Senators,
Thank you for your time today.

We certainly have a health crisis in our country, but it has nothing to do with vaccine preventable diseases.

I'm proud to be an American, but I'm embarrassed by our health statistics.

Babies are more likely to die within their first year in OUR country than any other developed nation.
http://time.com/5090112/infant-mortality-rate-usa/

Pregnant women in America have a greater chance of dying from pregnancy-related conditions than women who live all other developed nations. While their maternal mortality rate is lowering each year, ours RAISES each year.
https://www.npr.org/2017/05/12/528098789/u-s-has-the-worst-rate-of-maternal-deaths-in-the-developed-world

The third leading cause of death in our country? Medical errors.
https://www.npr.org/sections/health-shots/2016/05/03/476636183/death-certificates-undercount-toll-of-medical-errors

99 THOUSAND Americans die each year from hospital-related infections.
https://www.healthline.com/health-news/aging-healthcare-acquired-infections-kill-nearly-a-hundred-thousand-a-year-072713#1

In the United States, we have had 1 verified measles death since 2012. It was an older immune-compromised woman whose measles were undetected until her autopsy. 7 years, 1 death from measles.
https://www.usatoday.com/story/news/2015/07/02/measles-death-washington-state/29624385/

Let's compare that to other catastrophic events in our country.

Each year, about 100 children die from bicycle accidents. Perhaps the government should ban bicycles?
https://www.stanfordchildrens.org/en/topic/default?id=accident-statistics-90-P02853

According to the CDC, an average of 356 children die each year from drowning. Perhaps the government should mandate swim lessons for every child in America?
https://www.poolsafely.gov/know-the-facts-fatal-child-drownings/

This national hysteria over measles is unfounded.
It reminds me of Chicken Little believing the sky is falling, when it was simply an acorn.

10 years ago, my husband and I decided we could not make any medical decisions for our children based on fear.
I urge you, our lawmakers, to do the same.
Fear sells and America is buying it.

I'm a proud Coloradan, and I'm pleased that our state ranks as the 8th healthiest state in America.
https://www.cbsnews.com/news/healthiest-and-least-healthy-states-ranked-2018/

On the other hand, Mississippi, who has the highest vaccination rate of all the states (over 99%) is also ranked the most unhealthy state in our nation. Mississippi has the highest rate of infant mortality in our country. I think we can all agree that we do not want to be more like Mississippi.
https://www.clarionledger.com/story/news/politics/2017/12/12/mississippi-again-unhealthiest-state-country/943720001/

I urge you to vote NO on HB19-1312. This bill is unnecessary for Colorado.

Sincerely,
Melissa Bolton

see page 3
Attachment K

# Application of the Health Insurance Portability and Accountability Act of 1996 to the Colorado Immunization Information System

Revised February 15, 2009

## Colorado Immunization Registry Law

Pursuant to C.R.S. § 25-4-2401 et seq., authorizes Colorado Department of Public Health and Environment (CDPHE) to establish a comprehensive immunization tracking system. State and local health departments may gather immunization information for such tracking systems from the following sources:

(a) Practitioners ("Practitioner" is defined in 25-4-1703, C.R.S., as a duly licensed physician or other person who is permitted and otherwise permitted and qualified to administer vaccines under the laws of the State of Colorado);
(b) Clinics;
(c) Schools;
(d) Parents, legal guardians, or persons authorized to consent to immunizations;
(e) Individuals;
(f) Managed care organizations or health insurers in which an individual is enrolled as a member or insured, if such managed care organization or health insurer reimburses or otherwise financially provides coverage for immunizations;
(g) Hospitals;
(h) The Colorado Department of Health Care Policy and Financing with respect to individuals who are eligible for coverage under the Colorado Medical Assistance Act;
(i) Persons and entities that have contracted with the State pursuant to section 25-4-2403 (9) (d), C.R.S. Section 25-4-2403 (9) (d), C.R.S. allows the Colorado Department of Public Health and Environment (CDPHE) to enter into contracts that are necessary for the implementation and operation of the immunization tracking system; or
(j) From birth certificates. Section 25-4-1705 (8), C.R.S. and Section 25-4-2403 (10), C.R.S. provide that local health departments and CDPHE are required to use the birth certificate of any infant to enroll the infant in the immunization tracking system created under Section 25-4-2403 (2), C.R.S. as an official duty of local health departments and CDPHE.

Section 25-4-2403 (3), C.R.S. provides that the records in the immunization tracking system established pursuant to Section 25-4-2403 (2), C.R.S. are strictly confidential and may not be released, shared with any agency or institution, or made public upon subpoena, search warrant, discovery proceedings, or otherwise, except under the following circumstances:

(a) Medical and epidemiological information may be released in a manner such that no individual person can be identified;

(b) Immunization records and epidemiological information may be released to the extent necessary for the treatment, control, investigation, and prevention of vaccine-preventable diseases; except that every effort shall be made to limit disclosure of personal identifying information to the minimal amount necessary to accomplish the public health purpose;

(c) Immunization records and epidemiological information may be released to:

(i) The individual who is the subject of the record;

(ii) A parent of a minor individual;

(iii) A guardian or person authorized to consent to immunization;

(iv) The physician, clinic, hospital or licensed health care practitioner who is treating the person who is the subject of an immunization record;

(vi) A school in which such person is enrolled;

(vii) A managed care organization in which the individual is enrolled as a member or insured, if the managed care organization or health insurer reimburses or otherwise financially provides coverage for immunizations;

(viii) Hospitals;

(ix) Persons or entities that have contracted with the State to implement or operate the immunization tracking system; or

(x) The Colorado Department of Health Care Policy and Financing with respect to individuals who are eligible for coverage under the Colorado Medical Assistance Act.

Releasing or making public confidential immunization records in the immunization tracking system in an unauthorized manner is a misdemeanor (Sections 25-4-2403 (5) (b) and (c), C.R.S).

An individual, parent or guardian may exclude immunization information from the immunization tracking system. The physician, licensed health care practitioner, clinic, or local health department is required to inform the individual, parent or guardian of the option to exclude immunization information from the immunization tracking system and the potential benefits of inclusion in the system. (Section 25-4-2403 (7), C.R.S.).

Pursuant to a contract dated April 15, 2002, as extended, CDPHE granted authority to the University of Colorado Health Science Center (UCHSC) to maintain and operate the Colorado Immunization Information System (CIIS) under and in compliance with the

Colorado Immunization Registry Act. CDPHE will operate CIIS on and after January 1, 2009.

**Health Insurance Portability and Accountability Act of 1996 (HIPAA): CIIS is not a Covered Entity**

1) CDPHE is authorized to maintain and operate CIIS under the Colorado Immunization Registry Act.

2) HIPAA allows a public health authority to collect immunization information without an authorization (45 C.F.R., Section 164.512 (b). The requirement to track the disclosure applies, however.

3) CIIS provides free of charge a feature that complies with HIPAA disclosure tracking requirements.

The HIPAA Privacy Rule applies to Covered Entities. A Covered Entity (CE) is a health plan, a health care clearinghouse or a health care provider who transmits certain health claims information electronically (45 C.F.R. Section 164.104). CIIS does not provide, pay for or arrange for payment for health care and does not transmit any data in a covered transaction. Therefore, CIIS is not a Covered Entity under the Privacy Rule.

**HIPAA Privacy Rule: Implications for Covered Entities Related to CIIS**

A CE must obtain written authorization for disclosures of PHI except:

(a) for treatment, payment or health care operations;
(b) to the individual;
(c) to public health authorities if reporting is mandated by law (45 C.F.R. Section 164.512 (a) (1) **and/or**;
(d) to public health authorities for certain public health activities and purposes (45 C.F.R. Section 164.512 (b) (1) (i)). A mandate to report is not required.

A CE can disclose PHI for the activities and purposes described in Section 164.512 (b) (1) (i)) to:

> "..a public health authority that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease .. the conduct of public health surveillance, public health investigations, and public health interventions…"

A public health authority means:

- An agent or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe,
- Or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public

agency, or its contractors or persons or entities to whom it has granted authority,

- That is responsible for public health mandates as part of its official mandate (45 C.F.R. §164.501)

The Colorado Department of Public Health and Environment is a public health authority and is authorized by the Colorado Immunization Registry Act (Section 25-4-2403, C.R.S.) to collect and receive immunization information for the purpose of preventing or controlling disease and public health interventions. Preventing communicable disease and public health interventions require the patient's name, other identifying information, address, vaccine type, manufacturer, lot number, date of vaccine administration and Medicaid eligibility to prevent and control disease by identifying and recalling children who are not current for recommended immunizations and to identify geographic and other "pockets of need".

The HIPAA Privacy Rule preempts state laws that are contrary to the Rule (45 C.F.R. Section 160.203) but does not preempt more stringent state privacy laws or laws "for the conduct of public health surveillance, investigation, or intervention…" ( 45 C.F.R. Section 160.203 (a)(2)(c)). The intent of the Privacy Rule regarding public health is found in the comments in the preamble of the Privacy Rule that refer to the mandate of HIPAA:

> "Nothing in this part shall be construed to invalidate or limit the authority, power or procedures established under any law providing for the reporting of disease or injury, child abuse, birth or death, public health surveillance, or public health investigation or intervention."

Therefore, HIPAA allows a CE to disclose immunization information to CIIS without authorization. The CE must make reasonable efforts to limit the use or disclosure of PHI to the minimum amount necessary to accomplish their purpose. (45 C.F.R. §164.502 (b)(1)). The agreement signed by the CE with CDPHE and the CIIS Confidentiality Policy limit the uses and disclosures of the immunization information in CIIS to those authorized by the Colorado Immunization Registry Act. The guidance issued by the Office of Civil Rights on December 3, 2002 states (at page 77):

> "For disclosures to a public health authority, covered entities may reasonably rely on a minimum necessary determination made by the public health authority in requesting the protected health information. See 45 CFR 164.514(d)(3)(iii)(A). For routine and recurring public health disclosures, covered entities may develop standard protocols, as part of their minimum necessary policies and procedures, that address the types and amount of protected health information that may be disclosed for such purposes. See 45 CFR 164.514(d)(3)(i)."

Any CE with a direct treatment relationship with the patient must make a good faith effort to obtain written acknowledgement of notice of its privacy practices, including how information may be used and disclosed, including to public health authorities. The CE

must track all disclosures of PHI, including disclosures to non CEs ( 45 C.F.R. Section 164.528). CIIS has complete audit trails of all information necessary for a CE to comply with the tracking requirements related to disclosure of PHI to CIIS and, upon request, will furnish a report of the disclosures to the CE without charge.

**In summary, a Covered Entity is allowed to disclose the immunization information requested by CIIS, including patient identifiers, to CIIS without authorization. The CE should include this disclosure in its notice of privacy practices and minimum necessary policies and procedures. The CE must keep track of disclosures of the immunization information. CIIS can provide a report of disclosures made to the CIIS (without charge) if the CE does not have another system to track disclosures.**

Attachment K

Some questions regarding HB1312

**On the necessity of this bill:**

- the website for CDPHE already has aggregate data for vaccination rates. Herd Immunity rates are ideal at 95%. According to CDPHE, the rates for most vaccinations in the State is between 91.6% and 94.8%. The outlier is Tdap at 89.9%. The CDPHE also shows that exemptions to the listed vaccines are between 2.3% and 3.2%- these are children who have followed Colorado exemption law and turned in all according paperwork. Those who have no recorded data equal between .7% and 1.2%, and those who have incomplete records equal 1.8%-5.7%. Currently CDPHE is not pursuing the families that have no record of any immunizations or incomplete records of immunizations, but if current Colorado law was followed, and CDPHE was able to assist these families in completing their paperwork, the current immunization rate for the state would rise well over the ideal herd immunity percentage of 95%. Why is this bill necessary when following current Colorado law would satisfy the concerns of Mr. Mullica?

- one of the predicating presumptions of this bill is that a percentage of exemptions are written by parents who "show up to school having forgotten to get their child's records or are not interested in taking their children to the doctor." I have asked for the actual figures on how many exemptions are achieved this way since if this is true, that is a problem. However, that data has not been supplied. Is it possible that this bill was created on rumor and assumption rather than an actual problem? Can this Senate committee request the bill sponsor to supply actual data for how many exemptions in Colorado are acquired by parents who simply do not want to take their children to the doctor? And if there is no data on this, why write a bill to respond to a problem that may not actually exist?

**On the Personal Identifying Information (for children) and registry:**

- Is CDPHE a clear HIPAA regulated entity (there appears to conflicting information on this)?

- Are there limitations on how CDPHE can use the information gathered through this exemption process? Especially since CDPHE is able to sell data?

- How do you intend to help CDPHE protect children's personal identifying information from data mining or cyber threats?

- Because we are now beginning two separate processes for the collection of information- one process for non-exempt students and one process for exempt students- what protections will be put in place to ensure that a minority in Colorado does not experience discrimination due to the need for exemptions to one or more vaccine? How will you ensure that all students and their information will be treated equally and protected equally under the law with separated processes for the minority students to complete?

- Does this bill conflict at all with protections of disabled and special needs students who are protected by both the IDEA Act and ADA laws? How do you ensure that students with special needs are not discriminated against with this new registry process and added layers of tasks in order to get exemptions?

- How does keeping a registry of personal identifying information aid in the event of an emergency outbreak? And in what ways is this registry through CDPHE a proven solution that is better than the current system of utilizing the school to convey emergency information to parents of exempt students?

- It is unclear if there is only one database or two, based upon the debate in the House. If parents can "opt out" of CIIS, is there another database set up that will capture the PII of exempt children? If so, can Coloradans opt out of that database as well? And if there are two databases, how do they interact with each other?

- Mr Mullica said that the second database of exempt students will be "stored but not displayed." What does this mean?

- Why is aggregate data not useful to the concern of outbreak such that we require PII?

- When Mr. Mullica and the bill states that the registry is for "tracking" purposes, what exactly are the parameters of "tracking" fellow Americans?

- Can Mr. Mullica or other sponsors please state the DLP technologies being used to protect the database(s)?

**On compelled speech and exemption forms:**

- Are you aware of the evolving language on the current forms for personal and religious exemptions which have included "compelled speech?"

- If the bill remains amended describing the form with the words "but not limited to," how will you ensure that CDPHE form will not include compelled speech if these forms are the *only* option for exemption of children?

- If the forms do continue to include compelled speech, what will happen if parents alter or cross out items that they do not agree to or believe?

**On Medical Exemptions:**

- Are you aware of the process for getting medical exemptions in Colorado under current law, and are you aware of the differences between medical exemptions and religious or personal exemption?

- Are you aware of the narrow scope this bill relies upon to determine medical exemption in Colorado?

- How will protect children who are not vaccinated for medical reasons and yet fall outside the scope of ACIP while honoring the medical reasons they are exempt?

- If medically exempt children are now forced to turn in personal exemptions instead of medical exemptions, how will you prioritize those children who are at stronger risk for complication should an outbreak occur (medical exemption should indicate who is the most vulnerable to complications and by removing many children from medical exemption due to ACIP in this bill, they will be forced to downgrade the urgency of their medical situation and are now at risk of not being prioritized in an outbreak emergency)?

- Why are medical professionals who are treating children who require medical exemptions being replaced by a national entity to determine a patient's health and medical procedures?

- How do doctors feel about their information being handed to CDPHE for their registry when parents are compelled to turn the form in?

**On funding and stakeholders:**

- With Mr. Mullica's amendments, how will Colorado fund the addition of 4 new vaccines on the Colorado required list? In 2016, the state board stakeholders determined that the vaccine for meningitis would cost the state $1million to potentially save only one person and declined the CDC's request to make the vaccine required. Now, Mr. Mullica's amendment wants to add 4 vaccines: rotavirus, Hep A, and two meningococcal vaccines. How will the State of Colorado pay for this, especially in light of the 2016 decision by stakeholders?

- This bill originally claimed to cost $0.00 dollars to enact. Has the legislature contacted the health department to ensure that no extra funds for staffing, data protection, education materials, filing, etc are needed?

- This bill's original claim to cost no money now includes adding in vaccines to the required list. With the addition of Mr. Mullica's amendment to add vaccines, shouldn't this bill go through committee for a cost analysis now?

- According to Colo. Rev. Stat.24-4-102 in HB 12-1008, a representative group of stakeholders are to participate in discussion to propose amendments to the vaccine schedule or guidelines. Was this statute followed by Mr. Mullica to amend the vaccine requirements in Colorado and add these new vaccines? If so, when were those meetings held and are there public notes on the meetings themselves?

**On school funding and homeschoolers:**

- Since school funding is driven by enrollment, and this bill will likely decrease enrollment in public schools- including homeschool programs which utilize enrichment programs in public schools- how will you plan to back fill the funding gap for schools, especially in areas where funding is already a challenge? (e.g., Adams county could lose $30,000 if just half their homeschoolers leave the public school programs; Jeffco would lose over $14million in funding if all kids with exemptions were pulled out of enrichment programs.) With the proposed amendment from Mr. Mullica in the House, the only exempt homeschoolers from the effects of this bill would those who solely homeschool and have no interaction with the local public school at all. A large percentage of Colorado homeschoolers, however, utilize programs through their local schools to enhance and supplement their homeschool education.

- Same question for special needs children who are pulled from school to homeschool, losing federal funding.

**On the demand for parents to turn a form in in person:**

- Mr. Polis, at a townhall meeting on 4/24/19, stated that he is not support forcing parents to report in person to CDPHE. How do you reconcile his interests with this bill as it currently stands?

- How will ensure that parents who turn in exemptions for their child do not experience intimidation from a state entity (CDPHE) when they give over their child's personal information in order to achieve an exemption?

- What is explicitly in place in this bill to prevent CDPHE from refusing an exemption/losing exemption paperwork?

**On noncompliance:**

- Since this bill is focused on pursuing the 2.6% of parents who have followed Colorado law on exemptions, what is the consequences for families who do not follow this new bill should it become law?

- Is it possible with the current Colorado law to assist non-compliant parents who are the actual reason there is a shortfall in vaccination rates? If so, why are we introducing new legislation that focuses primarily on those who have followed current Colorado law?

**On informed consent:**

- With other medical procedures and drugs, informed consent is an ethical standard. Why would we not want educational materials that include benefits and risks to allow parents full access to informed consent?