to test in lieu of vaccination, health care organizations use testing to determine whether a worker is infected with COVID-19 to prevent the spread of the disease.

HB 1358 effectively eliminates one of the only methods health care organizations currently have to test for disease. Without the ability to test to prevent disease spread, health care organizations are putting the health of their staff and their patients at grave risk, including children, who account for ~53% of COVID-19 cases in New Hampshire on January 26, 2022.<sup>2</sup> The integrated services that health centers offer “all under one roof” include a wide range of pediatric services, family support programs, children’s oral health care, and childcare to the community. Pediatric patients make up ~25% of health centers’ patient population, and many of these young patients are immunocompromised or too young to be vaccinated. Moreover, overall, a high proportion of health center patients are at high risk of severe illness and hospitalization if they were to get infected with the virus, including pregnant mothers, patients who are experiencing homelessness, individuals with complex chronic illnesses such as diabetes and heart disease, and cancer patients.

**In addition to the danger it poses for patients, Bi-State and our members oppose HB 1358 because they must comply with the federal law to operate and serve Granite Staters through Medicare, Medicaid, and state contracts.**

Like vaccination requirements, testing for communicable diseases for health care workers before employment or continued employment is not new. For example, FQHCs are governed by patient-majority boards, meaning members of the communities served by the FQHCs approve the policies and procedures the FQHC must utilize. Their regulating body, the Health Resources and Services Administration, conducts site visits at least every three years, to ensure the FQHCs comply with the federal rules and regulations governing FQHCs. Health centers are required to “provide services....so that such services are available and accessible promptly, as appropriate, and in a manner that will assure continuity of services to the residents of the center’s catchment area.”<sup>2</sup> In order to demonstrate compliance with the clinical staffing requirements of FQHCs, an FQHC must have procedures in place to grant and renew privileges for clinical staff members who are “health center employees, individual contractors, or volunteers.”<sup>3</sup> The procedures for privileging clinicians include verifying immunization and communicable disease status. As of

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<sup>1</sup> “Guidance for the Interim Final Rule - Medicare and Medicaid Programs; Omnibus Covid-19 Health Care Staff Vaccination.” CMS, <https://www.cms.gov/medicareprovider-enrollment-and-certificationsurveycertificationgeninfpolicy-and-memos-states-and/guidance-interim-final-rule-medicare-and-medicaid-programs-omnibus-covid-19-health-care-staff-0#:~:text=On%20November%2005%2C%202021%2C%20CMS,Medicaid%2Dcertified%20providers%20and%20suppliers.>

<sup>2</sup> NH DHHS COVID-19 Update (January 26, 2022), <https://www.covid19.nh.gov/sites/g/files/ehbemt481/files/documents/2022-01/covid-19-update-01262022.pdf>

January 13, 2022, all health care organizations that are Medicare- and Medicaid-certified provider organizations must ensure applicable staff are vaccinated against COVID-19. This is only one of several health care related requirements health care workers have, nor is it one that Bi-State or our members object to. Federal rules require health care organizations have testing procedures and policies in place to prevent the spread of disease. Health care organizations should not be prohibited from testing their employees for deadly diseases by the State because it puts people at risk for serious illness and death.

New Hampshire is suffering from not only our highest numbers of COVID-19 infections, hospitalizations, and deaths, but also extraordinary staffing shortages that are impacting all residents and their ability to access primary and emergency care. Staffing shortages at CHCs are *not* due to vaccine requirements; ~5% of their workforce is currently out sick due solely to illness from COVID-19. This does not include their health care staff who are unable to go to work because they are at home caring for a sick child, nor does it illustrate the incredible strain that working at reduced workforce capacity puts on the rest of their staff.

For these reasons and more, Bi-State Primary Care Association and our members respectfully request the Committee recommend HB 1358 be inexpedient to legislate.

Sincerely,

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