



February 1, 2022

Representative Mark Pearson, Chairman
House Health, Human Services, and Elderly Affairs Committee
Legislative Office Building, Room 205
33 N. State Street
Concord, NH 03301
Email: HHSEA@leg.state.nh.us

RE: HB 1224-FN prohibiting state and local governments from adopting certain mandates in response to COVID-19; and prohibiting employers and places of public accommodation from discrimination on the basis of vaccination status

Dear Chairman Pearson and Members of the HHSEA Committee:

Bi-State Primary Care Association and our members respectfully request HB 1224-FN, prohibiting state and local governments from adopting certain mandates in response to COVID-19; and prohibiting employers and places of public accommodation from discrimination on the basis of vaccination status, 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 1224-FN because it eliminates the ability of the State, municipalities, and businesses to enact safety measures to minimize the spread of infectious diseases, including COVID-19.

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 this esteemed committee.

Bi-State and our members oppose HB 1224 because it will eliminate New Hampshire's ability to enact public health measures designed to minimize the spread of infectious diseases, including polio and measles.

New Hampshire, like all states, requires childhood immunizations to attend school.¹ If HB 1224 as introduced were to become law, the State and towns would be prohibited from requiring children to be vaccinated against deadly diseases, including measles, mumps, rubella, polio, or pertussis to attend school.² HB 1224 also prohibits state agencies and local governments from

¹ See Chapter He-P 300 Diseases last accessed on Jan. 31, 2022.

² HB 1224, page 1, lines 11 through 15 (Nh 2022)

adopting mask or facial covering requirements to minimize the spread of COVID-19 or any other infectious disease. Public health measures, such as mask and vaccination requirements, are designed to protect all community members, including those who cannot wear masks or be vaccinated. It is completely irresponsible to prohibit all mitigation measures that will prevent the spread of deadly diseases.

On January 19th, the New Hampshire Department of Health and Human Services reported there were 117 active COVID-19 clusters in the K-12 schools, with an average of 12.8 cases per cluster.³ The Department also reported 40 active childcare clusters. Masks are the only thing keeping children who are not old enough to be vaccinated safe. There are likely several factors that caused the drastic rise in pediatric cases, and the rise in school and childcare clusters, including the lack of mask mandates. We know that employing mitigation measures such as masks in schools prevents the spread of disease. Eliminating the ability of the State and local authorities to require masks to prevent disease spread will undoubtedly increase the number of COVID-19 cases and burden our health care system even more than it is today. On January 3rd, one health center reported it received over 600 calls from parents and caregivers calling for COVID-19 tests for children. COVID-19 will continue to overwhelm our health care system if we do not slow the spread of disease.

Bi-State and our members oppose HB 1224 because it interferes with Granite State employers', including health care organizations', ability to maintain safe workplaces, and HB 1224 will needlessly endanger the health and welfare of patients.

Without mitigation measures in place like masks and vaccination requirements, 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, 2022.⁴ 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 services, 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. HB 1224 would eliminate our health centers’ ability to require their staff to be vaccinated against infectious diseases, despite this being a longstanding requirement of employment.

In addition to the danger it poses for patients, Bi-State and our members oppose HB 1224 because they must comply with the federal law to operate and serve Granite Staters through Medicare, Medicaid, and state contracts.

HB 1224 specifically prohibits the denial of “educational opportunities, health care access, or employment opportunities based on the person’s vaccination status...” and states that employers cannot refuse to employ a person based on their vaccination status.⁵ 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 –

³ NH DHHS COVID-19 Education and Childcare Partner Call (January 19, 2022)

<https://www.covid19.nh.gov/sites/g/files/ehbemt481/files/inline-documents/sonh/hcp-call-presentation-011922.pdf>

⁴ 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>

⁵ HB 1224, page 2 lines 21 through 26, and page 1 lines 27 through 29 (Nh 2022)

which include community health centers, federally qualified health centers, and rural health clinics – be vaccinated against COVID-19.⁶ 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 their 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.

New Hampshire is suffering from not only some of our highest numbers of COVID-19 infections, hospitalizations, and deaths since the beginning of the pandemic, 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.

The lack of childhood immunizations, masks in schools, and other mitigation measures in our communities is eroding our health care system's ability to respond to urgent primary care needs: Primary care providers across the state cannot prioritize their regular patient visits because their staff are responding to COVID-19. Utilizing a package of mitigation strategies is economically prudent, will reduce the number of health care workers taking care of a sick child, and will, most importantly, save lives.

For these reasons and more, Bi-State Primary Care Association and our members respectfully request the Committee recommend HB 1224 be inexpedient to legislate.

Sincerely,

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⁶ “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/certificationgeninfo/policy-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.>