

**Department of State Health Services
Council Agenda Memo for State Health Services Council
November 4, 2009**

Agenda Item Title: Amendment to a rule concerning required vaccinations for students enrolled in health-related and veterinary courses in institutions of higher education

Agenda Number: 7g

Recommended Council Action:

For Discussion Only

For Discussion and Action by the Council

Background:

The Infectious Disease Prevention Section, Immunization Branch, located in the Prevention and Preparedness Services Division, provides services to prevent, control, reduce, and eliminate vaccine-preventable diseases in children and adults in Texas. Such services include the following:

- managing the Texas Vaccines for Children program to distribute federal and state-funded vaccines to approximately 3,400 clinic sites across the state;
- administering ImmTrac—the statewide immunization registry;
- contracting with local health departments to enhance 11 population-based activities in their communities;
- contracting with Federally Qualified Health Centers to deliver immunization services in the communities they serve;
- providing public and provider education and promotion of immunizations; and
- monitoring school and licensed child-care facilities for compliance of immunization requirements.

Funding to the Immunization Branch is provided through the Centers for Disease Control & Prevention federal funds and through state general revenue funds.

Summary:

The purpose of the amendment is to ensure the safety and health of students enrolled in veterinary medicine and the public. Texas A&M University is the only school of veterinary medicine in Texas and is the only institution affected by this rule change.

The rule is being amended in accordance with Senate Bill 291, 81st Legislature, Regular Session, 2009, which amended Education Code, Section 51.933.

The proposed amendment reflects the potential for human-to-human hepatitis B transmission due to blood and bodily fluid exposure due to cuts and abrasions acquired during veterinary coursework. The proposed amendment changes current language from “Students enrolled in schools of veterinary medicine whose coursework involves "direct contact with animals or animal remains" shall receive a complete series of Hepatitis B vaccine prior to such contact” to “Students enrolled in schools of veterinary medicine whose coursework involves "potential exposure to human or animal blood or bodily fluids" shall receive a complete series of hepatitis B vaccine prior to such contact.” This change will bring the rule in line with the statutory amendment.

The expected outcome resulting from administering the amendment as proposed is to ensure the safety of students enrolled in veterinary medicine and the public. Texas A&M University is the only school of veterinary medicine in Texas and is the only institution affected by this rule. The requirement for Hepatitis B vaccine for veterinary students is not new; however, the rule revision should heighten awareness of the requirement.

Summary of Input from Stakeholder Groups:

Preliminary comments were solicited from Texas A&M University. Comments were solicited via email. Texas A&M responded via telephone and email and said they plan to be in full compliance with this amendment. Public comments will be received during the *Texas Register* 30-day comment period.

Proposed Motion: Motion to recommend HHSC approval for publication of rules contained in agenda item #7g

Approved by Assistant Commissioner/Director: Adolfo Valadez, M.D., M.P.H. **Date:** 9/23/09

Presenter: Jack Sims **Program:** IDP, Immunization Branch **Phone No.:** 458-7111x6215

Approved by CPCPI: Carolyn Bivens **Date:** 9/23/2009

Title 25. HEALTH SERVICES
Part 1. DEPARTMENT OF STATE HEALTH SERVICES
Chapter 97. Communicable Diseases
Subchapter B. Immunization Requirements in Texas Elementary and Secondary Schools and
Institutions of Higher Education
Amendment §97.64

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes an amendment to §97.64, concerning required vaccinations for students enrolled in health-related and veterinary courses in institutions of higher education.

BACKGROUND AND PURPOSE

The amendment to §97.64(d)(2) is proposed in order to update the rule text regarding the potential of hepatitis B transmission for students enrolled in veterinary courses. Section 97.64(d)(2) currently states that: “Students enrolled in schools of veterinary medicine whose coursework involves direct contact with animals or animal remains shall receive a complete series of Hepatitis B vaccine prior to such contact.”

The amendment to §97.64(d)(2) is required by Senate Bill (SB) 291, 81st Legislature, Regular Session, 2009. SB 291 (b-1) states that: “A rule adopted under Subsection (b) that requires a hepatitis B vaccination for students may apply only to students enrolled in a course of study that involves "potential exposure to human or animal blood or bodily fluids.” SB 291 also states in Section 2 that: “Not later than November 1, 2009, the executive commissioner of Health and Human Services Commission shall adopt rules as required by Subsection (b-1), Section 51.933, Education Code, as added by this Act.”

The proposed amendment to §97.64(d)(2) will implement the SB 291 language. The proposed amendment tracks the statutory amendment, and reflects the potential for human-to-human hepatitis B transmission due to blood and bodily fluid exposure because of cuts and abrasions acquired during veterinary coursework.

Texas’ only school of veterinary medicine is Texas A&M University, which did submit informal feedback regarding this rule amendment. Public comments will be received during the *Texas Register* 30-day comment period.

SECTION-BY-SECTION SUMMARY

The proposed amendment changes current language from “Students enrolled in schools of veterinary medicine whose coursework involves "direct contact with animals or animal remains" shall receive a complete series of Hepatitis B vaccine prior to such contact” to “Students enrolled in schools of veterinary medicine whose coursework involves "potential exposure to human or

animal blood or bodily fluids" shall receive a complete series of hepatitis B vaccine prior to such contact." This change will bring the rule in line with the statutory amendment.

FISCAL NOTE

Casey S. Blass, Section Director, Infectious Disease Prevention Section, has determined that for each year of the first five years that the section will be in effect, if future funds are appropriated at current levels, there will be no additional costs to state and local government as a result of enforcing and administering the section as proposed. The proposed amendment is required by statute.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Blass has also determined that there will be no adverse economic impact on small businesses or micro-businesses required to comply with the section as proposed. The Texas A&M University is the only Texas institution affected by this proposed amendment.

ECONOMIC COST TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no economic costs to persons who are required to comply with the section. There is no impact on local employment.

ECONOMIC IMPACT STATEMENT

An economic impact statement is not required because small businesses and micro-businesses are not affected by this proposed amendment.

REGULATORY FLEXIBILITY ANALYSIS

Government Code, Chapter 2006, was amended by the 80th Legislature, Regular Session, (House Bill 3430), 2007, to require, as part of the rulemaking process, state agencies to prepare a Regulatory Flexibility Analysis that considers alternative methods of achieving the purpose of the rule. There is an exception to this requirement, however. An agency is not required to consider alternatives that, while possibly minimizing adverse impacts on small businesses, would not be protective of the "health, safety and environmental and economic welfare of the state." When the proposed rule is merely an implementation of legislative directives because of statutory changes, that proposed rule language becomes per se consistent with the health, safety, or environmental and economic welfare of the state, and therefore the department need not consider alternative methodologies as part of the preamble small business impact analysis.

PUBLIC BENEFIT

Mr. Blass has determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit as a result of the rule reflecting the recent statutory amendment as proposed is to ensure the safety and health of students in veterinary medicine and the public.

REGULATORY ANALYSIS

The department has determined that this proposal is not a “major environmental rule” as defined by Government Code, §2001.0225. “Major environmental rule” is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendment does not restrict or limit an owner’s right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Victoria Brice, Infectious Disease Prevention Section, Department of State Health Services, Mail Code 1946, P.O. Box 149347, Austin, Texas 78714-9347, Victoria.brice@dshs.state.tx.us, or (512) 458-7111 extension 6658. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rule has been reviewed by legal counsel and found to be within the state agencies’ authority to adopt.

STATUTORY AUTHORITY

The amendment is proposed under Education Code, §51.933, which requires the immunization against diseases for students at any institution of higher education who are pursuing a course of study in a human or animal health profession; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The amendment affects Education Code, Chapter 51; and Government Code, Chapter 531, and Health and Safety Code, Chapter 1001.

Legend: (Proposed Amendment(s))

Single Underline = Proposed new language

[Bold Print and Brackets] = Current language proposed for deletion

Regular Print = Current language

(No change.) = No changes are being considered for the designated subdivision

§97.64. Required Vaccinations for Students Enrolled in Health-related and Veterinary Courses in Institutions of Higher Education.

(a) - (c) (No change.)

(d) Students enrolled in schools of veterinary medicine.

(1) (No change.)

(2) Hepatitis B Vaccine. Students enrolled in schools of veterinary medicine whose coursework involves potential exposure to human or animal blood or bodily fluids **[direct contact with animals or animal remains]** shall receive a complete series of hepatitis **[Hepatitis]** B vaccine prior to such contact.

(e) (No change.)