

February 5, 2020

House Health Human Services and Elderly Affairs

Testimony of Laura Condon, former public board member of the NH Vaccine Association (2014-2019)

HB 1655-FN an act expanding the New Hampshire Vaccine Association to include adult vaccines.

OPPOSED

My name is Laura Condon and I am from Bedford, NH. I am here today to testify as a former 5-year board member on the board of directors of the NH Vaccine Association. My service on this Vaccine Association board, including service on the audit committee has required that I become very familiar with the current law, the other governing documents, and be accountable for the money that is spent. It is my hope that through my testimony you may have a better understanding of how the Vaccine Association and the vaccine program work here in NH, the legal concerns, the financial accountability concerns, the conflict with federal law specifically the Affordable Care Act, the increase in health insurance premiums and the unreasonable and excessive burden this would place on NH insurance consumers, and in coming to understand these very serious concerns that you will recognize that no matter how well intentioned it may be to find ways to reduce the costs of vaccines, that this bill is not the way to do it and that you properly vote this bill inexpedient to legislate.

There appear to be a number of misunderstandings about the current child vaccine purchase and reimbursement program and the CDC vaccine purchase contract that must be corrected and made clear.

NH DHHS as a government entity has government contract privileges to purchase vaccines from the CDC at government contract rates for use in government programs. This government contract is restricted to government entities, "Contract prices are those for CDC vaccine contracts that are established for the purchase of vaccines by immunization programs that receive CDC immunization cooperative agreement funds (i.e., state health departments, certain large city immunization projects, and certain current and former U.S. territories). Private providers and private citizens cannot directly purchase vaccines through CDC contracts." (per CDC) This contract allows DHHS to purchase the Vaccines for Children (VFC) vaccines, a federal government funded program, vaccines for Medicaid children a federal and state government funded program, and vaccines for children and uninsured adults for use in their own public health clinics in Manchester and Nashua. This federal contract does not allow for-profit entities like Anthem, Cigna, and Harvard Pilgrim to utilize this federal contract by having DHHS purchase vaccines from the CDC at federal discounts, deliver them to doctors, and then reimburse DHHS for the vaccines purchased, that they themselves cannot purchase. This would be similar to the 17 year-old wanting beer he is not old enough to purchase having a 21 year-old friend purchase the beer on his behalf and then reimburse his friend for the beer. I believe that RSA 126-Q that was passed in 2002 is a vaccine purchase and reimbursement scheme that abuses this federal government contract for discounted vaccines. The only reason it has gone on this long, is because this scheme has not been questioned prior to now.

Recent actions by DHHS's immunization division in the mishandling of taxpayer funds have shaken the confidence and trust of the public as was recently brought to light before the Executive Council. In 2014 DHHS came before the Executive Council to request \$1.36 million from the general fund to contract with

Scientific Technologies Corp. to implement a state vaccine registry. DHHS was granted that money for that project. But instead of spending the money on a state vaccine registry, that \$1.36 million was used to set up a vaccine ordering and inventory program, that involved spending and a program not authorized by the Executive Council. When the money was misspent and still there was no vaccine registry, DHHS came before the NH Vaccine Association in August of this past year with a request there for money for a vaccine registry and money for a number of DHHS employees through the Vaccine Association assessments. This is not the first time that DHHS has made this request as it was made in 2018 and was denied based on a written legal opinion of Hinckley, Allen & Snyder LLP as counsel to the Association. When the Association refused to take up that request for improper funding, DHHS turned to their vaccine seller, the CDC, for the funds. The CDC offered DHHS \$1.5 million to replace the money misspent so that DHHS may now implement a state vaccine registry. On December 18, 2019 the Executive Council granted that request to accept these funds after many questions and inquiry about the misdirection of funds granted in 2014. This decision was followed up with a request to Attorney General Gordon MacDonald to investigate this misdirection of \$1.36 million, was there any authority to engage in this spending, and how might there be accountability. Now would not be the time to put more money in the hands of DHHS until we get complete answers from the Attorney General's office on this inquiry into the misdirection of funds.

Supplying medical products without charge to business entities removes the financial incentive to safeguard those products. This has been an issue here in NH. I became aware of the serious issue of state-supplied vaccine waste and cover up when I was contacted by Valley News reporter Rick Jurgens in February of 2016 doing an investigation into a huge vaccine loss at Alice Peck Day Memorial Hospital in Lebanon. He did the investigation into this mishandling and storage of vaccines that occurred from August 2014 to October 2015 involving over 800 children, thousands of doses of vaccines, and millions of dollars. These were all vaccines supplied "free" by DHHS and paid for through the Vaccine Association. DHHS became aware of record keeping and vaccine storage issues in August 2015, but the public was not alerted to the problem of compromised vaccines until five months later in a letter to patients issued on January 11, 2016. What was done with vaccines that were compromised? There are no answers. What was the value of the vaccines that were wasted? There are no answers. How many patients were re-vaccinated and what was the cost of those vaccines? There are no answers. Was Alice Peck Day Hospital ever required to report on the waste of the vaccines and the costs they incurred to revaccinate or replace vaccines? No they were not. How do we know that Alice Peck Day paid anything towards the replacement of vaccines? We don't know. How do we know that Alice Peck Day didn't simply take more vaccines from the state supply of "free" vaccines to re-vaccinate children? We don't know. And to ensure that it wasn't simply presumed that all this remains unknown and unaccounted for, I made a Right-to-Know Request to DHHS for these answers and that's how I confirmed there was never any accounting of the loss, no controls, no liability for the loss, and no sanctions or repercussions to Alice Peck Day Memorial Hospital for these storage oversights and knowingly administering compromised vaccines. Yes, when the inventory is not your own, purchased with your own business funds, the financial incentive for proper maintenance of inventory is removed. Let us not expand on a program that lacks such controls.

It is concerning that there has been representation that absent a program where DHHS is purchasing vaccines at CDC discount pricing, that vaccine providers like doctors and pharmacists would be paying

market pricing. Candidly, that is a misrepresentation of how vaccine providers are purchasing vaccines, along with many other medical products. These smart, for-profit entities are utilizing medical discount programs to purchase many medical products at a discount, including vaccines. To represent that the CDC vaccine discount contract (again, limited to government entities) is the only way to purchase vaccines at a discount is not a fair representation or comparison of costs or savings. I have provided here information on PedsPal, just one of many medical discount programs available free for use in purchasing discounted vaccines. A fair and complete comparison of costs would have used these discount programs for comparison, rather than market pricing representing the “manufacturer’s suggested retail price” and we know that no one pays the MSRP, but car dealers use that to show you what a “savings” you are getting. For those interested in reducing the costs of vaccine purchases, I am hopeful that they are now aware of these discount purchase programs.

This bill proposes to add to the costs of vaccine purchases the costs of vaccine ordering and administrative oversight, including at least four new positions at DHHS. In addressing this concern, I refer to RSA 126-Q:1,IV “For purposes of rate setting and medical loss ratio calculations, all association assessments are considered pharmaceutical or medical benefit costs and not regulatory costs” and RSA 126-Q:4,I “An assessment determination made pursuant to this section is a pharmaceutical cost and not a regulatory cost for purposes of calculating the carrier’s medical loss ratio.” This flies in the face of requirements under the Affordable Care Act regulating the medical loss ratio. For those not familiar with what a medical loss ratio is, it is the percentage split in medical costs vs. administrative/profit costs allowed in premium setting for health insurance policies. This ACA protection was put in place to ensure that health insurance companies were containing their administrative costs, salaries, and profits to a limited percentage of overall costs to ensure that health insurance premiums costs are contained. This important ACA protection limits administrative costs to 15% - 20% of all costs. If an insurer exceeds these limits, they are required to rebate the excess to their insureds. (see Medical Loss Ratio handout). This provision in RSA 126-Q to allow for all administrative costs, including administrative contracts, lobbying fees, legal fees, etc. is an existing provision that should be removed from current statute for violation of ACA protections, not expanded and made more costly and harmful to NH insurance consumers. Allowing administrative costs to be misrepresented as medical services provides the basis for calculating unfair increased administrative costs including insurance company executive compensation and company profits, exceeding ACA limits. This would increase insurance premiums to NH insurance consumers and I urge that legislators work to protect consumers from this issue. There has been no evidence presented that the current vaccine purchase and reimbursement program has actually reduced health insurance premiums but by sweeping in more administrative costs, it may be expected that health insurance premiums will increase.

For these reasons, I ask that you vote HB 1655 as inexpedient to legislate.

I would be happy to take any questions. Thank you.