



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 1377 relative to unemployment benefits for employees terminated for refusing to comply with a vaccine mandate

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 1377, relative to unemployment benefits for employees terminated for refusing to comply with a vaccine mandate, 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 1377 because this bill penalizes businesses, including health care organizations, for putting measures in place to keep their employees and customers safe from preventable 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.

In addition to the danger it poses for patients, Bi-State and our members oppose HB 1377 because they must comply with the federal law to operate and serve Granite Staters through Medicare, Medicaid, and state contracts.

HB 1377 requires employees who are terminated, placed on leave, or given zero hours of billable time due to their noncompliance with an employer-mandated vaccination requirement, access to an additional six months of unemployment benefits. This bill penalizes private businesses, including health care organizations, for trying to prevent the spread of diseases by requiring vaccinations of their workforce, and as introduced, applies to all vaccination requirements. Vaccination requirements for health care workers are 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.”² 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.”³ The procedures for privileging clinicians include verifying immunization and communicable disease status. As of 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 requirement health care workers have, nor is it one that Bi-State or our members object to.

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-19.¹ 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.”

Bi-State and our members oppose HB 1377 because it penalizes Granite State employers’, including health care organizations’, ability to maintain safe workplaces and HB 1377 will needlessly endanger the health and welfare of patients.

Without a vaccine requirement 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, 2022.² 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,

¹ “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-medicare-programs-omnibus-covid-19-health-care-staff-0#:~:text=On%20November%2005%2C%202021%2C%20CMS,Medicaid%2Dcertified%20providers%20and%20suppliers.>

² 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>

including pregnant mothers, patients who are experiencing homelessness, individuals with complex chronic illnesses such as diabetes and heart disease, and cancer patients.

If HB 1377 were to become law, the State would be prohibited from working with CHCs through state contracts because CHCs must require vaccinations, including for COVID-19.

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?

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. Where would these health center patients turn for their health care needs?

For example, Coos County Family Health Services is the only primary care provider in the Berlin/Gorham area and provides much needed primary care and oral health services to those communities. Many of the services the citizens of Berlin and Gorham rely on are funded through State contracts. How would the State fulfill the terms and conditions of its federal and state if the State of New Hampshire could no longer contract with Coos County Family Health Services?

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 1377 be inexpedient to legislate.

Sincerely,

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