

Department of State Health Services
Agenda Item for State Health Services Council
October 5, 2006

Agenda Item Title: Amendments to 25 TAC §§97.1 – 97.11, New §§97.12 – 97.13, Repeal §§97.12 – 97.13 Concerning Control of Communicable Diseases

Agenda Number: 3b

Recommended Council Action:

For Discussion Only

For Discussion and Action by the Council

Background:

The amendments, repeal and new sections are necessary to comply with Health and Safety Code, Chapter 81. The amendments, repeal and new sections will enable the reporting sources to more clearly identify the conditions and diseases that must be reported, define the minimal reportable information on these conditions and diseases, and describe the procedures for reporting. The amendments adjust the list of reportable diseases to include diseases and conditions of concern to public health. The amendments also add language on the investigation and control of communicable diseases that are authorized by Health and Safety Code, Chapter 81.

Summary:

The Infectious Disease Control Unit proposes amendments to §§97.1 – 97.11, the repeal of §§97.12 - §97.13, and new §§97.12 - §97.13. Amendments to §97.1 update legacy agency references, update definitions by adding, deleting, and revising text as necessary for clarity; Amendments to §97.2 add a reference to the Health Insurance Portability and Accountability Act (HIPAA); Amendments to §97.3 update legacy agency references, add a website for accessing a summary list of notifiable conditions, update legacy agency references, change the scope of hepatitis B and C notifications, add influenza-associated pediatric mortality, leishmaniasis, *Taenia solium*, VISA, VRSA, and West Nile fever to the notifiable conditions list, update diseases requiring submission of specimens to Department of State Health Services (DSHS) laboratory; Amendments to §97.4 update legacy agency references, and changes reporting time frames for perinatal hepatitis B, pertussis, tularemia and SARS; Amendments to §97.5 update legacy agency references, where to report a disease or isolate, and where to submit an isolate; Amendments to §97.6 update legacy agency references, provide a toll-free telephone number for reporting diseases to the department by local health authorities and regional directors; Amendments to §97.7 updates guidance for exclusion from child-care facilities and schools; Amendments to §97.8 update legacy agency references; Amendments to §97.9 add language regarding application of control measures to private and common carriers as required by Health and Safety Code 81.086(b); Amendments to §97.10 update legacy agency references and clarifies existing language; Amendments to §97.11 adds persons, as required by legislation, who need to or may be notified by hospitals if they may have been exposed to a communicable disease.

Sections 97.12 and 97.13 are being repealed so that they may be renumbered for better flow and organization of the rules. New §97.12 is the renumbered §97.13, and new §97.13 is the renumbered §97.12 moved for better flow of the rules and reorganized for clarity. In the renumbered §97.12, the definition of correctional officer is changed to include volunteers and others involved in a facility's operations. Amendments to the renumbered §97.13 add avian influenza, hantavirus, SARS and smallpox to diseases that require tagging of body upon death. All of Subchapter A includes updates to names, references, and processes to reflect post-consolidation operations.

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

These rules impact people of Texas whose risk of illness is decreased by the early detection and control or prevention of infectious diseases in the community.

Stakeholder input has been obtained by posting on the DSHS Infectious Disease Control Unit website at <http://www.dshs.state.tx.us/idcu/default.asp> and e-mail distribution through the Health Alert Network. Preliminary comments have been sought during the months of June and July 2006 through methods listed above. Comments have not been excessive or controversial and changes have been made based on comments and input received. Formal comments will be obtained through the *Texas Register*.

Proposed Motion: Motion to recommend HHSC approval for publication of rules contained in the agenda item # 3b.

Agenda Item

Approved by: _____
Debra Stabeno, Assistant Commissioner

Date Submitted

9/12/2006

Presented by: Jeff Taylor **Title:** Manager

Program/Division: Infectious Disease Control Unit/Prevention & Preparedness Division

Contact Name/Phone: Evelyn Shewmaker **Extension:** 6116

Title 25. HEALTH SERVICES
Part 1. DEPARTMENT OF STATE HEALTH SERVICES
Chapter 97. Communicable Diseases
Subchapter A. Control of Communicable Diseases
Amendments §§97.1 - 97.11
New §§97.12 - §97.13
Repeal §§97.12 - §97.13

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes amendments to §§97.1 - 97.11, the repeal of §§97.12 - §97.13, and new §§97.12 - §97.13 concerning control of communicable diseases.

BACKGROUND AND PURPOSE

The amendments, repeal and new sections are necessary to comply with Health and Safety Code, Chapter 81. The amendments, repeal and new sections will enable the reporting sources to more clearly identify the conditions and diseases that must be reported, define the minimal reportable information on these conditions and diseases, and describe the procedures for reporting. The amendments adjust the list of reportable diseases to include diseases and conditions of concern to public health. The amendments also add language on the investigation and control of communicable diseases that are authorized by Health and Safety Code, Chapter 81.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 97.1 – 97.13 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

Amendments to §97.1 update legacy agency references, update definitions by adding, deleting, and revising text as necessary for clarity. Amendments to §97.2 add a reference to the Health Insurance Portability and Accountability Act (HIPAA). Amendments to §97.3 update legacy agency references, add a website for accessing a summary list of notifiable conditions, update legacy agency references, change the scope of hepatitis B and C notifications, add influenza-associated pediatric mortality, leishmaniasis, *Taenia solium*, *Vancomycin-intermediate resistant Staphylococcus aureus* (VISA), *Vancomycin resistant Staphylococcus aureus* (VRSA), and West Nile fever to the notifiable conditions list, update diseases requiring submission of specimens to Department of State Health Services laboratory. Amendments to §97.4 update legacy agency references, and changes reporting time frames for perinatal hepatitis B, pertussis, tularemia and severe acute respiratory syndrome (SARS). Amendments to §97.5 update legacy agency references, where to report a disease or isolate, and where to submit an isolate. Amendments to §97.6 update legacy agency references, provide a toll-free telephone number for reporting diseases to the department by local health authorities and regional directors. Amendments to §97.7 updates guidance for exclusion from child-care facilities and schools. Amendments to §97.8 update legacy agency references. Amendments to §97.9 add language regarding application of control measures to private and common carriers as required by Health and Safety Code, §81.086(b). Amendments to §97.10 update legacy agency references and clarifies existing language. Amendments to §97.11 add persons, as required by legislation, who need to or may be notified by hospitals if they may have been exposed to a communicable disease.

New §97.12 is the renumbered §97.13, and new §97.13 is the renumbered §97.12 moved for better flow of the rules and reorganized for clarity. In the new §97.12, the definition of correctional officer is changed to include volunteers and others involved in a facility's operations. New §97.13 adds avian influenza, hantavirus, SARS and smallpox to

diseases that require tagging of body upon death. All of Subchapter A includes updates to names, references, and processes to reflect post-consolidation operations.

FISCAL NOTE

Martha McGlothlin, Acting Section Director, Community Preparedness Section, has determined that for each year of the first five-year period that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. McGlothlin has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. McGlothlin has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The institutions and individuals responsible for reporting communicable diseases will have clear guidance on what is reportable; the public health community will have clear guidance on its legal responsibilities regarding control and exposure to communicable disease; and the general public will be better served by the department as it fulfills its responsibility to monitor communicable disease, assess and respond to the threat it presents to the public's health.

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 rules do 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 Jeff Taylor, Manager, Infectious Disease Epidemiology and Surveillance Group, Infectious Disease Control Unit, Community Preparedness Section, Division for Prevention and Preparedness, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, 512/458-7676 or by email to Jeff.Taylor@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The proposed amendments, repeal and new sections are authorized by Health and Safety Code, §81.004, which gives the commissioner of the department (commissioner) general statewide responsibility for the administration of the Communicable Disease Act and authorizes the adoption of rules necessary for its effective administration and implementation; §81.041, which requires that the executive commissioner of the Health and Human Services Commission (executive commissioner) identify and maintain a list of reportable diseases; §81.042(c), which requires rules to establish procedures to determine if a child should be reported and excluded from school; §81.042(d), which requires that health facilities report disease diagnoses in accordance with procedures adopted by the executive commissioner; §81.50, which requires that the executive commissioner adopt rules that prescribe the criteria that constitute exposure to reportable diseases; §81.082, which requires that control measures for communicable disease must be established by rules adopted by the executive commissioner; 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 the Health and Safety Code, Chapter 1001.

Sections for repeal.

§97.12. Death of a Person with Certain Communicable Diseases.

§97.13. Mandatory Testing of Persons Suspected of Exposing Certain Other Persons to Notifiable Conditions and Workers' Compensation Issues Relevant to Postexposure Management of Emergency Responders.

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

§97.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) – (5) (No change.)

(6) Common Carrier –Any vehicle or device available to the public for transportation of persons, goods, or messages.

(7) [(6)] Communicable disease--An illness due to an infectious agent or its toxic products which is transmitted directly to a well person from an infected person or animal, or indirectly through an intermediate plant or animal host, vector, or the inanimate environment.

(8) [(7)] Contact--A person or animal that has been in such association with an infected person or animal or a contaminated environment so as to have had opportunity to acquire the infection.

(9) [(8)] Department--Department of State Health Services [Texas Department of Health].

(10) [(9)] Disinfection--Application of chemical or physical agents to destroy [Destruction of] infectious agents outside the body [directly applied by chemical or physical means].

[(10) *Enterococcus Species*--Any *Enterococcus* bacteria isolated in a laboratory.]

(11) - (12) (No change.)

(13) Health authority--A physician designated to administer state and local laws relating to public health under the Local Public Health Reorganization Act, Health and Safety Code, Chapter 121. The health authority, for purposes of these sections, may be:

(A) a local health authority appointed by the local government jurisdiction; or [:]

[(i) director of a local health department; or]

[(ii) physician as appointed by the Commissioner of Health if there is no director of a local health department.]

(B) a regional director of the Department of State Health Services [Texas Department of Health] if no physician has been appointed by the **[Commissioner of Health as a]** local government [health authority].

(14) – (16) (No change.)

(17) Perinatal hepatitis B infection--HBsAg positivity in any infant aged >1-24 months.

[(17) Penicillin resistant *Streptococcus pneumoniae* --*Streptococcus pneumoniae* with a penicillin minimum inhibitory concentration (MIC) of 2 µg/mL or greater (high level), and/or an intermediate level resistance of 0.1 - 1 µg/mL.]

(18) Physician--A person licensed by the Texas **[State Board of]** Medical Board **[Examiners]** to practice medicine in Texas.

(19) Physician assistant--A person licensed as a physician assistant by the Texas **[State Board of]** Physician Assistant Board **[Examiners]**.

(20) – (25) (No change.)

(26) Specimen Submission Form **[G-1]**--A current Department of State Health Services [multipurpose] laboratory specimen submission form available from the Department of State Health Services, Laboratory Services Section [Texas Department of Health, Bureau of Laboratories], 1100 West 49th Street, Austin, Texas, 78756-3199.

(27) Vancomycin-intermediate resistant *Staphylococcus aureus* (VISA)--*Staphylococcus aureus* with a vancomycin minimum inhibitory concentration (MIC) of 4 µg/mL through 8 µg/mL.

[(27) Vancomycin resistant *Enterococcus* species--*Enterococcus* species with a vancomycin MIC greater than 16 micrograms per milliliter (µg/mL) or a disk diffusion zone of 14 millimeters or less. Vancomycin intermediate *Enterococcus* (e.g., *Enterococcus casseliflavus* and *Enterococcus gallinarum*) with a vancomycin MIC of 8 µg/mL - 16 µg/mL do not need to be reported.]

(28) Vancomycin-resistant *Staphylococcus aureus* (VRSA) **[and vancomycin resistant coagulase negative *Staphylococcus* species]**--*Staphylococcus aureus* **[or a coagulase negative *Staphylococcus* species]** with a vancomycin MIC of 16 [8] µg/mL or greater.

(29) (No change.)

§97.2. Who Shall Report.

(a) – (g) (No change.)

(h) The Health Insurance Portability and Accountability Act (HIPAA) allows reporting without authorization for public health purposes and where required by law. Title 45 Code of Federal Regulations §164.512(a)8(b).

§97.3 What Condition to Report and What Isolates to Report or Submit.

(a) Humans.

(1) Identification of notifiable conditions

(A) A summary list of notifiable conditions and reporting time frames is published on the Department of State Health Services web site at <http://www.dshs.state.tx.us/idcu/>. [The most current edition of the Texas Department of Health's (department) publication titled "Identification, Confirmation, and Reporting of Notifiable Conditions" shall be reported under these sections based on a specific diagnosis, test procedure, and/or confirmatory test. Copies are available upon request to the Materials Acquisition and Management Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.] Copies are filed in the Infectious Disease Surveillance and Epidemiology Branch **[and Surveillance Division]**, Department of State Health

Services [Texas Department of Health], 1100 West 49th Street, Austin, Texas 78756 [and are available for public inspection during regular working hours].

(B) (No change.)

(2) Notifiable conditions or isolates.

(A) Confirmed and suspected human cases of the following diseases/infections are reportable: acquired immune deficiency syndrome (AIDS); amebiasis; anthrax; botulism-adult and infant; brucellosis; campylobacteriosis; chancroid; chickenpox (varicella); *Chlamydia trachomatis* infection; Creutzfeldt-Jakob disease (CJD); cryptosporidiosis; cyclosporiasis; dengue; diphtheria; ehrlichiosis; encephalitis (specify etiology); *Escherichia coli*, enterohemorrhagic infection; gonorrhea; Hansen's disease (leprosy); *Haemophilus influenzae* type b infection, invasive; hantavirus infection; hemolytic uremic syndrome (HUS); hepatitis A, B, C, D, E, and unspecified (acute); **hepatitis C (newly diagnosed infection, effective 1/1/00);** hepatitis B, (acute and chronic) identified prenatally or at delivery as described in §97.135 of this title (relating to Serologic Testing during Pregnancy and Delivery; perinatal hepatitis B infection; human immunodeficiency virus (HIV) infection; influenza-associated pediatric mortality; legionellosis; leishmaniasis; listeriosis; Lyme disease; malaria; measles (rubeola); meningitis (specify type); meningococcal infection, invasive; mumps; pertussis; plague; poliomyelitis, acute paralytic; Q fever; rabies; relapsing fever; rubella (including congenital); salmonellosis, including typhoid fever; severe acute respiratory syndrome (SARS) as defined by the United States Centers for Disease Control and Prevention; shigellosis; smallpox; spotted fever group rickettsioses (such as Rocky Mountain spotted fever); streptococcal disease: invasive group A, invasive group B, or invasive *Streptococcus pneumoniae*; syphilis; Taenia solium and undifferentiated Taenia infections, including cysticercosis; tetanus; trichinosis; tuberculosis; tularemia; typhus; *Vibrio* infection, including cholera (specify species); viral hemorrhagic fevers; yellow fever; yersiniosis; and **[Severe Acute Respiratory Syndrome (SARS) as defined by the United States Centers for Disease Control and Prevention]** vancomycin-intermediate resistant *Staphylococcus aureus* (VISA), vancomycin-resistant *Staphylococcus aureus* (VRSA), and West Nile fever.

(B) In addition to individual case reports, any outbreak, exotic disease, or unusual group expression of disease that [which] may be of public health concern should be reported by the most expeditious means.

[(C) The following organisms shall be reported: *Enterococcus* species; vancomycin resistant *Enterococcus* species; vancomycin resistant *Staphylococcus aureus*; vancomycin resistant coagulase negative *Staphylococcus* species; *Streptococcus pneumoniae*; and penicillin-resistant *Streptococcus pneumoniae*.]

(3) Minimal reportable information requirements. The minimal information that shall be reported for each disease is as follows:

(A) – (C) (No change.)

(D) for other persons identified with latent TB infection - complete name; date of birth; physical address and county of residence; and diagnostic information [all information necessary to complete the most recent versions of forms TB 400 A & B (Report of Case and Patient Services)];

(E) (No change.)

(F) for hepatitis A, B, C, D, E - name, address, telephone number, age, date of birth, sex, race and ethnicity, disease, diagnostic indicators (diagnostic lab results, including all positive and negative hepatitis panel results, liver function tests, and symptoms), date of onset, pregnancy status, and physician name, address, and telephone number;

(G) for perinatal hepatitis B - name of infant; date of birth; sex; race; ethnicity; name, phone number and address of medical provider for infant; date, time, formulation, dose, manufacturer, and lot number of hepatitis B vaccine and hepatitis B immune globulin administered to infant, hepatitis B laboratory test results;

(H) [(F)] for chickenpox - name, date of birth, sex, race and ethnicity, address, date of onset, and varicella vaccination history;

[(G) for all other notifiable conditions listed in paragraph (2)(A) of this subsection - name, address, telephone number, age, date of birth, sex, race and ethnicity, disease, type of diagnosis, date of onset, and physician name, address, and telephone number;]

[(H) for all isolates of *Enterococcus* species and all isolates of *Streptococcus pneumoniae* regardless of resistance patterns - numeric totals at least quarterly;]

(I) for [vancomycin resistant *Enterococcus* species; penicillin resistant *Streptococcus pneumoniae*;] VISA [vancomycin resistant *Staphylococcus aureus*]; and VRSA - name, address, telephone number, age, date of birth, sex, race and ethnicity, disease, diagnostic indicators (diagnostic lab results, anatomic site of culture, and clinical indicators), date of onset, and physician name, address, and telephone number [vancomycin resistant coagulase negative *Staphylococcus* species, - name, city of submitter, date of birth or age, sex, anatomic site of culture, and date of culture]; [and]

(J) for Hansen's disease - name; date of birth; sex; race and ethnicity; social security number; disease type; place of birth; address; telephone number; date entered Texas; date entered U.S.; education/employment; insurance status; location and inclusive dates of residence outside U.S.; date of onset and history prior to diagnosis; date of initial biopsy and result; date initial drugs prescribed and name of drugs; name, date of birth and relationship of household contacts; and name, address, and telephone number of physician; and [.]

(K) for all other notifiable conditions listed in paragraph (2)(A) of this subsection - name, address, telephone number, age, date of birth, sex, race and ethnicity, disease, diagnostic indicators (diagnostic lab results and specimen source, and clinical indicators), date of onset, and physician name, address, and telephone number.

(4) Diseases requiring submission of cultures. For all anthrax (*Bacillus anthracis*), botulism-adult and infant (*Clostridium botulinum*), brucellosis (*Brucella* species), *E.coli* 0157:H7, isolates or specimens from cases where Shiga-toxin activity is demonstrated, *Listeria monocytogenes*, meningococcal infection, invasive (*Neisseria meningitidis* [*meningitides*] from normally sterile sites), plague (*Yersinia pestis*), tularemia (*Francisella tularensis*), [all vancomycin resistant] all *Staphylococcus aureus* with a vancomycin MIC greater than 2 µg/mL, and *Vibrio* species [vancomycin resistant coagulase negative *Staphylococcus* species] - pure cultures shall be submitted accompanied by a current department Specimen Submission Form [G-1].

(5) Laboratory reports. Reports from laboratories shall include name, patient identification number, address, telephone number, age, date of birth, sex, race and ethnicity, specimen submitter name, address, and phone number, specimen type, date specimen collected, disease test and test result, normal test range [values], date of test report, and physician name and telephone number.

(b) (No change.)

§97.4. When to Report a Condition or Isolate[; **Where to Submit an Isolate; Where to Report a Condition or Isolate**].

(a) Humans.

(1) The following notifiable conditions are public health emergencies and suspect cases shall be reported immediately by phone to the local health authority or the regional director of the Department of State Health Services [Texas Department of Health] (department): anthrax; botulism, foodborne; diphtheria; *Haemophilus influenzae* type b infection, invasive; measles (rubeola); meningococcal infection, invasive; [**pertussis;**] poliomyelitis, acute paralytic; plague; rabies; severe acute respiratory syndrome (SARS); smallpox; tularemia; viral hemorrhagic fevers; yellow fever. Vancomycin-intermediate resistant *Staphylococcus aureus* (VISA) and vancomycin-resistant *Staphylococcus aureus* (VRSA) [Vancomycin resistant *Staphylococcus aureus* and vancomycin resistant coagulase negative *Staphylococcus* species] shall be reported immediately by phone to the Infectious Disease Surveillance and Epidemiology Branch [**and Surveillance Division**], Department of State Health Services [Texas Department of Health], Austin at (800) 252-8239.

(2) The following notifiable conditions shall be reported within one working day of identification as a suspected case: brucellosis, hepatitis A (acute), perinatal hepatitis B, pertussis, Q fever, rubella (including congenital), [**tularemia,**] tuberculosis, and *Vibrio* infection (including cholera).

(3) – (5) (No change.)

[(6) For *Enterococcus* species; vancomycin resistant *Enterococcus* species; *Streptococcus pneumoniae*; and penicillin-resistant *Streptococcus pneumoniae* - reports shall be made no later than the last working day of March, June, September, and December.]

(6) [(7)] All anthrax (*Bacillus anthracis*), botulism-adult and infant (*Clostridium botulinum*), brucellosis (*Brucella* species), *E.coli* 0157:H7, isolates or specimens from cases where Shiga-toxin activity is demonstrated, *Listeria monocytogenes*, meningococcal infection, invasive (*Neisseria meningitidis* [*meningitides*] from normally sterile sites), plague (*Yersinia pestis*), tularemia (*Francisella tularensis*), VISA, VRSA and [all vancomycin resistant *Staphylococcus aureus*, and vancomycin resistant coagulase negative *Staphylococcus* species] *Vibrio* species shall be submitted as pure cultures to the Department of State Health Services, Laboratory Services Section [Texas Department of Health, Bureau of Laboratories], 1100 West 49th Street, Austin, Texas 78756-3199 as they become available.

(b) Animals.

[(1)] Reportable conditions affecting animals shall be reported within one working day following the diagnosis.

[(2) Reportable conditions in animals shall be reported to either the appropriate Texas Department of Health regional zoonosis control office or the Zoonosis Control Division office in Austin.]

[(3) Conditions in animals that are reportable to both the Texas Department of Health and the Texas Animal Health Commission can be reported to either one of the agencies which will forward the information to the other agency.]

§97.5 Where To Report a Condition or Isolate; Where To Submit an Isolate.

(a) Humans.

(1) [(a)] A physician, dentist, veterinarian, chiropractor, reporting officer of a hospital, [and a**] person in charge of a hospital laboratory (if the laboratory reports independently), [**or**] person permitted by law to attend a pregnant woman during gestation or at the delivery of an infant, or school authority shall report to the local health authority where the office, clinic, hospital, or school is located. If there is no local health authority appointed for the jurisdiction where the office, clinic, hospital, or school is located, the report shall be made to the Department of State Health Services [Texas Department of Health] (department) regional director. Public health emergencies shall be**

reported to the department's central office if the local health authority or the department's regional director is not immediately accessible.

(2) [(b)] The administrative officer of a clinical laboratory, blood bank, mobile unit, or other facility shall report a condition or submit an isolate as follows.

(A) [(1)] If the laboratory examination was requested by a physician, notice shall be sent to the local health authority for the jurisdiction where the physician's office is located, to the department's regional director for the jurisdiction where the physician's office is located if no local health authority exists, or to the department's central office when the regional director or local health authority are unknown to the laboratory.

(B) [(2)] If the laboratory examination was not requested by a physician, notice shall be sent to the local health authority for the jurisdiction where the laboratory is located, to the department's regional director for the jurisdiction where the laboratory is located if no local health authority has been appointed, or to the department's central office when the regional director or local health authority are unknown to the laboratory.

(C) [(3)] For VISA and VRSA [**vancomycin resistant Staphylococcus aureus and vancomycin resistant coagulase negative Staphylococcus species**] immediately report by phone to the Infectious Disease Surveillance and Epidemiology Branch [**and Surveillance Division**] at 1-800-252-8239. [**For Enterococcus species; vancomycin resistant Enterococcus species; Streptococcus pneumoniae; and penicillin resistant Streptococcus pneumoniae; reports shall be mailed to the Infectious Disease Epidemiology and Surveillance Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, or faxed to the Infectious Disease Epidemiology and Surveillance Division at (512) 458-7616.**]

(D) [(4)] All anthrax (*Bacillus anthracis*), botulism-adult and infant (*Clostridium botulinum*), brucellosis (*Brucella* species), *E.coli* 0157:H7, isolates or specimens from cases where Shiga-toxin activity is demonstrated, *Listeria monocytogenes*, meningococcal infection, invasive (*Neisseria meningitidis*) [**Neisseria meningitidis**] from normally sterile sites, plague (*Yersinia pestis*), tularemia (*Francisella tularensis*), all *Staphylococcus aureus* with a vancomycin MIC greater than 2 µg/mL, and [**all vancomycin resistant Staphylococcus aureus, and all vancomycin resistant coagulase negative Staphylococcus species**] *Vibrio* species shall be submitted as pure cultures to the Department of State Health Services, Laboratory Services Section [**Texas Department of Health, Bureau of Laboratories**], 1100 West 49th Street, Austin, Texas 78756-3199.

(3) [(c)] Sexually transmitted diseases including HIV and AIDS shall be reported in accordance with §§97.132 - 97.135 of this title (relating to Sexually Transmitted Diseases Including Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV)).

(b) Animals.

(1) Reportable conditions in animals shall be reported to either the appropriate Department of State Health Services regional zoonosis control office or the Zoonosis Control Branch office in Austin.

(2) Conditions in animals that are reportable to both the Department of State Health Services and the Texas Animal Health Commission can be reported to either one of the agencies, which will forward the information to the other agency.

§97.6. Reporting and Other Duties of Local Health Authorities and Regional Directors.

(a) The purpose of this section is to provide procedures for local health authorities and regional directors to report a disease to the Department of State Health Services [**Texas Department of Health's**] (department) central office.

(b) Those notifiable conditions identified as public health emergencies in §97.4 (a) of this title (relating to When to Report a Condition or Isolate[; **When to Submit an Isolate; Where to Report a Condition or Isolate**]) shall be reported immediately to the department by telephone at (800) 252-8239.

(c) (No change.)

(d) For notifiable conditions not listed in subsection (b) and (c) of this section, the local health authority or the department's regional director shall collect reports of disease and transmit the following information at weekly intervals as directed by the department: name, address, telephone number, [city,] age, date of birth, sex, race and ethnicity, **[physician,]** disease, diagnostic indicators (diagnostic lab results and specimen source, and clinical indicators) [type of diagnosis], date of onset, and physician name, address, and telephone number.

(e) Transmittal may be by telephone, mail, courier, or electronic transmission.

(1) (No change.)

(2) **[If by electronic transmission, including facsimile transmission by telephone, the local health authority or the department's regional director must obtain prior approval of the manner and form of the transmission from the commissioner of health (commissioner) or his/her designee.]** Any electronic transmission of the reports must provide at least the same degree of protection against unauthorized disclosure as those of mail or courier transmittal.

(f) - (h) (No change.)

(i) Persons reporting notifiable conditions in animals shall be referred to the central office or the appropriate regional office of the department's Zoonosis Control Branch [Division].

§97.7. Diseases Requiring Exclusion from Child-care Facilities and Schools.

[(a) The Texas Department of Health (department) publication titled "Recommendations for the Prevention and Control of Communicable Diseases in a Group-Care Setting" may be used to determine the incubation period, early signs of illness, and prevention/treatment measures of communicable conditions. Copies are available from the Infectious Disease Epidemiology and Surveillance Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756 upon request.]

(a) [(b)] The owner or operator of a child-care facility, or the school administrator, shall exclude from attendance any child having or suspected of having a communicable condition. Exclusion shall continue until the readmission criteria for the conditions are met. The conditions and readmission criteria are as follows:

(1) amebiasis--exclude until treatment is initiated;

(2) campylobacteriosis--exclude until after diarrhea and fever subside;

(3) chickenpox--exclude until the lesions become dry **[after seven days from onset of rash, except immunocompromised individuals who should not return until all blisters have crusted over (may be longer than seven days)]**;

(4) common cold--exclude until fever subsides;

(5) conjunctivitis, bacterial and/or viral--exclude until written permission and/or permit is issued by a physician or local health authority;

- (6) fever--exclude until fever subsides without use of fever suppressing medications;
- (7) fifth disease (erythema infectiosum)--exclude until fever subsides;
- (8) gastroenteritis[, **viral**]**]**--exclude until diarrhea subsides;
- (9) giardiasis--exclude until diarrhea subsides;
- (10) head lice (pediculosis)--exclude until one medicated shampoo or lotion treatment has been given;
- (11) hepatitis [, **viral, Type**] A--exclude until one week after onset of illness;
- (12) impetigo--exclude until treatment has begun;
- (13) infectious mononucleosis--exclude until physician decides or fever subsides;
- (14) influenza--exclude until fever subsides;
- (15) measles (rubeola)--exclude until four days after rash onset or in the case of an outbreak, unimmunized children should also be excluded for at least two weeks after last rash onset occurs;
- (16) meningitis, bacterial--exclude until written permission and/or permit is issued by a physician or local health authority;
- (17) meningitis, viral--exclude until fever subsides;
- (18) mumps--exclude until nine days after the onset of swelling;
- (19) pertussis (whooping cough)--exclude until completion of five days of antibiotic therapy;
- (20) ringworm [**of the scalp**]**]**--exclude until treatment has begun;
- (21) rubella (German measles)--exclude until seven days after rash onset or in the case of an outbreak, unimmunized children should be excluded for at least three weeks after last rash onset occurs;
- (22) salmonellosis--exclude until diarrhea and fever subside;
- (23) scabies--exclude until treatment has begun;
- (24) shigellosis--exclude until diarrhea and fever subside;
- (25) streptococcal sore throat and scarlet fever--exclude until 24 hours from time antibiotic treatment was begun and fever subsided; and
- (26) tuberculosis, pulmonary--exclude until antibiotic treatment has begun and a physician's certificate or health permit obtained.

(b) [(c)] The owner or operator of a child-care facility, or the school administrator, shall exclude from attendance any child having or suspected of having a communicable disease designated by the Commissioner of Health [**commissioner of health**] (commissioner) as cause for exclusion until one of the criteria listed in subsection (c) [(d)] of this section is fulfilled.

(c) [(d)] Any child excluded for reason of communicable disease may be readmitted, as determined by the health authority, by **[submitting]**:

(1) submitting a certificate of the attending physician, advanced practice nurse, or physician assistant attesting that the child does not currently have signs or symptoms of a communicable disease or to the disease's non-communicability in a child-care or school setting;

(2) submitting a permit for readmission issued by a local health authority; or

(3) meeting readmission criteria as established by the commissioner.

§97.8. General Control Measures for Notifiable Conditions.

Except for diseases for which equivalent measures of investigation and control are specifically provided in other sections in this chapter, the Commissioner of Health **[commissioner of health]** (commissioner), a health authority, or a duly authorized representative of the commissioner or a health authority may proceed as follows.

(1) Investigation shall be made, as the circumstances may require, for verifying the diagnosis, ascertaining the source of the causative agent, disclosing unreported cases, and finding contacts. On request, a person shall provide the Department of State Health Services **[Texas Department of Health]** (department) or health authority with records, data, and other information according to the written instruction of the department or health authority. The health authority and the department shall keep this information confidential.

(2) – (5) (No change.)

§97.9. Quarantine of Specific Premises and Application of Control Measures to Private and Common Carriers.

(a) A health authority may declare a house, building, apartment, room, or place within the health authority's jurisdiction to be a place of quarantine whenever a case of communicable disease occurs therein, and, in the health authority's opinion, it is necessary to do so in order to protect the public health. No person shall leave or enter the place during the period of quarantine except with specific permission of the health authority.

(b) The department or health authority may investigate and apply control measures to private and common carriers and private conveyances as authorized in Disease Prevention and Control Act (Act), Health and Safety Code, §81.086 when they have reasonable cause to believe that:

(1) it has departed from or traveled through an area infected or contaminated with a communicable disease;

(2) it is or may be infected or contaminated with a communicable disease;

(3) a individual on board has been exposed to or is the carrier of a communicable disease; or

(4) it has cargo or an object on board that is or may be infected or contaminated with a communicable disease.

§97.10. Confidential Nature of Case Reporting and Records.

(a) All individual morbidity case reports received by the health authority or the Department of State Health Services **[Texas Department of Health]** (department) are confidential records and not public records.

(b) (No change.)

(c) The department may use information obtained from reports or health records for statistical and epidemiological studies which may be public information as long as the information does not permit the identification of an individual [an individual is not identifiable].

§97.11. Notification of Emergency Medical Personnel [Service Employee], Fire Fighters, [Fighter, or] Peace Officers [Officer], Detention Officers, County Jailers, or Other Persons Providing Emergency Care of Possible Exposure to a Disease.

(a) Purpose. The Communicable Disease Prevention and Control Act (Act), §81.048, requires a licensed hospital to notify a health authority in certain instances when an emergency medical service employee, peace officer, detention officer, county jailer, or fire fighter may have been exposed to a reportable disease during the course of duty from a person delivered to the hospital under conditions that were favorable for transmission. A hospital that gives notice of a possible exposure under this section or a local health authority that receives notice of a possible exposure under this section may give notice of the possible exposure to a person other than emergency medical service employee, a peace officer, a detention officer, a county jailer, or a fire fighter if the person demonstrates that the person was exposed to the reportable disease while providing emergency care.

(b) Disease and criteria which constitute exposure. The following diseases and conditions constitute a possible exposure to the disease for the purposes of the Act, §81.048:

(1) chickenpox; diphtheria; measles (rubeola); pertussis; pneumonic plague; SARS; smallpox; pulmonary or laryngeal tuberculosis; and any viral hemorrhagic fever, if the worker and the patient are in the same room, vehicle, ambulance, or other enclosed space;

(2) Haemophilus influenzae type b infection, invasive; meningitis [(specify type)]; meningococcal infections, invasive; mumps; poliomyelitis; Q fever (pneumonia); rabies; and rubella, if there has been an examination of the throat, oral or tracheal intubation or suctioning, or mouth-to-mouth resuscitation;

(3) – (4) (No change.)

(c) Notification processes. The following notification processes shall apply when possible exposures to notifiable conditions occur.

(1) If the hospital has knowledge that, on admission to the hospital, the person transported has any of the notifiable conditions listed in subsection (b)(1) of this section, then notice of a possible exposure of an emergency medical service employee, peace officer, detention officer, county jailer, or fire fighter to the disease shall be given to the health authority for the jurisdiction where the hospital is located.

(2) For possible exposures to any of the diseases listed in subsection (b)(2)-(4) of this section, the emergency medical service employee, peace officer, detention officer, county jailer, or fire fighter shall provide a medical professional at the hospital with notice, preferably written, of the circumstances of the possible exposure. Once the hospital has knowledge of a possible exposure, then notice shall be given as follows.

(A) (No change.)

(B) The health authority shall determine whether or not significant risk of disease transmission exists and report his/her assessment of the possible exposure event to the director of the entity that employs the emergency medical service employee, peace officer, detention officer, county jailer, or fire fighter.

(C) The director of the entity that employs the emergency medical service employee, peace officer, detention officer, county jailer, or fire fighter shall inform the employee of the health authority's assessment.

(D) (No change.)

(d) (No change.)

Legend: (Proposed New Rule)

Regular Print = Proposed new language

§97.12. Mandatory Testing of Persons Suspected of Exposing Certain Other Persons to Notifiable Conditions and Workers' Compensation Issues Relevant to Postexposure Management of Emergency Responders.

(a) Purpose. The Communicable Disease Prevention and Control Act, Health and Safety Code, §81.050, provides a mechanism by which an emergency medical service employee, paramedic, fire fighter, correctional officer, or law enforcement officer, who receives a bona fide exposure that places him or her at risk of a notifiable condition in the course of employment or volunteer service may request the Department of State Health Services (department) or the department's designee to order testing of the person who may have exposed the worker.

(b) Definitions. For the purposes of this section, the following words and/or terms will have the following meanings, unless the context clearly indicates otherwise.

(1) Correctional officer--A worker whose normal duties and responsibilities include management or supervision of incarcerated or detained persons or an employee, contractor, or volunteer, other than a correctional officer, who performs a service in a correctional facility as defined by §1.07, Penal Code, or a secure correctional facility or secure detention facility as defined by §51.02, Family Code.

(2) Emergency responder--An emergency medical services employee, paramedic, fire fighter, correctional officer, or law enforcement officer who is employed by or volunteers for an employer with the responsibility of answering emergency calls for assistance.

(3) Requestor--An emergency responder who presents a sworn affidavit to a health authority to request testing of a person who may have exposed him/her to a notifiable condition in the course of his/her duties.

(4) Source--The person who may have exposed an emergency responder to a notifiable condition during the emergency responder's course of duties.

(c) Diseases and criteria that constitute exposure. The notifiable conditions and the criteria that constitute exposure to such diseases are as outlined in §97.11(b)(1)-(4) of this title (relating to Notification of Emergency Medical Personnel, Fire Fighters, Peace Officers, Detention Officers, County Jailers, or other Persons Providing Emergency Care of Possible Exposure to a Disease).

(d) The department's designee. For the purposes of implementing the Health and Safety Code, §81.050(d), (e), and (h), the following physicians have been delegated by the department to be the department's designee who will determine if a risk of exposure to a notifiable condition has occurred:

(1) the health authority for the jurisdiction in which the emergency responder is employed;

(A) if the health authority does not choose to make a determination of the risk of exposure, a licensed physician employed by the local health department who has responsibility for the control of notifiable conditions in the jurisdiction served by the health department; or

(B) if the health authority does not choose to make a determination of the risk of exposure and there is not a separate physician employed by the county or municipal health department with responsibility for the control of notifiable condition, or for counties which do not have an appointed health authority, the regional director of the department of which the county or municipality is a part; and

(2) for the Texas Department of Criminal Justice (TDCJ), the TDCJ Deputy Director of Health Services (Institutional Division) shall serve as the designated health official in determining risk of exposure to correctional officers employed by the TDCJ.

(e) Criteria under which a request for mandatory testing can be made. A request under this section may be made only if the emergency responder:

- (1) has experienced the exposure in the course of his or her employment or volunteer service;
- (2) believes that the exposure places him or her at risk of a notifiable condition; and
- (3) presents to the department's designee a sworn affidavit that delineates the reasons for the request.

(f) Initial actions required of the department's designee. Upon receiving a request for mandatory testing in accordance with subsection (e) of this section, the department's designee shall:

(1) review the emergency responder's request and inform him or her whether the request meets the criteria establishing risk of infection with a notifiable condition;

(2) determine which diagnostic tests may be indicated to verify exposure to certain notifiable conditions;

(3) give the source who is subject to the order prompt and confidential written notice of the order which must include the following items:

(A) the grounds and provision of the order, and the factual basis for its issuance;

(B) a referral to appropriate health care facilities where the source can be tested for certain notifiable conditions;

(C) a notice to the source who is subject to the order of the right to refuse to be tested; and

(D) a statement of the authority of the department's designee to ask for a court order requiring the test; and

(4) request the prosecuting attorney who represents the state in district court to petition said court for a hearing on the order, in the event that the source who is subject to the order refuses to comply.

(g) Source's right to an attorney. If the source who is subject to the order refuses to comply, and a hearing in district court ensues, then:

(1) the source has a right for an attorney to be present at the hearing;

(2) the court shall appoint an attorney for a source who cannot afford legal representation; and

(3) the source may not waive the right to an attorney unless he/she has consulted with an attorney.

(h) Court proceedings. The district court proceedings include:

- (1) a determination as to whether exposure occurred and whether the exposure presents a possible risk of infection as outlined in §97.11(b)(1)-(4) of this title;
- (2) consideration of evidence if introduced by either the attorney for the state and/or the attorney for the source;
- (3) at the conclusion of the hearing, taking appropriate action being either:
 - (A) an order requiring counseling and testing of the person for certain notifiable conditions; or
 - (B) a refusal to issue an order if the court has determined that the counseling and testing of the source is unnecessary; and
- (4) the option to assess court costs against the requestor if the court finds that there was not reasonable cause for the request.

(i) Additional actions required of the department's designee. The department's designee shall be responsible for the following actions with respect to testing:

- (1) develop protocols for coding test specimens to ensure that any identifying information concerning the source will be destroyed as soon as the testing is complete;
- (2) inform the requestor of the test results;
- (3) inform both the requestor and the source of the need for medical follow-up and counseling services in the event that the source is found to have a notifiable condition; and
- (4) advise appropriate postexposure medical follow-up as recommended by the United States Public Health Service.

(j) HIV counseling and testing. HIV counseling and testing conducted under this section must conform to the model protocol on HIV counseling and testing required under the Health and Safety Code, §85.081.

(k) Workers' compensation issues. For the purposes of qualifying for workers' compensation or any other similar benefits for compensation, the following shall apply:

- (1) An emergency responder who claims a possible work-related exposure to a notifiable condition must provide the employer with a sworn affidavit of the date and circumstances of the exposure and document that, not later than the tenth day after the date of the exposure, the emergency responder had a test result that indicated an absence of the notifiable condition.
- (2) An emergency responder exposed to a notifiable condition during the course of employment shall be entitled to the benefits described in the Government Code, Chapter 607.
- (3) A state emergency responder claiming an exposure to HIV infection in the normal course of his/her duties must follow the postexposure procedure mandated by the Health and Safety Code, §85.116, and §97.140 of this title (relating to Counseling and Testing for State Employees Exposed to Human Immunodeficiency Virus (HIV) Infection on the Job).

(4) For posting and notice requirements, refer to the rules of the Texas Department of Insurance, Division of Workers' Compensation in Title 28, Texas Administrative Code, Chapter 110 (Required Notices of Coverage).

(5) For further clarification of workers' compensation issues, emergency responders and their employers should contact the Texas Department of Insurance, Division of Workers' Compensation at 1-800-252-7031.

(1) Testing of the exposed person. An emergency responder who may have been exposed to a notifiable condition, may not be required to be tested.

§97.13. Death of a Person with Certain Communicable Diseases.

(a) If a physician has knowledge that a person had, at the time of death, a communicable disease listed in subsection (c) of this section, then the hospital administrator, clinic administrator, nurse, or the physician shall affix or cause to be affixed a tag on the body, preferably the great toe.

(b) The tag shall be on card stock paper and shall be no smaller than five centimeters by ten centimeters. The tag shall include the words "COMMUNICABLE DISEASE--BLOOD/BODY SUBSTANCE PRECAUTIONS REQUIRED" in letters no smaller than six millimeters in height. The name of the deceased person shall be written on the tag. The tag shall remain affixed to the body until the preparation of the body for burial has been completed.

(c) Diseases that shall require tagging are acquired immune deficiency syndrome (AIDS); anthrax; avian flu, brucellosis; cholera; Creutzfeldt-Jakob disease; Hantavirus pulmonary syndrome; hepatitis, viral; human immunodeficiency virus (HIV) infection; plague; Q fever; rabies; relapsing fever; Rocky Mountain spotted fever; severe acute respiratory syndrome (SARS); smallpox; syphilis; tuberculosis; tularemia; and viral hemorrhagic fevers.

(d) All persons should routinely practice standard infection control procedures when performing postmortem care on a deceased person who is known or suspected of having a communicable disease listed in subsection (c) of this section.

Repeal

~~§97.12. Death of a Person with Certain Communicable Diseases.~~

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~~(k) Workers' compensation issues. For the purposes of qualifying for workers' compensation or any other similar benefits for compensation, the following shall apply:~~

~~(1) An emergency responder who claims a possible work-related exposure to a notifiable condition must provide the employer with a sworn affidavit of the date and circumstances of the exposure and document that, not later than the tenth day after the date of the exposure, the emergency responder had a test result that indicated an absence of the notifiable condition.~~

~~(2) An emergency responder exposed to a notifiable condition during the course of employment shall be entitled to the benefits described in the Texas Government Code, Chapter 607.~~

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