

**Department of State Health Services
Agenda Item for State Health Services Council
August 6, 2007**

Agenda Item Title: Amend 25 TAC, Part 1, Chapter 97, Subchapter B, Immunization Requirements in Texas Elementary and Secondary Schools and Institutions of Higher Education, §97.62 Rules Relating to the Exclusions from Compliance.

Agenda Number: 3-1

Recommended Council Action:

For Discussion Only

For Discussion and Action by the Council

Background: The Disease Prevention and Intervention Section, Immunization Branch, provides services to prevent, control, reduce, and eliminate vaccine-preventable diseases in children and adults.

- §97.62 is under a 4-year review
- Amendment to §97.62 allows parents or legal guardians to submit a request for a conscientious objection affidavit form via the department's internet; amendments are also proposed to clarify that references to a child's guardian in this rule mean a child's legal guardian.
- The Immunization Branch will solicit stakeholder feedback on the proposed rule amendment during the Texas Register 30-day comment period.
- The rule is being submitted for consideration at the August 6, 2007, State Health Services Council Meeting.
- No fiscal impact to state or local governments; no fiscal impact to small or micro-businesses

Summary: The amendment provides improved instructions and improved access for a child's parent or guardian to submit a written request for the affidavit form that provides for exclusion from required immunizations based on reasons of conscience, including a religious belief.

The public benefit anticipated as a result of enforcing or administering the section as proposed is to allow parents to submit a request for conscientious objection affidavit form via the department's Internet website, thereby providing improved customer service.

Summary of Stakeholder Input to Date (including advisory committees): Stakeholder input was solicited through verbal and written communication about the review of the rule. Stakeholder comments are archived.

Proposed Motion: Motion to recommend HHSC approval for publication of rules contained in agenda item #3-1.

Agenda Item

Approved by: _____
Debra Stabeno, Assistant Commissioner, Prevention and Preparedness

Date Submitted
6/12/07

Presented by: Jack Sims **Title:** Immunization Branch Manager
Program/Division: Immunization Branch, Disease Prevention & Intervention Section,
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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 §97.62

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 §97.62 concerning the provision of exclusions from compliance with required immunizations.

BACKGROUND AND PURPOSE

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 97.62 has been reviewed and the department has determined that reasons for proposing amendments to §97.62 continue to exist because a rule on this subject is needed.

Texas Health and Safety Code, §161.004(d)(1), states that: "A child is exempt from an immunization required by this section if.....a parent, managing conservator, or guardian states that the immunization is being declined for reasons of conscience, including a religious belief." Under the statute, the appropriate form is obtained from the department. Currently under agency rules, a person claiming exclusion for reasons of conscience, including a religious belief, from a required immunization may only obtain the affidavit form by submitting a written request to the department via mail delivery, hand delivery, or by facsimile. There is currently nothing in the rule to authorize requesting the form via the internet.

The proposed amendment would allow the form to be requested via the internet. This change would reflect the fact that more and more people are conducting routine business through the internet. Allowing parents to submit a request for a conscientious objection affidavit form via the department's Internet website would add convenience for the public and would improve the process' efficiency.

Amendments are also proposed to clarify that references to a child's guardian in this rule mean a child's legal guardian.

SECTION-BY-SECTION SUMMARY

Amendments to §97.62 would update department organizational names and mailing addresses, reorder the text, allow parents or legal guardians to request conscientious objection affidavit forms for their children via the department's Internet website, insert the parenthetical "(where applicable)" to §97.62(2)(D) to reflect the fact that there will be no physical "request" to return when the internet request method is used; and would clarify that all references in the rule to a child's "guardian" mean a child's "legal guardian."

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 fiscal implications to state or local governments as a result of enforcing and administering the section as proposed other than the increase in efficiency the change would provide for the department.

SMALL AND MICRO-BUSINESS IMPACT

Mr. Blass has also determined that there will be no effect on small businesses or micro-businesses required to comply with the section 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 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.

PUBLIC BENEFIT

Mr. Blass has determined that for each year of the first five years that the section is are 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 allow parents to submit a request for conscientious objection affidavit form via the department's Internet website, thereby providing improved customer service.

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 rule 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 proposed rules may be submitted to Victoria Brice, Disease Prevention and Intervention Section, Division of Prevention and Preparedness, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, 512-458-7111, extension 6658, or by

email to Victoria.Brice@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, Deputy General Counsel, Linda Wiegman, certifies that the proposed rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

Section 97.62 is authorized by Health and Safety Code, §81.021, which requires the department to protect the public from communicable disease; §81.004 which allows the department to adopt rules for the effective administration of the Communicable Disease Act; §§161.004 and 161.0041 which provides for the exemption and the methodology for obtaining it; 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 rules affect Health and Safety Code, Chapters 81, 826 and 1001; Government Code. Review of the section implements Government Code, §2001.039.

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

§97.62. Exclusions from Compliance

Exclusions from compliance are allowable on an individual basis for medical contraindications, reasons of conscience, including a religious belief, and active duty with the armed forces of the United States. Children and students in these categories must submit evidence for exclusion from compliance as specified in the Health and Safety Code, §161.004(d), Health and Safety Code, §161.0041, Education Code, Chapter 38, Education Code, Chapter 51, and the Human Resources Code, Chapter 42.

(1) To claim an exclusion for medical reasons, the child or student must present a statement signed by the child's physician (M.D. or D.O.), duly registered and licensed to practice medicine in the United States who has examined the child, in which it is stated that, in the physician's opinion, the vaccine required is medically contraindicated or poses a significant risk to the health and well-being of the child or any member of the child's household. Unless it is written in the statement that a lifelong condition exists, the exemption statement is valid for only one year from the date signed by the physician.

(2) To claim an exclusion for reasons of conscience, including a religious belief, a signed affidavit must be presented by the child's parent or legal guardian, stating that the child's parent or legal guardian declines vaccinations for reasons of conscience, including because of the person's religious beliefs. The affidavit will be valid for a two-year period. The child, who has not received the required immunizations for reasons of conscience, including religious beliefs, may be excluded from school in times of emergency or epidemic declared by the commissioner of public health.

(A) A person claiming exclusion for reasons of conscience, including a religious belief, from a required immunization may only obtain the affidavit form by submitting a written request to the department. The request must include the following:

(i) full name of child;

(ii) child's date of birth (month/day/year);

(B) Requests for affidavit forms must be submitted to the department through one of the following methods:

(i) written request through the United States Postal Service (or other commercial carrier) to the department at: DSHS Immunization Branch, Mail code 1946, P. O. Box 149347, Austin, Texas 78714-9347;

(ii) by facsimile at (512) 458-7544;

(iii) by hand-delivery at the department's physical address at 1100 West 49th Street, Austin, Texas 78756; or

(iv) via the department's Immunization program internet website (go to www.ImmunizeTexas.org).

[(B) Written requests must be submitted through the United States Postal Service (or other commercial carrier), by facsimile, or by hand delivery to the department's Bureau of Immunization and Pharmacy Support, 1100 West 49th Street, Austin, Texas 78756.]

(C) Upon request, one affidavit form for each child will be mailed unless otherwise specified (shall not exceed a maximum of five forms per child).

(D) The department shall not maintain a record of the names of individuals who request an affidavit and shall return the original request (where applicable) with the forms requested.

(3) To claim an exclusion for armed forces, persons who can prove that they are serving on active duty with the armed forces of the United States are exempted from the requirements in these sections.