

**Department of State Health Services**  
**Agenda Item for State Health Services Council**  
**April 12, 2007**

**Agenda Item Title:** Amend 25 TAC §97.64, concerning required vaccinations for students enrolled in health-related and veterinary courses in institutions of higher education

**Agenda Number: 5d**

**Recommended Council Action:**

For Discussion Only

For Discussion and Action by the Council

**Background:**

Under department rule, §97.64, *Required Vaccinations for Students Enrolled in Health-related and Veterinary Courses in Institutions of Higher Education*, there is a requirement that higher education (non-veterinary) students have a full series of hepatitis B vaccinations before direct patient contact is permissible, pursuant to federal Centers for Disease Control and Prevention (CDC) recommendations. In 2004, the Texas Higher Education Coordinating Board (THECB) raised concerns to department staff regarding this rule, citing declining enrollment in certain health-related courses of study covered by the rule. Section 97.64 went into effect in 2000. Since these complaints were first received, taking into account input from THECB, the department developed policies clarifying the meaning of direct patient contact as the term is used in the rule, worked to identify specific programs affected by the rule, and increased educational efforts for both students and institutions of higher education regarding the rules requirements and the reasoning behind them. However, department staff continue to receive reports of decreasing enrollment in affected courses of study that are two years or shorter.

Program staff has found compelling evidence that §97.64, as it is currently written, is having a negative fiscal impact on the institutions offering these courses in the form of reduced enrollment, with a corresponding negative impact on rural nursing homes that rely heavily on local community colleges to provide a trained workforce of students enrolled in such courses, as well as a following negative impact on the state as a whole through reduction in the workforce of graduated students qualified in the fields of phlebotomy, certified nursing aide, medical assistant, Emergency Medical Technician, and licensed vocational nursing (based on the assumption that graduates are more likely to work in areas near the place of graduation).

**Summary:**

The proposed rule amendment contains a reorganization of the entire rule for better clarity and efficiency. Non-veterinary students would be allowed to enroll and attend class with at least one dose of each vaccine requirement specified, enroll with acceptable documentation of immunizations, and enroll with acceptable evidence of serologic confirmation to immunity. These students would be required to show proof of a **second mumps** vaccination as recommended by the ACIP for adults at high risk, such as students at post-high school educational institutions. Tdap vaccination may be used in lieu of the Td vaccination, per ACIP recommendation. Proposed changes would also clarify the applicability section to discern between students enrolled in health-related courses with exposure to human blood and bodily fluids and veterinary students who

have exposure to animal and animal remains. A new subsection (d) is created so that veterinary and non-veterinary coursework is clearly distinguished, making it easier for each type of student to know the applicable requirements.

In addition, the proposed amendment to §97.64 is to ensure that the existing rule is up-to-date and necessary in response to Texas Government Code, §2001.039. The rule is due for 4-year review in April 2008.

**Summary of Stakeholder Input to Date (including advisory committees):**

Stakeholder input has been received from the Texas Higher Education Coordinating Board (THECB), Texas Administrators of Continuing Education (TACE), and the DSHS Zoonosis Program regarding the proposed amendments to §97.64 (see “Background” above). Additional stakeholder input will be sought by posting in the Texas Register for a 30-day comment period.

**Proposed Motion:**

Motion to recommend HHSC approval for publication of rules contained in agenda item #6d.

**Approved by:** \_\_\_\_\_  
Assistant Commissioner, Division for Prevention and Preparedness Services

**Presented by:** Mr. Jack Sims      **Title:** Branch Manager  
**Program/Division:** Disease Prevention and Intervention Section, Immunization Branch

**Contact:** Mr. Tim Hawkins x3394

**Date Submitted**

4-12-2007

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 the required vaccinations for students enrolled in health-related and veterinary courses in institutions of higher education.

BACKGROUND AND PURPOSE

Under department rule, §97.64, *Required Vaccinations for Students Enrolled in Health-related and Veterinary Courses in Institutions of Higher Education*, there is a requirement that higher education (non-veterinary) students have a full series of hepatitis B vaccinations before direct patient contact is permissible, pursuant to federal Centers for Disease Control and Prevention (CDC) recommendations. In 2004, the Texas Higher Education Coordinating Board (THECB) raised concerns to department staff regarding this rule, citing declining enrollment in certain health-related courses of study covered by the rule. Section 97.64 went into effect in 2000, though department staff inquiries have found varying levels of compliance with this rule. Since these complaints were first received, taking into account input from THECB, the department developed policies clarifying the meaning of direct patient contact as the term is used in the rule, worked to identify specific programs affected by the rule, and increased educational efforts for both students and institutions of higher education regarding the rules requirements and the reasoning behind them. However, department staff continue to receive reports of decreasing enrollment in affected courses of study that are two years or shorter.

From a medical perspective, the department agrees with the reasoning behind the CDC recommendations that higher education students in the courses at issue have a full series of hepatitis B vaccinations before direct patient contact is permissible. At the same time, the department understands the concerns raised by THECB that §97.64, as it is currently written, appears to be making it more difficult for students to enter these health-related courses, which then has negative implications for the state's health care workforce and to filling health care needs in rural areas. The most urgent issue raised by THECB included concerns that many students seeking to enroll in short-term programs (less than six months) primarily do so not long before classes begin, thus making it impossible to have the complete vaccination series prior to the scheduled start of the course activities in question (e.g. direct patient contact). This enrollment practice limits the ability of the school to allow students to begin coursework, which includes direct patient care, before the completion of a three-dose hepatitis B series vaccine. The vaccine series of three doses is usually given at a 0, 1, 6 month interval or an alternative schedule of 0, 1-2, 4 months. Also, the concern over the acute health-professions shortage was also raised. The completion of the hepatitis B series was viewed as a barrier in many areas,

particularly rural areas, and thus creating drops in enrollment that resulted in closures for some programs.

In late 2006, the department and THECB met with rural and urban stakeholders (i.e. community colleges) in Arlington and Midland, as part of an effort to document the persistent claims made over recent years to the department regarding the claimed impact of the rule. After evaluating this input, department staff found compelling evidence that §97.64, as it is currently written, was having a negative affect on enrollment in these courses, with a particular impact on rural nursing homes that rely heavily on local community colleges to provide a trained workforce of students enrolled in these courses. Community colleges were experiencing reduced enrollment of students for phlebotomy, certified nursing aide, medical assistant, emergency medical technician, and licensed vocational nursing programs.

Program staff has found compelling evidence that §97.64, as it is currently written, is having a negative fiscal impact on the institutions offering these courses in the form of reduced enrollment, with a corresponding negative impact on rural nursing homes that rely heavily on local community colleges to provide a trained workforce of students enrolled in such courses, as well as a following negative impact on the state as a whole through reduction in the workforce of graduated students qualified in the fields of phlebotomy, certified nursing aide, medical assistant, emergency medical technician, and licensed vocational nursing (based on the assumption that graduates are more likely to work in areas near the place of graduation).

Additionally, Government Code, §2001.039, requires that each state agency review and consider for readoption every 4 years each rule adopted by that agency pursuant to the Government Code, Chapter 2001. Section 97.64 has been reviewed and the department has determined that reasons for adopting the section continue to exist because a rule on this subject is needed.

Recent Advisory Committee on Immunization Practices (ACIP) recommendations for mumps and Tdap vaccines for adults necessitate changes to the rules as they exist. ACIP now recommends two doses of mumps vaccine for adults at high risk (i.e., health-care workers, international travelers, and students at post--high school educational institutions). Similarly, ACIP recommends that persons who are at least 19 years of age but younger than 65 years of age should receive a single dose of Tdap to replace tetanus and diphtheria toxoids vaccine (Td) for booster immunization against tetanus, diphtheria, and pertussis if they received their last dose of Td greater than 10 years earlier and they have not previously received Tdap.

The proposed rule amendment contains a reorganization of the entire rule for better clarity and efficiency, and includes the following changes:

- 1) Adding a new section for limited exceptions of the requirements to allow (non-veterinary) students to enroll and/or attend class with at least one dose of each vaccine requirement specified, enroll with acceptable documentation of immunizations, and enroll with acceptable evidence of serologic confirmation to immunity;

2) (Non-veterinary) students in health-related courses at an institution of higher education will be required to show proof of a **second mumps** vaccination as recommended by the ACIP for adults at high risk, such as students at post-high school educational institutions;

3) Tdap vaccination may be used in lieu of the Td vaccination for entry of (non-veterinary) students enrolled in health-related courses in institutions of higher education as is recommended by ACIP that persons who are at least 19 years of age but younger than 65 years of age should receive a single dose of Tdap to replace the Td booster for immunization against tetanus, diphtheria, and pertussis;

4) Clarifying the applicability section, §97.64(a) to discern between students enrolled in health-related courses with exposure to human blood and bodily fluids and veterinary students who have exposure to animal and animal remains. A new subsection (d) is created so that veterinary and non-veterinary coursework is clearly distinguished, making it easier for each type of student to know the applicable requirements.

5) Re-word existing language for the rabies vaccine for clarity.

#### SECTION-BY-SECTION SUMMARY

Section 97.64(a), regarding applicability for non-veterinary students, provides that the section applies to all students enrolled in health-related courses which will involve direct patient contact with potential exposure to blood or bodily fluids in educational, medical, or dental care facilities. The section is also clarified by extracting the applicability of veterinary students to a separate subsection (d) to address the students with exposure to animals or animal remains. This subsection (d) substantively is not changing for the rabies vaccine requirement, although language is proposed to be clarified regarding the two-year follow-up. However, the department will conduct a study and solicit stakeholder input regarding appropriate vaccinations for students enrolled veterinary courses, along with appropriate schedules for those vaccinations. If warranted, rulemaking will be initiated at that time.

Section 97.64(b) discusses the vaccines required. Recent Advisory Committee on Immunization Practices (ACIP) recommendations for mumps and Tdap vaccines for adults necessitate changes to the rules as they exist, which is addressed in (1) and (2) below. The amendment to this section provides the following:

(1) One dose of a tetanus-diphtheria toxoid (Td) is required within the last ten years. The booster dose may be in the form of a tetanus-diphtheria-pertussis containing vaccine (Tdap). The change to allow Tdap in lieu of Td is now acceptable as recommended by the ACIP for adults at high risk, such as students at post-high school educational institutions.

(2) Beginning January 1, 2009, students must show acceptable evidence of vaccination of two doses of a mumps-containing vaccine (preferably MMR vaccine) as recommended by the ACIP for adults at high risk, such as students at post-high school educational institutions.

(3) Reorganization of the measles, mumps, and rubella requirement specifying the addition of a second mumps vaccine requirement (beginning January 1, 2009). Two doses of measles vaccine and one dose of rubella vaccine remain unchanged. Reorganization of the presumed immunity to measles and mumps vaccination is also stated in §97.64(b)(2)(D) that students born on or before December 31, 1956 may enroll with one dose of measles, mumps, and rubella and also §97.64(b)(E), which clarifies that students who were vaccinated with a measles-containing vaccine prior to 1968 should receive two doses of a measles and mumps containing vaccine.

(4) One dose of rubella vaccine. (No change)

(5) Students are required to have three doses of hepatitis B vaccine. The proposed amendment would allow students to enroll with at least one dose of the hepatitis B vaccine rather than the complete series prior to direct patient contact.

(6) Students are required to have received one dose of varicella (chickenpox) vaccine on or after his/her first birthday or, if the first dose was administered on or after the student's thirteenth birthday, two doses of varicella (chickenpox) vaccine are required. The proposed amendment clarifies the requirement to read that one dose is required, if the vaccine was administered on or after the 1<sup>st</sup> birthday; however, two doses are required, if the vaccine was administered on or after the student's 13<sup>th</sup> birthday.

Section 97.64(c) is amended to list the limited exceptions to the requirements listed in 97.64(b) as they apply to students described in Section 97.64(a). The proposed language would allow students to participate in coursework activities described in subsection (a) if 1) the student receives at least one dose of each specified vaccine prior to enrollment and completes the vaccination series according to the stated schedule, or 2) the student provides acceptable proof of serologic confirmation of immunity. The proposed language goes on to state that students claiming to have had the full series of the required vaccination(s) cannot engage in the activities described in subsection (a) until they have provided acceptable proof.

#### FISCAL NOTE

Casey S. Blass, Section Director, Disease Prevention and Intervention Section, has determined that for each year of the first five years that the section will be in effect there will be no additional costs to state and local government as a result of enforcing and administering the section as proposed.

Concerning students enrolled in health-related courses which will involve direct patient contact with potential exposure to human blood or bodily fluids in educational, medical, or dental care facilities, department staff found compelling evidence that Rule §97.64, as it is currently written, is having a negative fiscal impact on institutions offering these courses in the form of reduced enrollment, with a corresponding negative impact on rural nursing homes that rely heavily on local community colleges to provide a trained workforce of students enrolled in such courses, as well as a following negative impact on the state as a whole through reduction in the workforce of graduated students qualified in the fields of phlebotomy, certified nursing aide, medical assistant, emergency medical technician, and licensed vocational nursing (based on the assumption that

graduates are more likely to work in areas near the place of graduation). Mr. Blass has determined that a positive fiscal impact may occur as a result of enforcing and administering the section as proposed, since the changes are designed to address the issues outlined above.

#### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Blass has also determined that, in addition to providing clarity and efficiency as a result of the reorganization of the entire rule, there will be a positive effect on small businesses or micro-businesses required to comply with the section as proposed. This was determined by the evaluation of input received during discussion in late 2006 between the department, THECB and rural and urban stakeholders (community colleges) in Arlington and Midland that discovered compelling evidence that Rule §97.64, as it is currently written, is having a negative affect on enrollment in the courses at issue, as discussed above.

To the extent that certain nursing homes that rely heavily on local community colleges to provide a trained workforce of students enrolled in these courses are small or micro-businesses, they would benefit from these rule changes by virtue of stabilized and increased enrollment. In addition, having a sufficient number of qualified health care graduates entering the Texas workforce would be a benefit to all Texans and the state economy, including small practitioners who hire such graduates and may themselves be considered small or micro-businesses.

#### PUBLIC BENEFIT

In addition, Mr. Blass has also 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 anticipated as a result of enforcing or administering the section as proposed is to provide easier entry for students enrolling in health care courses, especially given implications to the state's health care workforce and addressing health care needs in rural areas (as discussed previously). This was determined by the evaluation of input received during discussions in late 2006 between the department, THECB, and rural and urban stakeholders (community colleges) in Arlington and Midland that discovered compelling evidence that §97.64, as it is currently written, was having a negative affect on enrollment in these courses. The public shall also benefit from clarifying the rule requirements to make them easier to read and understand.

#### 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, do not constitute a taking under Government Code, §2007.043.

## PUBLIC COMMENT

Comments on the proposal may be submitted to Tim Hawkins, Disease Prevention and Intervention Section, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7111 extension 3394, or (800) 252-9152. 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, Cathy Campbell, 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 Health and Safety Code, §81.023, which requires the department to develop immunization requirements for children; 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 Health and Safety Code, §81.023; and Texas Education Code, §51.933.

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) Applicability for non-veterinary students. This section applies to all students enrolled in health-related courses which will involve direct patient contact with potential exposure to blood or bodily fluids in educational, medical, or dental care facilities.

**[(a) This section applies to all students enrolled in health-related courses, which will involve direct patient contact in medical or dental care facilities. This includes all medical interns, residents, fellows, nursing students, and others who are being trained in medical schools, hospitals, and health science centers listed in the Texas Higher Education Coordinating Board's list of higher education in Texas; and students attending two-year and four-year colleges whose course work involves direct patient contact regardless of the number of courses taken, number of hours taken, and the classification of the student. Subsection (i) of this section also applies to veterinary medical students whose course work involves direct contact with animals or animal remains regardless of number of courses taken, number of hours taken, and the classification of the student.]**

(b) Vaccines Required. Students must have the all the following vaccinations before they may engage in the course activities described in subsection (a) of this section:

(1) Tetanus-diphtheria. One dose of a tetanus-diphtheria toxoid (Td) is required within the last ten years. The booster dose may be in the form of a tetanus-diphtheria-pertussis containing vaccine (Tdap).

(2) Measles, Mumps, and Rubella Vaccines.

(A) Students must show acceptable evidence of vaccination of two doses of a measles-containing vaccine (preferably MMR vaccine).

(B) Beginning January 1, 2009, students must show acceptable evidence of vaccination of two doses of a mumps-containing vaccine (preferably MMR vaccine).

(C) One dose of rubella vaccine.

(D) Students born on or before December 31, 1956 are required to have one dose of a measles containing vaccine, one dose of mumps, and one dose of rubella and thus are exempt from the two dose requirement of measles and mumps containing vaccine.

(E) Students vaccinated prior to 1968 shall be revaccinated, unless documentation is provided that indicates that a live virus vaccine was used in vaccinating the student.

(3) Hepatitis B Vaccine. Students are required to have three doses of hepatitis B vaccine.

(4) Varicella Vaccine. Students are required to have received one dose of varicella (chickenpox) vaccine on or after the student's first birthday or, if the first dose was administered on or after the student's thirteenth birthday, two doses of varicella (chickenpox) vaccine are required.

**[(b) Students may be provisionally enrolled for up to one semester or one quarter to allow students to attend classes while obtaining the required vaccines and acceptable evidence of vaccination.]**

(c) Limited Exceptions:

(1) Notwithstanding the other requirements in this section, a student may participate in coursework activities involving the contact described in subsection (a) of this section if the student has received at least one dose of each specified vaccine prior to enrollment and goes on to complete each vaccination series on schedule in accordance the Centers for Disease Control & Prevention's Recommended Adult Immunization Schedule as approved by the Advisory Committee on Immunization Practices (ACIP), American College of Obstetricians and Gynecologists (ACOG), the American Academy of Family Physicians (AAFP), and the American College of Physicians.

(2) Students, who claim to have had the complete series of a required vaccination, but have not properly documented them, cannot participate in coursework activities involving the contact described in subsection (a) of this section until such time as proper documentation has been submitted and accepted.

(3) The immunization requirements in subsection (b) above are not applicable to individuals who can properly demonstrate proof of serological confirmation of immunity. Vaccines for which this may be potentially demonstrated, and acceptable methods for demonstration, are found in rule §97.65 of this title (relating to Exceptions to Immunization Requirement (Verification of Immunity/History of Illness)). Such a student cannot participate in coursework activities involving the contact described in subsection (a) of this section until such time as proper documentation has been submitted and accepted.

**[(c) Students cannot be provisionally enrolled without at least one dose of measles, mumps, and rubella vaccine if direct patient contact will occur during the provisional enrollment period.]**

(d) Students enrolled in schools of veterinary medicine.

(1) Rabies Vaccine. Students enrolled in schools of veterinary medicine whose coursework involves direct contact with animals or animal remains shall receive a complete primary series of rabies vaccine prior to such contact. Serum antibody levels must be checked every two years, with a booster dose of rabies vaccine administered if the titer is inadequate.

**[(d) Polio vaccine is not required. Students enrolled in health-related courses are encouraged to ascertain that they are immune to poliomyelitis.]**

**[(e) One dose of tetanus-diphtheria toxoid (Td) is required within the last ten years.]**

**[(f) Students who were born on or after January 1, 1957, must show, prior to patient contact, acceptable evidence of vaccination of two doses of measles-containing vaccine administered since January 1, 1968.]**

**[(g) Students must show, prior to patient contact, acceptable evidence of vaccination of one dose of rubella vaccine.]**

**[(h) Students born on or after January 1, 1957, must show, prior to patient contact, acceptable evidence of vaccination of one dose of mumps vaccine.]**

**[(i) Students shall receive a complete series of hepatitis B vaccine prior to the start of direct patient care or show serologic confirmation of immunity to hepatitis B virus.]**

**[(j) Students enrolled in schools of veterinary medicine shall receive a complete primary series of rabies vaccine prior to the start of contact with animals or their remains; and, a booster dose of rabies vaccine every two years unless protective serum antibody levels are documented.]**

**[(k) Students shall receive two doses of varicella vaccine unless the first dose was received prior to thirteen years of age.]**