

**Department of State Health Services  
Council Agenda Memo for State Health Services Council  
April 23, 2009**

**Agenda Item Title:** An amendment to a rule concerning the control of communicable diseases requiring exclusion from schools

**Agenda Number:** 5c

**Recommended Council Action:**

For Discussion Only

For Discussion and Action by the Council

**Background:** The Emerging and Acute Infectious Disease Branch of the Infectious Disease Control Unit, located in the Division of Prevention and Preparedness Services, is tasked with control and prevention of infectious diseases other than STD/HIV and tuberculosis. Branch staff coordinates with local and regional health departments infectious disease surveillance activities and assists in conducting disease outbreak investigations. The Branch does not provide direct care but rather provides analysis of risk factors as well as consultation and education on prevention and control of infectious diseases. All residents of Texas benefit from the control and reduction of infectious diseases. Funding for the Branch is approximately \$1.6 million, which includes \$907,000 in General Revenue and \$703,000 in Federal funds from the Immunization, Tuberculosis, Community Preparedness and Epidemiology & Laboratory Capacity cooperative agreements.

**Summary:** The purpose of the amendment is to provide school and parents with guidance regarding appropriate control measures for the prevention and containment of wound, skin, and soft tissue infections. Section 97.7 specifically benefits the public health by minimizing the spread of communicable diseases within schools. The amendment will add a condition for which children may be excluded from schools to prevent the transmission of bacterial infections, especially antibiotic resistant staphylococcal infections. The rule will address all wound and skin and soft tissue infections instead of only one specific skin and soft tissue infection concerning impetigo.

The rule will delete references to child-care facilities because DSHS has no authority to exclude children from child-care facilities. Exclusion from these facilities is addressed with the Department of Family and Protective Services, which adopts by reference the exclusion list of this rule.

**Summary of Input from Stakeholder Groups:**

The stakeholder input for this rule was obtained through meetings, phone calls, emails, and blogs to the following:

- Infectious Disease Surveillance and Epidemiology Workgroup;
- Methicillin Resistant Staphylococcus aureus Community Workgroup;
- School nurses;
- Texas Medical Association;
- Local Health Department epidemiologists;
- Health Service Region epidemiological response teams;
- Southwestern Athletic Trainers Association;
- Texas Education Association;
- Department of Family and Protective Services; and
- Texas Parent Teacher Association.

All stakeholders provided feedback with the exception of the Texas Parent Teacher Association.

Stakeholders believe that the rule provides clear guidelines for both exclusion and restriction. The rule will allow the student suffering from the infection to have minimal exclusion from instructional time, and allow for protection of other students by restricting the affected student from participating in activities that might result in spread of infection to others.

Changes resulting from the stakeholder input included omitting reference to individuals who are immature, cognitively impaired or uncooperative; adding language for clarity; and deleting the specific reference to impetigo.

**Proposed Motion:** Motion to recommend HHSC approval for publication of rule contained in agenda item #5c

**Approved by Assistant Commissioner/Director:** Adolfo Valadez, M.D., M.P.H. **Date:** 3/16/09

**Presenter:** Marilyn Felkner **Program:** Emerging and Acute Infectious Disease Branch **Phone No.:** 458-7111 ext. 6393

**Approved by CPCPI:** Carolyn Bivens **Date:** 3/16/09

Title 25. HEALTH SERVICES  
Part 1. DEPARTMENT OF STATE HEALTH SERVICES  
Chapter 97. Communicable Diseases  
Subchapter A. Control of Communicable Diseases  
Amendment §97.7

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 §97.7, concerning the control of communicable diseases requiring exclusion from schools.

BACKGROUND AND PURPOSE

The Communicable Disease Act requires the department to designate communicable diseases that require exclusion from schools not child-care facilities (Health and Safety Code, §81.042). Child-care facilities are governed by minimum standards, designed to promote the health and safety of children attending licensed facilities, promulgated by the Department of Family and Protective Services (Human Resources Code, §42.042(e)). The Department of Family and Protective Services rule (in 40 TAC, §746.3603) adopts by reference the department's current rule, §97.7, (being amended here) on school exclusion. The references to child-care facilities in §97.7 are being deleted because the department has no authority to exclude children from child-care facilities.

The overall purpose of the rule is to provide school personnel as well as parents with guidance regarding appropriate control measures for the prevention and containment of wound, skin, and soft tissue infections. The amendments are necessary to provide a more comprehensive rule related to the prevention of transmission of skin and soft tissue infections in school settings.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 97.7 has been reviewed and the department has determined that reasons for adopting the section continues to exist because a rule on this subject is needed.

SECTION-BY-SECTION SUMMARY

The amendments to §97.7 create an additional condition for which children may be excluded from schools to prevent the transmission of bacterial infections, especially antibiotic resistant staphylococcal infections. The amendment addresses all wound and skin and soft tissue infections instead of only one specific skin and soft tissue infection concerning impetigo. The caption and text of the rule has also been amended to delete references to exclusion from child-care facilities because the department has no authority to exclude children from child-care facilities. Exclusion from these facilities is addressed in 40 TAC, §746.3603, of the Department of Family and Protective Services, which adopts by reference the exclusion list in the department's current rule, §97.7, (being amended here)

## FISCAL NOTE

Dr. Adolfo Valadez, MD, MPH, Division Director, Prevention and Preparedness Services, has determined that for each calendar year of the first five years the section is in effect, there will be no fiscal implications to state government because the state does not operate schools. For each calendar year of the first five years the section is in effect, there may be minor fiscal implications to local school districts as a result of enforcing or administering the section as proposed. The rule will have a neutral or net positive effect on local school districts. Public school systems must provide home or hospital bedside instruction when a student is unable to attend school for chronic or temporary illnesses that are anticipated to amount to four weeks or more of confinement. Schools send a teacher to serve the student at home or hospital bedside and receive weighted funding to cover the expenses. They may lose funds from the state when a student cannot attend because of this rule. But because this rule will prevent the spread of disease, overall absenteeism will be reduced along with these attendant costs. It is anticipated that this will be a rare occurrence.

## SMALL AND MICRO-BUSINESS ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

Dr. Valadez 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. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the section. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no anticipated negative impact on local employment. Therefore, an economic impact statement and regulatory flexibility analysis for micro-businesses and small businesses are not required.

## PUBLIC BENEFIT

In addition, Dr. Valadez 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 as proposed. The public benefit anticipated as a result of enforcing or administering the section is to prevent transmission of infectious diseases, specifically skin and soft tissue infections.

## 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 Marilyn Felkner, Infectious Disease Control Unit, Department of State Health Services, P.O. Box 149347, MC 1960, Austin, Texas 78714-9347, (512)-458-7676, or by e-mail to marilyn.felkner@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, 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 proposed amendment is 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; §81.042(c), which requires rules to establish procedures to determine if a child should be reported and excluded from school; 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. The review of the rule implements Government Code, §2001.039.

The proposed rule affects Health and Safety Code, Chapters 81 and 1001; and Government Code, Chapters 531 and 2001.

Legend: (Proposed Amendment(s))

Single Underline = Proposed new language

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

Regular Print = Current language

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

(a) 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;

(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--exclude until diarrhea subsides without the use of diarrhea suppressing medications;

(9) giardiasis--exclude until diarrhea subsides;

(10) head lice (pediculosis)--exclude until one medicated shampoo or lotion treatment has been given;

(11) hepatitis A--exclude until one week after onset of illness;

(12) infections (wounds, skin, and soft tissue)--exclude until drainage from wounds or skin and soft tissue infections is contained and maintained in a clean dry bandage; restrict from situations that could result in the infected area becoming exposed, wet, soiled, or otherwise compromised;

**[(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--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) 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) as cause for exclusion until one of the criteria listed in subsection (c) of this section is fulfilled.

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

(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.