



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 1604-FN including state medical facilities in the statute providing medical freedom in immunizations

Dear Chairman Pearson and Members of the HHSEA Committee:

Bi-State Primary Care Association and our members respectfully request HB 1604-FN, including state medical facilities in the statute providing medical freedom in immunizations, 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 1604-FN because it eliminates the ability of the health care organizations to enact safety measures to minimize the spread of an infectious and deadly disease.

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 1604 because it interferes with health care organizations' ability to maintain safe workplaces, and HB 1604 will needlessly endanger the health and welfare of patients.

HB 1604 as introduced does not apply to every CHC; however, we oppose the bill regardless because: 1) it eliminates health care organizations' ability to require vaccinations of their staff; and 2) the testimony and conversation at the committee hearing indicated an amendment may be drafted to expand the bill to apply to all health care organizations. 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, 2022.¹

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 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. The implications of repealing the exceptions in RSA 141-C:1-a and expanding that statute to include all health care providers would eliminate our health centers’ ability to require their staff 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 1604 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 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.

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-certificationsurveycertificationgeninfopolicy-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.>

For these reasons and more, Bi-State Primary Care Association and our members respectfully request the Committee recommend HB 1604 be inexpedient to legislate.

Sincerely,

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