

CHAPTER 43

S.B. No. 266

AN ACT

relating to immunizations.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 12.033, Health and Safety Code, is amended to read as follows:

Sec. 12.033. [FEES FOR] DISTRIBUTION AND ADMINISTRATION OF CERTAIN VACCINES AND SERA. (a) *Except as otherwise provided by this section, the [The] board by rule shall charge fees for the distribution and administration of vaccines and sera provided under:*

- (1) Section 2.09, Education Code;
- (2) Section 42.043, Human Resources Code;
- (3) Chapter 826 (Rabies Control Act of 1981); [and]
- (4) Chapter 81 (Communicable Disease Prevention and Control Act); and
- (5) Section 161.005, Health and Safety Code.

(b) *Except as otherwise provided by this section, the [The] board by rule may require a department contractor to charge fees for public health services provided by a contractor participating in a department program under the laws specified by Subsection (a).*

(c) *Provided the board finds that the monetary savings of this subsection are greater than any costs associated with administering it, the [The] board by rule shall establish a fee schedule for fees under this section. In establishing the fee schedule, the board shall consider a person's financial ability to pay all or part of the fee, including the availability of health insurance coverage. In the event the fee schedule conflicts with any federal law or regulation, the board shall seek a waiver from the applicable federal law or regulation to permit the fee schedule. In the event the waiver is denied, the fee schedule shall not go into effect [shall set the fees in amounts reasonable and necessary to defray the cost to the state of distributing and administering the vaccines and sera].*

(d) The commissioner may waive the fee requirement for any type of vaccine or serum if the commissioner determines that:

- (1) a public health emergency exists; and
- (2) the vaccine or serum is needed to meet the emergency.

(e) *The department may not deny an immunization to an individual required to be immunized under a law specified by Subsection (a) because of the individual's inability to pay for the immunization. The department shall provide the immunization at a reduced charge or no charge according to the financial ability of the individual or a person with a legal obligation to support the individual to pay for the immunization. The department shall give priority to those persons least able to pay for immunization.*

SECTION 2. Section 161.001, Health and Safety Code, is amended to read as follows:

Sec. 161.001. LIABILITY OF PERSON WHO ORDERS OR ADMINISTERS IMMUNIZATION. (a) A person who administers or authorizes the administration of a vaccine or immunizing agent is not liable for an injury caused by the vaccine or immunizing agent if the immunization is required by the board or is otherwise required by law or rule.

(b) *A person who administers or authorizes the administration of a vaccine or immunizing agent is not liable or responsible for the failure to immunize a child because of the failure or refusal of a parent, managing conservator, or guardian to consent to the vaccination or immunization required under this chapter. Consent to the vaccination or immunization must be given in the manner authorized by Sections 35.011 through 35.015, Family Code.*

(c) *A person who fails to comply with Section 161.004 is not liable or responsible for that failure, and that failure does not create a cause of action.*

(d) This section does not apply to a negligent act in administering the vaccine or immunizing agent.

SECTION 3. Subchapter A, Chapter 161, Health and Safety Code, is amended by adding Sections 161.004 through 161.006 to read as follows:

Sec. 161.004. STATEWIDE IMMUNIZATION OF CHILDREN. (a) Every child in the state shall be immunized against vaccine preventable diseases caused by infectious agents in accordance with the immunization schedule adopted by the board.

(b) Hospitals shall be responsible for:

(1) referring newborns for immunization at the time the newborn screening test is performed;

(2) reviewing the immunization history of every child admitted to the hospital or examined in the hospital's emergency room or outpatient clinic; and

(3) administering needed vaccinations or referring the child for immunization.

(c) Physicians shall be responsible for reviewing the immunization history of every child examined and administering any needed vaccinations or referring the child for immunization.

(d) A child is exempt from an immunization required by this section if:

(1) immunization conflicts with the tenets of an organized religion to which a parent, managing conservator, or guardian belongs; or

(2) the immunization is medically contraindicated based on an examination of the child by a physician licensed by any state in the United States.

(e) For purposes of this section, "child" means a person under 18 years of age.

(f) The board shall adopt rules that are necessary to administer this section.

(g) A parent, managing conservator, or guardian may choose the health care provider who administers the vaccine or immunizing agent under this chapter.

Sec. 161.005. IMMUNIZATIONS REQUIRED. (a) On admission of a child to a facility of the Texas Department of Mental Health and Mental Retardation, the Texas Department of Criminal Justice, or the Texas Youth Commission, the facility physician shall review the immunization history of the child and administer any needed vaccinations or refer the child for immunization.

(b) The department and the board have the same powers and duties under this section as those entities have under Section 2.09, Education Code. In addition, the provisions of that section relating to provisional admissions and exceptions apply to this section.

(c) A facility covered by this section shall keep an individual immunization record during the individual's period of admission, detention, or commitment in the facility, and the records shall be open for inspection at all reasonable times by a representative of the local health department or the department.

(d) This section does not affect the requirements of Section 2.09, Education Code, or Section 42.043, Human Resources Code.

Sec. 161.006. DEPARTMENT IMMUNIZATION SERVICE. The department, to the extent permitted by law, is authorized to pay employees who are exempt or not exempt for purposes of the Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) on a straight-time basis for work on a holiday or for regular compensatory time hours when the taking of regular compensatory time off would be disruptive to normal business operations. Authorization for payment under this section is limited to work directly related to immunizations.

SECTION 4. An agency is not required to carry out the duties relating to this Act except to the extent that funds for those purposes are appropriated to the agency or are otherwise available.

SECTION 5. Subsection (b), Section 42.043, Human Resources Code, is amended to read as follows:

(b) The department shall require that each child at an appropriate age have a test for tuberculosis and be immunized against diphtheria, tetanus, poliomyelitis, mumps, rubella, and

rubeola. The immunization must be effective on the date of first entry into the facility. However, a child may be provisionally admitted if the required immunizations have begun and are completed as rapidly as medically feasible.

SECTION 6. (a) Except as provided by Subsection (b) of this section, Subsection (b), Section 42.043, Human Resources Code, as amended by this Act, takes effect September 1, 1993, and the changes made by this Act to that section apply to a child admitted to a child-care facility as defined by Section 42.002, Human Resources Code, on or after that date.

(b) A child-care facility as defined by Section 42.002, Human Resources Code, may not be required to comply with the changes made by this Act to Subsection (b), Section 42.043, Human Resources Code, for a child admitted to the facility before September 1, 1993, earlier than January 1, 1994.

SECTION 7. This Act takes effect September 1, 1993.

SECTION 8. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on March 10, 1993, by a viva-voce vote; April 6, 1993, Senate refused to concur in House amendments and requested appointment of Conference Committee; April 13, 1993, House granted request of the Senate; April 20, 1993, Senate adopted Conference Committee Report by a viva-voce vote; passed the House, with amendments, on April 1, 1993, by a non-record vote; April 13, 1993, House granted request of the Senate for appointment of Conference Committee; April 19, 1993, House adopted Conference Committee Report by a non-record vote.

Approved April 23, 1993.

Effective Sept. 1, 1993.