

AGENDA ITEM VIII-O (3)

Consideration of adopting the Commissioner's recommendation to the Board relating to proposed amendments to Chapter 21, Student Services, Subchapter T, Sections 21.610 - 21.614 of Board rules concerning the vaccination against bacterial meningitis for entering students at public or private or independent institutions of higher education (S.B. 1107, 82nd Texas Legislature, Regular Session)

RECOMMENDATION:           Approval

Background Information:

The Texas Higher Education Coordinating Board staff propose amendments to Chapter 21, Student Services, Subchapter T, the Vaccination Against Bacterial Meningitis For Students Approved To Reside In On-Campus Dormitories Or Other On-Campus Housing Facilities At Institutions of Higher Education, Sections 21.610–21.614 of Board rules concerning the vaccination against bacterial meningitis for entering students at public or private or independent institutions of higher education. These amendments were adopted on an emergency basis and now are being considered for final adoption.

The intent of the amendments is to incorporate into existing rules a provision enacted by Senate Bill 1107 during the 82nd Texas Legislature, Regular Session, that requires entering students at public and private or independent institutions of higher education to have an initial bacterial meningitis vaccination or booster dose during the five-year period preceding, or at least 10 days prior to the first day of the first semester, in which the student initially enrolls at an institution. Language has been added to define "entering student." Language has also been added that requires an institution of higher education or private or independent institution of higher education to provide written notice, with the registration materials that the institution provides to a student before the student's initial enrollment, of the right of the student or parent or guardian to claim an exemption from the vaccination requirement. A provision was also made to allow an institution of higher education or private or independent institution of higher education to extend the compliance date for an individual student to a date that is no later than the 10th day after the first day of the semester in which the student enrolls. The existing list of exemptions was expanded to include students 30 years of age or older and students enrolled only in online or other distance education courses. Language referring to the vaccine requirement for first-time students residing in on-campus dormitories or other on-campus housing facilities has been deleted.

Date approved by the Commissioner for publication in the *Texas Register*: August 5, 2011

Date published in the *Texas Register*: August 19, 2011

Summary of comments received and changes made as a result of those comments:

Comment: Four comments were received supporting the rules as proposed.

Comment: A total of 156 similar comments were received from citizens of Amarillo and surrounding Panhandle communities, and staff from Amarillo College. They recommended an

exemption from the requirement for entering students to be immunized against bacterial meningitis, if such students were continuing education (CE) students participating in a THECB approved CE Certificate Program meeting the *Guidelines for Instructional Programs in Workforce Education* (GIPWE) requirement of less than 360 contact hours.

An additional 62 comments were received recommending an exemption for all CE students or CE students with 48 contact hours or less. However, the majority of comments were to exempt students taking less than 360 contact hours.

Also, recommending an exemption for CE students were individuals from Alamo Community College District, Austin Community College, Brazosport College, Collin College, Del Mar College, Dallas County Community College District, Denison Development Alliance, El Paso Community College, Grayson County College, Houston Community College, Howard College at San Angelo, Lee College, Marshall Economic Development Corporation, McLennan Community College, Navarro College, Northeast Texas Community College, Northwest Vista College, Palo Alto College, San Antonio College, San Jacinto College, Trinity Valley Community College, Vernon College, Victoria College, and West Texas A & M University. The Texas Association of Collegiate Registrars and Admissions Officers (TACRAO) and Lee College requested an exemption for continuing education students taking less than 48 contact hours of instruction.

Response: Staff agree with the recommendation to exempt students enrolled in continuing education (CE) programs that are less than 360 contact hours. A review of the Coordinating Board's inventory of continuing education courses that are 360 contact hours or more, revealed 198 programs ranging from 360-800 contact hours. The certificate programs include a broad range of programs, including training for firefighters, massage therapists, peace officers, paramedics, and police academy training. Students enrolled in these CE programs are more likely to be in the target group and demographic for students at risk for contracting the disease.

Based upon the public comments received, staff amended Section 21.614 (a) to include an exemption for CE students attending courses or programs that are less than 360 contact hours.

Comment: The Texas Administrators of Continuing Education (TACE) recommended an amendment to the rules to exempt all non-credit/continuing education students at community colleges, technical colleges and four-year universities.

Response: Staff recommend no change, as CE students enrolled in programs that are 360 contact hours or more are the only students that would be required to be vaccinated.

Comment: A San Jacinto College CE Research Analyst commented that the proposed rules will pose an extreme undue hardship on Texas CE programs and students. He further commented that the proposed rules will lead to the elimination of some CE course offerings and entire training programs because of the additional burden and financial expense. He requested a change to the rules to define a CE "Entering Student" as a student enrolled in an on-campus recognized Workforce Education Certificate Program (360 or more contact hours). He requested that any CE student not meeting this revised criteria of "Entering Student" would not be required to receive the bacterial meningitis vaccination.

Response: Staff recommend no change to the definition section as a change has been recommended for Section 21.614 (a) to include an exemption for CE students attending courses or programs that are less than 360 contact hours.

Comment: A faculty member from Dallas County Community College District who teaches under-prepared students commented that the vaccination requirement is not in the best interest of Texas citizens, and requests that the mandates of the bill be rethought. The vaccination requirement will result in decreased enrollment in higher education due to the cost of the vaccine, and will be another obstacle to overcome for students on financial aid, those with limited income and resources, and single mothers. Houston Community College and San Jacinto College staff had similar comments.

Response: SB 1107 was passed and required that all entering students be immunized against bacterial meningitis. No change is required.

Comment: Comments were received from staff at Amarillo College, Lee College, Lee College-Huntsville Center, Lamar State College-Port Arthur, Navarro College, and the Windham School District stating that colleges contracting with the Texas Department of Criminal Justice (TDCJ) have been informed that TDCJ will not pay for the vaccine. The commenters stated that the vaccination requirement would end college programs in prisons. The Windham School District noted that state and national studies have shown that post-secondary programs establish a strong positive relationship to recidivism reduction. An exemption from the bacterial meningitis vaccination requirement for incarcerated individuals in Texas prisons has been requested.

Response: Staff agree with the recommended change and have amended Section 21.614 (a) to include an exemption for incarcerated individuals in Texas prisons.

Comment: TACRAO commented that courses taken at any correctional facility should be deemed "other distance education courses" as these students never interact with the general student population on a college campus, and requests changes to the definition of "Other Distance Education Courses."

Response: Staff recommend no change to the definition section as Section 21.614 (a) has been amended to include an exemption for incarcerated individuals enrolled in CE and college courses at prison facilities.

Comment: TACRAO and Lee College staff requested that high school students concurrently enrolled in dual credit courses held at Texas public high schools be exempt from the vaccine requirement, as high school students already have to prove to the school district that they have current immunizations, or have received an exemption from the Department of State Health Services.

Response: Staff agree with the recommended change and have amended Section 21.614 (a) to include an exemption for students enrolled in a dual credit course which is taught at a public or private K-12 facility not located on a higher education institution campus.

Comment: Amarillo College, Austin Community College, Collin College, Houston Community College, the Marshall Economic Development Corporations, McLennan Community College, Navarro College, Northeast Texas Community College, Northwest Vista College, San Antonio College, San Jacinto College, TACE, Trinity Valley Community College, Vernon College, Victoria College and a registered nurse from a health care facility in Amarillo commented that employer-based corporate training continuing education courses be exempt from the bacterial meningitis vaccination.

Response: Staff agree with the recommended change and have amended Section 21.614 (a) to include an exemption for continuing education corporate training courses.

Comment: Lee College requests that a specific affidavit template be provided to the institutions by the Coordinating Board so that students that refuse the shot based on religious or other reasons will have identical documentation. They further request that a list of approved documents for proving inoculation be made part of the rules.

Response: Board staff maintains that it is not within the Coordinating Board's purview to develop an affidavit template or list of approved documents for student use in providing proof of vaccination. A conscientious exemption form from the Department of State Health Services must be used. No changes were made as a result of this comment.

Comment: Staff noted in Section 21.612 the definition of "Entering student" should be expanded to add the title name "Returning student" for (1)(B) to ensure consistency with the title "New student" in (1)(A).

Response: Staff concur and expanded Section 21.612 to include a the title "Returning student" in (1)(B).

Legal Review:

Approved by the Office of General Counsel \_\_\_\_\_ Date: \_\_\_\_\_