



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

May 9, 2023

The Honorable Steve Hopkins
Mississippi State Representative
Post Office Box 1018
Jackson, Mississippi 39215-1018

Re: COVID-19 Vaccine Requirement

Dear Representative Hopkins:

The Office of the Attorney General has received your request for an official opinion.

Question Presented

Does House Bill 1509 (“H.B. 1509”), as enacted by the Mississippi Legislature in the 2022 Regular Session, prohibit a public community college’s nursing program from requiring its students to have the COVID-19 vaccine?

Brief Response

Section 1(2)(a) of H.B. 1509 prohibits public community colleges from refusing, withholding, or denying a student any local or state educational opportunities based on the student’s COVID-19 vaccination status. Whether a public community college’s nursing program or portion thereof takes place at a qualified “health care facility” that is exempt from the prohibition set forth in Section 1(2)(a) is a mixed question of fact and law upon which we are unable to officially opine.

Applicable Law and Discussion

Section 1(2)(a) of H.B. 1509, codified in part in Mississippi Code Annotated Section 41-23-49, provides:

(2) Except as provided in subsection (3) of this section, *it is an unlawful discriminatory practice for:*

(a) A state agency, public official, state institution of higher learning, *public community or junior college*, county, municipality or other political subdivision

of the state *to refuse, withhold from, or deny to a person any local or state services, goods, facilities, advantages, privileges, licensing, educational opportunities, health care access, or employment opportunities based on the person's COVID-19 vaccination status* or whether the person has an immunity passport.

(Emphasis added).

It is the opinion of this office that H.B. 1509 generally prohibits a public community college from enacting and enforcing any blanket regulation that refuses, withholds, or denies a student any local or state educational opportunities based upon the student's COVID-19 vaccination status. This would include a community college nursing program.

However, Section 2 of H.B. 1509 provides that “[a] health care facility is exempt from compliance with this act during any period of time that compliance with this act would result in a violation of regulations or guidance issued by the Centers for Medicare and Medicaid Services or the Centers for Disease Control and Prevention.” We note at the outset that on May 11, 2023, the Administration ended the public health emergency under which most of its vaccine requirements were initiated.¹ According to the White House announcement on May 1, 2023, “HHS and DHS announced today that they will start the process to end their vaccination requirements for Head Start educators, CMS-certified healthcare facilities, and certain noncitizens at the land border.”²

While the community college's nursing program would be included under Section 1(2)(a) of H.B. 1509, the setting of the clinical instruction portion of the program may implicate the exemption under Section 2. However, the language of the exemption is contingent on compliance with Centers for Medicare and Medicaid Services regulations or guidance. Ultimately, whether the program's nursing instruction or a portion thereof takes place at a “health care facility” that is exempt under Section 2 is a mixed question of fact and law upon which this office may not officially opine. MS AG Op., *Barton* at *2 n.2 (May 17, 2021) (identifying mixed questions of fact and law as questions that cannot be addressed by official opinion).

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: /s/ Abigail C. Overby

Abigail C. Overby
Special Assistant Attorney General

¹ <https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/01/the-biden-administration-will-end-covid-19-vaccination-requirements-for-federal-employees-contractors-international-travelers-head-start-educators-and-cms-certified-facilities/>

² *Id.*