August 1, 2023

Via E-mail: Reg.Testimony@mass.gov

William Anderson

Office of the General Counsel

Massachusetts Department of Public Health

250 Washington Street

Boston, MA 02108

Dear Mr. Anderson:

Mass General Brigham, Incorporated (MGB) appreciates the opportunity to provide the following comments on the proposed amendments to 105 CMR 130.325 and 130.326.

1. While MGB understands that the intent of the proposed regulations is to create a floor for exemptions to a hospital’s or clinic’s mandatory influenza and COVID-19 vaccination requirements, the language of the proposed regulation does not state that in an unambiguous manner. In fact, the plain language reading of these amendments is that hospitals and clinics must provide an exemption to any member of their workforce that “declines the vaccination.” Thus, the proposed regulation may be interpreted as not allowing hospitals to impose mandatory vaccination programs that do not allow individuals to receive an exemption for other than disability- or religious-based reasons.
2. Nowhere in the proposed amendments does it state that a hospital or clinic can have more stringent exemption policies. MGB is concerned that, if these proposed amendments are in fact adopted, and MGB continues to impose more stringent exemption policies (such as requiring any member of its workforce refusing the vaccine to prove that there is a disability- or religious-based reason for such refusal), such workforce member will be able to cite to the plain language of these amendments and argue that MGB is not in compliance with them.

MGB strongly urges DPH to add language that provides clarity for both hospitals/clinics and workforce members that they will not be in violation of these regulatory provisions by having more stringent exemption policies, as long as such policies are not in violation of other state and Federal laws, such as the Americans with Disabilities Act and other laws protecting workforce members from discrimination on the basis of disability or religion. If such language is not added, MGB is concerned that it will lead to uncertainty regarding the implementation and enforcement of such policies, and could also lead to unnecessary and costly litigation over these issues.

1. With respect to reporting compliance, MGB requests alignment with NHSN Healthcare Personnel Safety Component requirements to avoid imposing unnecessary and significant burdens on Health Care Facilities. The MDPH requirements also need to clearly specify whether “personal or other” constitutes a single reporting category, or two separate categories of “personal” or “other reasons”.

Thank you for your consideration.

Sincerely,



Erica S. Shenoy, MD, PhD

Chief of Infection Control

Mass General Brigham



Dean Hashimoto, MD

Chief Medical Officer, Workplace Health and Wellness

Mass General Brigham