

745 Fifth Ave, Suite 500, New York, NY 10151
sirillp.com | P: (212) 532-1091 | F: (646) 417-5967

SENT VIA EMAIL

July 18, 2023

Commonwealth of Massachusetts
Joint Committee on Public Health
JointCommittee.PublicHealth@malegislature.gov

Re: Letter in opposition to bills S.1458/H.2151, An Act Promoting Community Immunity

Dear Massachusetts Elected Representatives:

We write on behalf of our client, ICAN Legislate, to oppose bills S.1458 and H.2151. There are multiple issues with these bills and we encourage you to **vote no** on both. Among other things, these bills seek to destroy parental/guardian consent to vaccination of minors and force compelled speech onto parents/guardians who hold religious objections to vaccination.

The suggested amendments to section 12F of Chapter 112 of the General Laws, in the Emergency Treatment of Minors section, allow any minor to consent to medical care related to a belief that he or she is “*at risk of contracting* any disease defined as dangerous to the public health pursuant to section six of chapter one hundred and eleven; provided, however, that such minor may only consent to care which relates to the *prevention* or treatment of such disease.” (Emphasis added to proposed amended portions.) This new language allows a minor of any age to be vaccinated without his or her parent/guardian’s consent or knowledge for any number of diseases.

Permitting vaccination of minors without parental consent violates federal law. The undersigned recently challenged a similar law in Washington, D.C. and prevailed in federal court. Likewise, should S.1458 and H.2151 become law, we would challenge it on the same grounds.

Federal law requires that parents or guardians of a child receive the federally created vaccine information statement (“**VIS**”) from the individual intending to administer a vaccine. This requirement applies before each administration of a vaccine. As provided in 42 U.S.C. § 300aa-26(d), part of the National Childhood Vaccine Injury Act (“**NCVIA**”):

each health care provider who administers a vaccine set forth in the Vaccine Injury Table shall provide to the legal representatives of any child or to any other individual to whom such provider intends to administer such vaccine a copy of the [VIS] ... supplemented with visual presentations or oral explanations, in appropriate cases. Such materials shall be provided prior to the administration of such vaccine.

For the purposes of this section: “The term ‘legal representative’ means a parent or an individual who qualifies as a legal guardian under State law.” 42 U.S.C. § 300aa-33. Thus, under federal law, a medical practitioner must provide the VIS with appropriate supplemental explanations to the legal guardian of a child prior to injecting the child with a vaccine.

This federal law is critical for assuring vaccine safety. This is because federal law provides pharmaceutical companies with immunity from liability for injuries caused by their childhood vaccine products. To fill the resulting safety gap, Congress wanted to make sure that parents were informed of, among other things, the reasons a vaccine should not be administered to their child, what they should do if an injury occurs, and the fact that if the injury was serious, they could file a claim in the vaccine injury compensation program (“VICP”).

Even putting aside the reason adhering to this federal law is important, state law simply cannot conflict with federal law. And federal law is clear that the parent of a child must receive a VIS prior to administering a vaccine, each time, and from the person intending to administer the vaccine. It would therefore be a direct violation of federal law to permit the person administering the vaccine to vaccinate a minor without first providing a VIS to the parent or guardian giving them the opportunity to inform the healthcare provider of any contraindications as listed on the VIS, address any reactions that occur thereafter, and be in a position to file in the VICP for any injuries.

A federal court, in a decision that was not appealed, held precisely that when striking down a D.C. law that permitted vaccination without parental consent. The judge found:

Two crucial exchanges of information lie at the heart of the NCVIA. The first is the exchange of information from parent to doctor. Healthcare providers recommend against vaccinations if individuals reacted poorly to past immunizations. A VIS [Vaccine Information Statement] describes the risks of certain vaccines and explains when they are contraindicated...By removing the parent from the vaccine decision, the [D.C. law allowing children to be vaccinated without parental consent or knowledge] undercuts a key purpose of the VIS and a safety check before the vaccination

and

[T]he [D.C. law allowing children to be vaccinated without parental consent or knowledge] encourages children to deceive their parents. Once a child has gone behind her parents’ backs to get a vaccine, what is she supposed to do if she has a negative reaction? Some children might tell their parents; others very well might be afraid and try to hide their actions. Besides the obvious medical risk such a situation entails, this throws a wrench in the NCVIA’s goal of ‘[f]ast, informal adjudication’ of vaccine injuries.¹

¹ <https://www.icandecide.org/wp-content/uploads/2022/03/Mazer-Ruling.pdf>.

This section of the bills should be stricken in its entirety as its only function is to usurp parental consent to vaccination which, as you can see, is clearly in violation of federal law and cannot not be allowed.

Furthermore, proposed new chapter 111P of the General Laws seeks to create a sweeping new process for attaining religious exemptions to vaccines. While there are several issues with this proposed process, we focus on only one of those issues here.

The proposed chapter creates a specialized religious exemption form required to be completed and submitted by the child’s “responsible adult” that “shall include a statement from the department that *refusing to immunize* is against public health policy and *may result in serious illness or death of the participant or others.*” This statement compels first person affirmations and speech in violation of the First Amendment and has other Constitutional problems. *See, e.g., 303 Creative LLC v. Elenis*, 600 U.S. ____ (June 28, 2023). The statement is clearly included to intimidate a parent/guardian, violates the Constitution, and should not be included on the proposed form; thus, this portion of the bill should be stricken.

We respectfully request that you honor federal law and the rights of parents/guardians, and not pass these bills into law.

Regards,



Aaron Siri, Esq.
Elizabeth A. Brehm, Esq.