

SUBJECT: Prohibiting mandatory immunization against human papilloma virus

COMMITTEE: Public Health — committee substitute recommended

VOTE: 6 ayes — Delisi, Laubenberg, Jackson, S. King, Olivo, Truitt

3 nays — Cohen, Coleman, Gonzales

WITNESSES: For —Carol Ann Armenti, Center for Cervical Health; Tama Chunn, Life Advocates; Moira Dolan, Medical Accountability Network; Julie Drenner, Texans for Family Values PAC; Linda Flower, Texas Physicians Resource Council; Dawn Richardson, Parents Requesting Open Vaccine Education; Jonathan Saenz, Free Market Foundation; and ten others; (*Registered, but did not testify*: Tom “Smitty” Smith, Public Citizen, Inc.; Judy Vatterott, Life Advocates; Ellie Andrew; Joanna Clardy)

Against —Mark Akin; Jessica Bell; Tracey Buchanan; Betty Edwards; Melanie Oldham; Amy Sweet; Edward P. Tyson; Amanda Vail. (*Registered, but did not testify*: Elizabeth Brenner, Texas Association of Planned Parenthood; Randall Ellis, Legacy Community Health Services; Curtis Fuelberg, Planned Parenthood of Houston and Southeast Texas; Paula Littles, Texas AFL CIO; Heather Paffe, Texas Association of Planned Parenthood Affiliates; Sarah Wheat, Planned Parenthood of the Texas Capital Region; Heather Burcham; Cheryl Swope Lieck; Margaret R. Walsh)

On —David Lakey, Department of State Health Services; Charles Bell, Texas Health and Human Services Commission; Betty Jo Edwards, Texas Association of Obstetricians and Gynecologists; Merry Lynn Gerstenschlager, Texas Eagle Forum; Jane Rider, Texas Academy Family Physicians, Texas Pediatric Society, Texas Medical Association; Jack Sims, Department of State Health Services; (*Registered, but did not testify*: Andrea Milbourne, U.T. M.D. Anderson Cancer Center; Catherine Wilkes, Christus Health; Fred Campbell)

BACKGROUND: Sec. 38.001 of the Education Code mandates that all Texas students be vaccinated against diphtheria, rubeola, rubella, mumps, tetanus, and poliomyelitis. The Texas Board of Health (now the Health and Human Services Commission) is authorized to modify, delete, or add to the list of

required vaccinations as a requirement for admission to any elementary or secondary school, and has added pertussis, *haemophilus influenzae* type b, measles, hepatitis B, hepatitis A, invasive pneumococcal, and varicella (chicken pox). This section also establishes procedures for parents or guardians of students to opt-out of mandatory vaccinations based on potential health risk or conscientious objection.

On February 2, 2007, Gov. Rick Perry issued Executive Order No. RP-65, which ordered the health and human services executive commissioner to mandate vaccination against human papilloma virus (HPV) for all female children prior to admission to the sixth grade. The governor cited research showing that HPV, the most common sexually transmitted infection, may develop into cervical cancer. RP-65 ordered the Department of State Health Services to modify the current conscientious objection process to allow parents to submit a form via the Internet if they disagree with the vaccination of their daughter. RP-65 orders the department and the commissioner to make the HPV vaccine available through the Texas Vaccines for Children Program and Medicaid. RP-65 also authorizes the department to implement a public awareness campaign to educate the public about the vaccine and the vaccination process.

**DIGEST:** CSHB 1098 would amend sec. 38.001 of the Education Code to state that immunization against human papilloma virus is not required as a condition for admission to any elementary or secondary school. It specifically would preempt any contrary executive order issued by the governor. It also would prevent the executive commissioner of the Health and Human Services Commission from adding HPV vaccination to the list of vaccinations required for school admission.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

**SUPPORTERS SAY:** CSHB 1098 is necessary because the governor's executive order prematurely would mandate that young girls receive a HPV vaccine that is new and has been tested for only five years. Typically, it takes 10-15 years for HPV to develop into cervical cancer. Five years is not long enough to determine whether this vaccine will be effective. Questions remain about whether this vaccine would provide lifelong immunity, what side effects the vaccine might produce, and the effect of the vaccine on pregnant women. Until those questions have been answered, it is

appropriate for the Legislature to exercise its judgment and decide not to mandate this vaccine.

Mandating HPV vaccination is unnecessary because other measures, such as education and early diagnosis, along with voluntary immunization as the vaccine is proven, would be as effective in preventing cervical cancer. While most women will be exposed to HPV, most HPV infections are spontaneously cleared from a woman's immune system. The rates of cervical cancer have decreased over the last 50 years, in part because of the increasing use of pap smears to diagnose pre-cancerous cells and improvements in medical technology. The focus should continue to be on education and prevention with regular pap smears, rather than on mandatory vaccination with a yet-to-be-proven vaccine. The Legislature in 2005 promoted these goals by enacting HB 1485 by Delisi, establishing the Texas Cervical Cancer Strategic Plan to diagnose and prevent HPV infection and eliminate mortality from cervical cancer by 2015, and HB 1485 by Thompson, requiring health benefit plans to cover screening tests to detect HPV infection and cervical cancer.

CSHB 1098 would not prohibit anyone from receiving vaccination against HPV nor prevent the state from paying the \$360 individual cost of the vaccine for those in low-income families. It simply would block mandatory HPV vaccination for all young girls as a prerequisite for attending school.

The bill would maintain the ability of parents to control the upbringing of their children. Executive order RP-65 would undermine the ability of parents to control their children's health care. The opt-out program in RP-65 is complicated and unclear. The mandatory vaccination also could in some cases encourage young women to engage in early sexual activity by giving them the false impression that immunity from the HPV virus makes all sexual activity safer and more acceptable.

Mandatory immunization against HPV also would be inappropriate because mandatory vaccination typically is used for diseases spread by casual contact, not for sexually transmitted diseases. While hepatitis is spread both sexually and more casually, the vaccine against this disease was not mandated in Texas until 15 years after it was licensed.

Executive order RP-65 usurped authority from the Legislature and did not allow for full and thorough comment, discussion, and review from medical

professionals, parents, and educators about the relative merits and drawbacks of mandatory HPV vaccination. The legislative process for CSHB 1098 will allow for more thorough review.

OPPONENTS  
SAY:

CSHB 1098 would undermine the ability to provide effective health care to Texas women for a preventable cancer. The current available HPV vaccine, Gardasil, is effective on the strains of HPV that cause 70 percent of cervical cancers. Although most HPV infections are spontaneously cleared from a woman's immune system, the infections that do not spontaneously clear are the strains of HPV that may cause cervical cancer. Pap smears can be misinterpreted by physicians and have a false negative rate that may be as high as 30 percent.

Although the HPV vaccine is new, it has undergone rigorous testing and peer review from the federal Food and Drug Administration. Even if the immunity is not for a lifetime, the need for people to get booster shots to update their immunity to the virus is much like what is needed with some other vaccinations. There is no evidence that this vaccine has a negative effect on pregnancy or future fertility.

The executive order provides for parents to opt out of the HPV vaccine requirement. This opt-out provision would be no more onerous than the existing opt-out provisions for any other vaccine and would in fact be easier by allowing parents or guardians to file the forms over the Internet. The Education Code already has clear procedures and standards for parents or guardians to opt-out of vaccinating their children.

If the vaccine is not required, girls from low-income families or whose families are unaware of the vaccine could be less likely to be vaccinated. In Texas, cervical cancer rates are highest among Hispanic women, and mortality rates are highest among African-American women and in rural counties, according to a report from the Department of State Health Services.

Mandatory vaccination has been used in the past for diseases that can be spread sexually. For example, Hepatitis A vaccination and Hepatitis B vaccination are mandatory. Hepatitis B can be transmitted through transmission of blood or infected bodily fluids. Mandating vaccination is one of the best ways to control disease. Incomplete vaccination of a person or a population can cause vaccine and drug-resistant strains of viruses to develop.

CSHB 1098 would foreclose the option of further discussion on the merits of mandating the HPV vaccine. Rather than just preempting Gov. Perry's executive order and the agency rulemaking process, this bill would, unlike for any other disease, prohibit state health officials from mandating HPV vaccination, regardless of the demonstrable health benefits. Whether mandated by executive order or legislative directive, the HPV vaccination would save thousands of lives and should be required like other vaccinations against infectious disease.

OTHER  
OPPONENTS  
SAY:

This bill would not go far enough to prevent government intrusion into the health care decisions of its citizens. Government should not be able to mandate vaccinations. Through education efforts, most parents will choose to have their children vaccinated when the vaccine has been proven safe and effective, but they should be able to weight the risks and make that choice themselves.

NOTES:

The bill as introduced would have specified that immunization against human papilloma virus "may not" be required for admission to an elementary or secondary school. The committee substitute would specify that immunization against the human papilloma virus "is not required" for school admission.

The companion bill, SB 438 by Hegar, has been referred to the Senate Health and Human Services Committee.

A related bill, HB 1379 by Deshotel, et al., which would require development of educational materials and programs concerning HPV, was reported favorably, without amendment, by the Public Health Committee and has been set on Wednesday's Major State Calendar.

HB 215 by Farrar, et al., which would require each female student enrolling in grade six to be fully immunized against HPV virus and require dissemination of information on HPV to parents and female students, has been referred to the Public Health Committee. The companion bill, SB 110 by Van de Putte, has been referred to the Senate Health and Human Services Committee.

The Governor's Office estimates that it would cost about \$29.4 million to ensure that low-income children received the HPV vaccine if immunization were made mandatory.