

April 7, 2014

Representative Pete Higgins  
State Capitol, Room 424  
Juneau, AK 99801-1182

Dear Representative Higgins:

The Pharmaceutical Research and Manufacturers of America (PhRMA) opposes Senate Bill 169: “An Act establishing in the Department of Health and Social Services a statewide immunization program and the State Vaccine Assessment Commission.” PhRMA’s member companies represent the leading innovative biopharmaceutical companies from around the world. Our members work tirelessly to advance the important causes of global health by investing in and developing breakthrough medications to treat many chronic and intractable diseases. A bright spot in all of this scientific achievement exists in the world of vaccines; products that serve as catalysts to eradicate illnesses. It is because of this important objective that we support the broadest-possible system to ensure all eligible individuals receive vaccinations. Unfortunately, SB 169 falls far short of accomplishing this objective and could likely do more harm than good. Even more concerning, however, is we believe SB 169 could represent a serious violation of federal law by using federal funds for purposes for which they are not authorized. Set forth below is our analysis of SB 169 and the shortfalls we see inherent in its proposed misappropriation of federal funds.

Initially, SB 169 would re-establish a universal purchasing program for vaccines. Here, the State proposes to fund this program by assessing a tax on health plans in the State. We understand this assessment will include health plans who administer the State’s Medicaid managed care program. Where the assessments collected exceed the amounts necessary to provide vaccines for the health plans assessed, the State would place the remaining amounts in a fund. We understand that the State intends to use this fund to provide vaccines for a wide range of uninsured adults and children in the State. In that regard, then, SB 169 would necessarily utilize federal dollars to pay for vaccines in a manner not allowed under federal law, both by covering vaccines for Medicaid children (who receive vaccines under a different federal program), and by using Medicaid funds to pay for individuals not eligible for Medicaid who may also be eligible to receive vaccines under another federal program – for instance under first-dollar coverage of vaccines in a state insurance exchange plan.

*A state may not use Medicaid funds to pay for items not covered under the Medicaid law.* The federal Medicaid program does not pay for vaccines for children. Instead, the federal government has established a separate program to purchase vaccines for Medicaid children. Specifically, the federal Medicaid law directs State Medicaid programs to participate in a pediatric vaccine distribution program in conjunction with the Vaccines for Children program, which is administered by the federal Centers for Disease Control (CDC).<sup>1</sup> Under the federal Medicaid law, a State Medicaid program is required to “provide for a program for the distribution of pediatric vaccines to program-registered providers for the immunization of vaccine-eligible children” in accordance with this CDC pediatric vaccine program.<sup>2</sup>

Under federal law, the federal government provides these pediatric vaccines at no cost to the State. The State does not pay for either the purchase or delivery of the vaccines – only federal dollars are used to pay for this program.<sup>3</sup> The federal government is responsible for these costs for all Medicaid children, as well as for

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<sup>1</sup> Social Security Act § 1928.

<sup>2</sup> Social Security Act § 1902(a)(62).

<sup>3</sup> Social Security Act § 1928(a)(2)(A).

uninsured children, children who receive vaccines in federally qualified health centers or rural health clinics, and children covered by the Indian Health Service. The CDC purchases and distributes vaccines to grantees, such as state health departments and certain local and territorial public health agencies. These grantees distribute the vaccines at no charge to private physicians' offices and public health clinics that are registered as VFC providers.<sup>4</sup>

Not only does the federal Medicaid law require that states use the VFC program to provide vaccines for children, the law does not authorize other separate Medicaid payments for vaccines for children.<sup>5</sup> Under federal law, Medicaid funds are not authorized for items that are not covered by the Medicaid statute; in the event that a state were to use federal Medicaid dollars to provide for a service not covered under Medicaid law, then, CMS would have the right to recover those funds by withholding any state claim for federal matching funds for other services provided under its Medicaid program.

*A state may not use Medicaid funds to pay for items provided to individuals not eligible for Medicaid.* As we understand it, SB 169 would also authorize the use of Medicaid funds to pay for individuals – such as uninsured adults – that are not eligible for Medicaid. This would be the case if the State utilized the assessment money not otherwise attributed to a specific insured individual to purchase vaccines for an uninsured or non-Medicaid beneficiary. Again, this is prohibited by the Medicaid statute. Federal Medicaid matching funds are required by federal law to be spent to pay for health care delivered to specified patient populations. Absent a specific permission in the Medicaid law, which does not appear to be present in this instance, a state is not permitted to use these funds for non-Medicaid patients.

Where a state uses its taxing authority to divert federal Medicaid funds from those mandatory uses to other uses, the federal government may consider withdrawing Medicaid funding for that state. Using federal funds to pay for projects that Medicaid does not pay for has long been subject to scrutiny by Congress, the U.S. Department of Health and Human Services' Office of the Inspector General, and CMS. Diverting Medicaid funds by means of a tax to fund vaccinations for non-Medicaid eligible patients will inflate the cost of Medicaid services and represent, at the very least, an abuse likely to warrant federal government attention and which could well put other funding for state Medicaid and CHIP programs at risk of reduction or delay.

PhRMA supports efforts to achieve widespread vaccination across the State of Alaska, but SB 169 would impermissibly leverage federal dollars to pay for vaccines in a manner not permitted under federal law.

Respectfully,



Kim Martin  
Senior Director

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<sup>4</sup> <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Quality-of-Care/Quality-of-Care-%E2%80%93-Vaccines.html>.

<sup>5</sup> The Medicaid statute defines “medical assistance” as meaning payment of part of all of the cost of the following care and services or the care and services themselves, or both” and then provides a long list of services that are covered by the Medicaid program as “medical assistance.” Social Security Act § 1905(a). Pediatric vaccine for Medicaid-eligible children are not listed in § 1905(a) as a Medicaid-covered service.