



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

RE: HB 1352 relative to eligibility for workers' compensation for an adverse reaction to a mandatory COVID-19 vaccination

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 1352, relative to eligibility for workers' compensation for an adverse reaction to a mandatory COVID-19 vaccination, 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 1352 because it interferes with the ability of private businesses, including health care organizations, to maintain safe workplaces and will needlessly endanger the health and welfare of Granite Staters.

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 1352 because it will eliminate Granite State employers', including health care organizations', ability to maintain safe workplaces, and HB 1352 will needlessly endanger the health and welfare of patients.

As introduced, HB 1352 not only creates an "occupational disease for purposes of determining eligibility for workers' compensation," it also allows employees to be eligible for workers' compensation if an employer "imposes additional requirements or workplace conditions upon an employee who declines to receive a COVID-19 vaccination." This will apply to any mitigation measures employers put in place to prevent unvaccinated workers, including those who receive medical exemptions from vaccine requirements, from spreading a deadly disease. For example, if

this bill were to become law, health care organizations could not require unvaccinated health care workers wear personal protective equipment or require them to socially distance from coworkers or patients with complex medical conditions. The bill also penalizes businesses for incentivizing employees to become vaccinated, which interferes with private employers' ability to create and implement employee benefits. Bi-State and our members also question whether HB 1352 would expose health care organizations to liability for exposing vaccinated employees and their patients to a disease unnecessarily.

Without a vaccine requirement or mitigation measures for those who are unvaccinated and receive accommodations in place, 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, 2022.¹ 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 1352 because they must comply with the federal law to operate and serve Granite Staters through Medicare, Medicaid, and state contracts.

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-19.² 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.”

If New Hampshire’s community health centers were in violation of state statute, they could be forced to shut the doors to the more than 112,000 Granite Staters who rely upon them for their primary care, substance use disorder treatment, mental health services, and pediatric care.

¹ 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>

² “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-certificationsurvey/certificationengeninpolicy-and-memos-states-and/guidance-interim-final-rule-medicare-and-medicaid-programs-omnibus-covid-19-health-care-staff-0#:~:text=On%20November%202021%2C%20CMS,Medicaid%2Dcertified%20providers%20and%20suppliers.>

New Hampshire relies heavily on CHCs to provide an array of health care services that the State itself is unable to provide. For example, the State of New Hampshire relies on nonprofit organizations like the FQHCs to provide health care services to pregnant women and children through a Title V block grant. Additionally, Bi-State and the health centers work with the State to ensure access to medication-assisted treatment for pregnant and postpartum patients. How would the State provide these services otherwise? Where would the 112,000 health center patients turn for their health care needs?

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 1352 be inexpedient to legislate.

Sincerely,

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