

DEPARTMENT OF STATE HEALTH SERVICES

ORDER ADOPTING EMERGENCY RULES

**Regarding Provisional Enrollment in Texas Elementary and Secondary
Schools for School Year 2009-2010**

New 25 TAC, §97.73

As authorized by Government Code, §2001.034, the Executive Commissioner may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing, if the Executive Commissioner finds that an imminent


peril to the public health, safety or welfare requires adoption of the rule on fewer than 30 days' notice. Emergency rules adopted under Government Code, §2001.034, may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

The new emergency rules and the preamble to the rules, as attached, are incorporated by reference in this Order as though set forth verbatim herein.

IT IS THEREFORE ORDERED BY the Texas Health and Human Services Executive Commissioner that new 25 TAC §97.73 is hereby adopted.

The rules become effective immediately on the day the rules are filed with the Texas Register Division.

DATE ISSUED: 8-24-09



ALBERT HAWKINS, or Designee
Executive Commissioner
Health and Human Services Commission

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
New Rule §97.73

Adoption Preamble

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department) adopts, on an emergency basis, new §97.73, relating to provisional enrollment in Texas elementary and secondary schools for school year 2009-2010. As authorized by Government Code §2001.034, the Executive Commissioner may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing, if the Executive Commissioner finds that an imminent peril to the public health, safety or welfare requires adoption of the rule on fewer than 30 days' notice. Emergency rules adopted under Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The rule of the department at §97.63 of this title, relating to immunization requirements in Texas elementary and secondary schools, was amended in March 2009 to require three additional vaccinations for school entry for the 2009-2010 school year: meningococcal and tetanus/diphtheria/pertussis (Tdap) vaccines for Texas students entering 7th grade; and a second dose of varicella vaccine for students entering kindergarten and those entering 7th grade. Under this rule students may not enroll in school for 2009-2010 until they have received these age-appropriate immunizations, with very few, limited exceptions. A combination of factors has left many students unable to complete these vaccinations before August 24, 2009, the first day of public school for 2009-2010. Thousands of Texas students will not be able to begin school August 24, 2009, and will miss from days to weeks of education. If this occurred, this would adversely affect students' overall welfare and would put students at risk of being unsupervised. Preventing students from attending school deprives them of access to education, school-based health services, free and reduced cost lunches, and other public health programs provided through public and private schools. It also places hardships on working families by requiring them to provide childcare while the student is prevented from attending class, all of which creates an imminent peril to public health, safety, and welfare.

Under these emergency rules, students who are required to have, but have not yet received one or more of these three vaccinations may be provisionally enrolled in school through September 30, 2009. A student is not required to be vaccinated according to the schedule for the three vaccines until October 1, 2009. The schedule for one or more of

the vaccines may be delayed beyond October 1, 2009, for good cause determined by the commissioner of the department.

This emergency rule will delay the following requirements relating to meningococcal, tetanus/diphtheria/pertussis, and varicella vaccines:

- 1) meningococcal vaccine;
- 2) tetanus/diphtheria/pertussis (Tdap) vaccines for Texas students entering 7th grade and boosters for students entering grades 8-12; and
- 3) varicella vaccine for students entering kindergarten and those entering 7th grade.

LEGAL CERTIFICATION

The Department of State Health Services, General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

STATUTORY AUTHORITY

These emergency rules are adopted on an emergency basis under Government Code, §2001.034, relating to emergency rulemaking, and Health and Safety Code §81.004 which allows the department to adopt rules for the effective administration of the Communicable Disease and Prevention Act; §81.021 which requires the department to protect the public from communicable disease; §161.004 regarding statewide immunization of children; and Government Code §531.0055 and Health and Safety Code §1001.075. Government Code §2001.034 authorizes the adoption of emergency rules without prior notice or hearing, or with an abbreviated notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare or a requirement of state or federal law requires adoption of a rule on fewer than 30 days' notice. Government Code §531.0055 and Health and Safety Code §1001.075 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 Chapter 1001, Health and Safety Code.

TITLE 25
PART 1
CHAPTER 97
SUBCHAPTER B

HEALTH SERVICES
DEPARTMENT OF STATE HEALTH SERVICES
COMMUNICABLE DISEASE
IMMUNIZATION REQUIREMENTS IN TEXAS
ELEMENTARY AND SECONDARY SCHOOLS AND
INSTITUTIONS OF HIGHER EDUCATION
Provisional Enrollment in Texas Elementary and Secondary
Schools for School Year 2009-2010.

NEW § 97.73.

- (a) This section establishes a special exception to section 97.63 of this title (relating to Immunization Requirements in Texas Elementary and Secondary Schools) for the 2009-2010 elementary and secondary school year. A student may be provisionally enrolled in an elementary or secondary school without the following vaccines:
- (1) Tetanus/diphtheria/pertussis (Tdap);
 - (2) Varicella; and
 - (3) Meningococcal.
- (b) The immunization schedule for the three vaccines listed in Subsection (a) of this section is prescribed in Section 97.63 (2)(B)(ii)(III), (v), and (vii) of this title (relating to Immunization Requirements in Texas Elementary and Secondary Schools). A student is not required to provide evidence of vaccination in accordance with the schedule for these three vaccines until October 1, 2009.
- (c) A school nurse or school administrator must review the immunization status of a provisionally enrolled student to ensure compliance of the student by October 1, 2009, with the vaccination requirements for the three vaccines listed in Subsection (a) of this section.
- (d) The commissioner of the Department of State Health Services may postpone compliance with the immunization schedule for one or more of the three vaccines listed in Subsection (a) of this section beyond October 1, 2009 in accordance with this subsection.
- (1) If the commissioner determines good cause exists, the commissioner may extend the deadline for compliance with the immunization schedule for one or more 30-day periods. The commissioner must determine good cause exists for such extension.
 - (2) For purpose of this section, "good cause" means widespread or acute unavailability of a vaccine that prevents a substantial number of schoolchildren from obtaining such vaccinations, a state of disaster declared under chapter 418, Government Code, or a public health emergency declared in accordance with federal law.

- (3) The commissioner shall notify appropriate state and local health and school officials of the postponement of compliance authorized under this section. The commissioner also shall publish notice of a determination under this section in the Texas Register and other publications as determined by the commissioner.