



The Ohio Senate
Senate General Government Budget Committee
Senator Bob Peterson, Chair

HOUSE BILL 218
OPPONENT WRITTEN TESTIMONY

Chairman Peterson, Vice Chair Cirino, Ranking Member Craig, and members of the Senate General Government Budget Committee, thank you for the opportunity to provide written testimony expressing our concerns over House Bill 218 (“HB 218”). As medical professionals with significant experience in infection control, our concern is that the limits imposed by this legislation restrict employers’ and schools’ ability to keep their patients, students, customers, employees, and workplaces safe.

University Hospitals (“UH”) is a Cleveland-based health system that serves more than 1.2 million patients in 16 Northeast Ohio counties with over 30,000 caregivers. The hub of our 23-hospital system is University Hospitals Cleveland Medical Center, an academic medical center known for advanced care. Included on UH’s main campus are University Hospitals Rainbow Babies & Children’s Hospital, among the nation’s best children’s hospitals; and University Hospitals Seidman Cancer Center, part of the National Cancer Institute-designated Case Comprehensive Cancer Center at Case Western Reserve University (the nation’s highest designation). UH strives to strengthen the health care needs of our community by providing outstanding service, the highest quality physicians and nurses, and using innovative techniques. We are very proud of the medical expertise we offer in Northeast Ohio and incredibly proud of the critical role we play in protecting families in our local communities.

It is well established that getting vaccinated is one of the most important ways people can protect themselves, the people they care about, and their communities from COVID-19 since these vaccines prevent severe illness, hospitalization, and death. Recent studies have shown that current variants are now more contagious and transmissible than ever before.¹ UH has strongly encouraged and promoted the vaccine among its employees; however, UH did not mandate the vaccine for its employees prior to the CMS requirement for Medicare providers and suppliers to become vaccinated (paused at this time while litigation progresses). We appreciate that this Ohio General Assembly generally tries to respect the rights of employers and this scenario is no different. The pandemic has posed a rapidly changing landscape with multifaceted challenges that require constant adaptation. With that in mind, UH has the clinical expertise and experience to best protect our employees and patients while also juggling evolving challenges (e.g. new variants, state-wide and national staffing shortages, etc.).

We describe the current scientifically-proven methods of preventing infection and transmission as easy as the ABC’s:

- A**lways mask in indoor public spaces;
- B**e aware of symptoms;
- C**lean your hands and your space;
- D**istance physically, but not socially; and
- E**veryone that can get vaccinated, should.²

¹ <https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html>

² <https://www.uhhospitals.org/university-hospitals-healthy-restart>

Under current Ohio and federal law, Ohioans may decline vaccinations for a variety of reasons, including medical or religious reasons.³ These exemptions have been in place and working well for a long time. HB 218 goes well beyond those exemptions, causing significant confusion, costs, and would interfere with our ability to protect our employees, patients, and their families.

To start, HB 218 proposes a “natural immunity” exemption under which the student or employee must submit to the school, institution, or employer written documentation that the student or employee has been tested for the presence of COVID-19 antibodies in a manner recognized by the medical community and, at the time of testing, had antibodies in an amount at least equal to or greater than those conferred by a COVID-19 vaccine for which the FDA has issued a biologics license. Studies have shown that while there is temporary protection from COVID-19 infection, “natural immunity” is not equivalent to vaccination, since it wanes over time⁴ and is less effective⁵ than vaccines. It is worth further noting that new studies indicate that the recently-identified Omicron variant is “associated with substantial ability to evade immunity from prior infection.”⁶ This means that, to the extent there may have been some protection from prior infection or “natural immunity” from initial COVID-19 infection waves, at least for a limited period of time, such protection appears not to hold for newly spreading variants.

Testing for antibodies and measuring them on an on-going basis for employees or students who assert this exemption to the vaccine would be expensive, not highly sensitive, time-consuming, complicated, and would require clinical resources that otherwise would be used for patient care. Furthermore, commercial antibody testing may not detect all antibodies after natural infection, including antibodies against the spike protein, which is most important in immune protection. Further, some of these tests may be unreliable. Encouraging this kind of “protection” contradicts the available clinical guidance, and may increase the likelihood of another surge in future COVID-19 infections from a new variant. This approach also has the potential to encourage intentional infection at a time when healthcare resources in our state are being challenged by record high hospitalizations from COVID-19 infection, and also discourage vaccination, which has been shown to prevent the most severe effects of COVID-19 infection, including hospitalization and death.

Additionally, HB 218 requires the Ohio Department of Health to adopt rules establishing the frequency with which a student or employee must be retested for the presence of COVID-19 antibodies. The bill does not specify how the standard of a test that is “recognized by the medical community” will be determined, especially given the medical consensus does not support “natural immunity” equivalency. It is also unclear how a school or employer would make the determination that a student or employee’s antibody levels meet or exceed those conferred by vaccination.

HB 218 also proposes an exemption related to an individual’s reasons of conscience to refuse to comply with a COVID-19 vaccine mandate. The religious exemption required by Title VII of the Civil Rights Law, as explained in recent guidance from the EEOC includes a standard that encompasses those beliefs that are sincerely held by an individual, even if there is not an organized doctrine around their beliefs, so long as they are not a mere personal preference.⁷ The proposed exemption is therefore unnecessary, but also would effectively permit an individual to avoid a vaccine requirement under any circumstance without giving due consideration to the health and safety of an employer’s workforce and the customers or patients they serve. This is most troubling in hospitals and other health care settings, especially those that have many patients who are immunocompromised, such as our cancer patients. A hospital simply wants the ability, as the employer, to take whatever steps they deem appropriate and necessary to protect both patients and employees.

³ <https://www.lsc.ohio.gov/documents/reference/current/membersonlybriefs/133Ohio%20Immunization%20Laws.pdf>

⁴ <http://dx.doi.org/10.15585/mmwr.mm6947a2>

⁵ <http://dx.doi.org/10.15585/mmwr.mm7032e1>

⁶ <https://doi.org/10.1101/2021.11.11.21266068>

⁷ <https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination>

While currently being litigated in the courts, federal requirements have been announced which will require healthcare staff to be vaccinated as a Condition of Participation for Medicare. HB 218 would restrict our ability to comply with these Medicare Conditions of Participation. In fact, HB 218 is in direct conflict with federal rulemaking. Depending on the outcome of pending litigation, we may be put in a situation where we are faced with the decision to violate either state or federal law because it would be impossible to comply with both. We are awaiting further details from the federal government and the outcome in the courts, but it is very clear that the Centers for Medicare and Medicaid Services (“CMS”) intends to require all health care workers in health systems, hospitals, and other healthcare providers to get vaccinated or we may lose our eligibility to serve Ohio’s vulnerable Medicare patients. CMS is already measuring employee vaccination rates in hospitals as a quality measure.

We appreciate that the Ohio General Assembly acknowledges that many businesses in the state are subject to requirements outside of the state legislature. However, increased state regulations that conflict with federal or other requirements create additional burden for Ohio hospitals, businesses, employers and confusion for their employees.

We recognize that HB 218 includes two provisions that are helpful to healthcare providers as we respond to record volumes and the latest COVID-19 surge from the Delta variant and the emergence of the new COVID variant Omicron. First, HB 218 would extend all HB 606 qualified liability immunity provisions through June 30, 2023 for health care and emergency services provided during a government-declared disaster/emergency and also for exposure to or transmission or contraction of certain coronaviruses. Second, HB 218 allows Emergency Medical Technicians (basic, intermediate, and paramedic) who have received proper training to administer COVID-19 tests and collect/label test specimens. These are common sense policies that should pass regardless of HB 218 as they improve our ability to care for our patients during this global pandemic and current surge.

We also appreciate the general intent behind exempting those in children’s hospitals and those in ICUs of hospitals from these proposed legislative exceptions to employer policies, as it acknowledges the protection provided by vaccines and the potential safety derived from being able to require them. However, this carve out may not be sufficient to protect our patients and caregivers. We serve many unvaccinated patients and immunocompromised patients, including but not limited to cancer patients, across our health systems. It would be challenging to divide our employees, those affected and not affected by these exceptions, especially given on-going staffing re-assignments based on surge needs and staff shortages. These two provisions do not relieve our overall concern with this legislation, especially given the newly added language for children’s hospitals and ICU’s, requiring them in good faith to provide equitable employment for those employees refusing the COVID-19 vaccine. This language is overly broad and unclear, likely placing a heavy administrative strain on hospitals when that time and resources could be instead used for fighting this pandemic and serving Ohioans in need of care.

In conclusion, UH has serious concerns that this legislation may only exacerbate the harm caused by COVID-19. We urge you to not pass this legislation, which poses risks to businesses, hospitals, and human life. Thank you Chairman Peterson, Vice Chair Cirino, Ranking Member Craig, and members of the Senate General Government Budget Committee for this opportunity to provide feedback on this important legislation.

Robert Salata, M.D., FACP, FIDSA
Chair, Department of Medicine
University Hospitals Cleveland Medical Center
11100 Euclid Avenue
Cleveland, OH 44106

Claudia Hoyen, M.D.
Director, Pediatric Infection Control
UH Rainbow Babies & Children’s Hospital
11100 Euclid Avenue
Cleveland, OH 44106