**REQUIREMENT FOR VACCINATION AGAINST**

**BACTERIAL MENINGITIS FOR ENTERING STUDENTS**

**FREQUENTLY ASKED QUESTIONS**

Revised by The University Of Texas System Office Of General Counsel
November 10, 2011, Revised September 1, 2013

1. **What are the new requirements for vaccination of students against bacterial meningitis?**

Senate Bill 62 takes effect on October 1, 2013.  It amends Section 51.9192 of the Texas Education Code.  You can read the text of the bill at:

<http://www.legis.state.tx.us/tlodocs/83R/billtext/pdf/SB00062F.pdf#navpanes=0>.

1. **What are the changes SB 62 makes to the law?**

SB 62 changed the maximum age for students who are required to comply with the vaccination requirements from 30 to 22. This means that beginning on January 2, 2014, only student who are 21 years old or younger on the first day of the semester will be required to comply with the requirements of the law.

It also clarifies that there is no distinction between how students who plan to reside on campus and students who plan to reside off-campus at UT System institutions during the semester who wish to claim an exemption from the vaccination requirements based on a conscientious objection can establish that they qualify for the exemption. All students must use the form provided by the Texas Department of State Health Services.

SB 62 also makes other changes to the exemption application process that apply only to students enrolled in public junior colleges.

1. **What changes did the Texas Higher Education Coordinating Board make to its regulations regarding the vaccination requirement?**

 The amended Texas Higher Education Coordinating Board rules import the new requirements from SB 62.

 In addition, they clarify that students seeking a conscientious objection exemption must submit the required form to the appropriate office at the institution no less than 90 days after the form has been notarized.

1. **What are the general requirements of the law as of January 1, 2014?**

As of January 1, 2014, all Texas public and private institutions of higher education, including all System institutions, cannot allow new students to enroll unless the student shows proof that the student:

* has had a vaccination or a booster for bacterial meningitis during the last five years but no later than the 10th day before the first day of the semester (or other period of enrollment) in which the student seeks to enroll; or
* meets one of the five specific exceptions permitted by the laws and regulations. These exceptions are:
	+ New students who are twenty two years of age or older on first day of the semester;
	+ New students who are enrolled only in on-line or distance classes;
	+ New student who provide a medical excuse that states that the vaccination would be harmful to the student’s health;
	+ New students who provide documentation of a moral or conscientious objection to the vaccine by using a form promulgated by the Texas Department of State Services; and
	+ New students who are also Texas high school students enrolled in a dual enrollment program where the student is enrolled in dual enrollment classes held at a Texas high school.

Institutions are required to give all entering students information about the new requirement as part of the institution’s application materials.

The regulations clarify that the requirements do apply to individuals participating in a Texas Higher Education Coordinating Board approved CE course or program that requires 360 or more contact hours.

They apply to all new students regardless of whether they will be residing on campus or off campus.

1. **When does the new law take effect?**

The law took effect immediately upon passage. Institutions of higher education are required to begin complying with the law as amended by SB 62 as of January 1, 2014.

The Coordinating Board has proposed amendments to amend the rules as previously adopted. For purposes of this FAQ, a reference to the new law refers to the new law as currently interpreted by the currently Proposed Rule which has been published in the Texas Administrative Code in the August 16, 2013 issue and are expected to take effect on October 24, 2013. The proposed amendments to the rules can be found at: <http://www.sos.state.tx.us/texreg/archive/August162013/Proposed%20Rules/19.EDUCATION.html#68>.

**6. What does an institution have to do to comply?**

Each institution should have policy and procedures to notify all incoming students about the new requirements, identify all individuals subject to the new requirements and to prevent those individuals from enrolling until they are in compliance. An office or unit must be delegated to receive the proof of compliance for the institution. UT System’s Office of General Counsel (OGC), in consultation with the Offices of Academic Affairs and Health Affairs, has drafted a model policy, which has been amended to comply with SB 62, that institutions can elect to adopt that, assuming the institution complies with the policy, will ensure that the institution is in compliance with the new requirements.

1. **How does the OGC model policy work?**

In essence, the law requires institutions to prevent individuals affected by the law from attending classes or participating in any other activities that require the student to be enrolled at the University until the student is in compliance with the requirements of the law. We have determined that the most efficient and effective way to make that happen is to prevent students who are subject to the requirements from registering for classes for that semester until they provide proof of compliance.

1. **Our institution does not want to use the registration process as the “gate-keeping” mechanism for preventing students who have not complied with the vaccination requirement from enrolling. Do we have to adopt the OGC Model Policy?**

No. If your institution has devised another method to keep students who have not demonstrated compliance from enrolling and/or attending classes, it is free to adopt a different rule or policy. The Office of General Counsel will be happy to work with you to make sure your policy complies with the changes made by SB 62 and the Coordinating Board’s rules. Pursuant to Regents’ Rule 20201, Sec. 4.9, the use of a policy that deviates from the Model policy will also require the approval of either the Office of Academic Affairs or the Office of Health Affairs as well as OGC.

1. **We have heard there is an extension provided in the law to allow a student more time to comply. How does that work?**

The law permits an institution to grant an extension of the compliance date (normally 10 days prior to the first day of the semester) for “justifiable circumstances.” The extensions cannot extend under any circumstances past the 10th day after the first day of the semester. The Coordinating Board has clarified that if an institution decides to offer such extensions they should be used sparingly and can only be granted on a case by case basis.

Under the OGC Model Policy, institutions have the option to adopt a policy of granting extensions for justifiable circumstances. However, the policy limits the last date for which for an extension can be granted to the first day of the semester. This date was selected to avoid situations where a student is granted an extension, permitted to enroll, subsequently fails to comply, and then must be terminated from enrollment after the semester has already commenced. The System believes precluding the student from enrolling at all will be less disruptive to the student and a more efficient use of the institution’s resources than terminating them after they have begun to attend classes.

Under the Model Rule, if a student is granted an extension, the student may be permitted to register upon a showing of justifiable circumstances but must establish compliance with the new law no later than the first day of the semester. A student who has been granted the extension and either establishes by the first day of class that he or she has either received the required vaccination; or, that she or he has provided the required documentation to establish the student qualifies for an exception, will be enrolled and permitted to attend classes. A student who has been granted an extension, but subsequently fails to show proof of compliance by the first day of the semester will not be enrolled at all for that semester and will not be permitted to attend classes.

The Model Policy defines “justifiable circumstances” as circumstances over which a student has no control that prevent him or her from providing proof of the required vaccination or that the student meets an exception as permitted by the policy. It clarifies that a student cannot be granted an extension because the student has alleged that she or he failed to receive notice of the law from the institution as part of its admissions material, or because the student claims to have been simply unaware of the requirement.

**NOTE:** Institutions that elect to allow an extension process will also have to develop a process for following through with all students granted an extension to determining if they have complied by the last date of the extension. The institution will also have to ensure that students who have not complied by the expiration of the extension period are not permitted to attend any classes and that their enrollment is terminated. In addition, institutions that elect to adopt an extension date past the first day of the semester will also need to establish mechanisms for terminating the enrollment of all non-compliant students as of the date the extension expires **and** ensuring that such terminated students are not permitted to attend classes or otherwise exercise the rights of an enrolled student as of that date. For example, if the student is residing in campus housing and the institution permits only enrolled students to occupy campus housing, the institution will also need a process for evicting students whose enrollment has been terminated for non-compliance.

1. **To which students does this new requirement apply?** **Does this law apply to transfer students? How about international students?**

The law applies to any student admitted to the institution for the first time who meets the criteria outlined in FAQ # 4. It includes transfer students even if they are transferring from another UT System institution. It also applies to a student who was previously admitted but experience a break in attendance of a fall or spring semester or longer.

International students must also comply. They are not required to obtain the vaccine in the US. They can establish proof of compliance using documentation from their home country as long as it meets the requirements set forth in the new law.

1. **How can a student wishing to obtain an exemption for reasons of conscience document his or her eligibility for the exemption?**

A student who objects to receiving the vaccination for reasons of conscience can obtain information about requesting the required affidavit form from DSHS at <http://www.dshs.state.tx.us/immunize/school/default.shtm#exclusions>.

The DSHS form may be ordered electronically; however it must be mailed to the address provided by the student. Students should be aware that it may take up to two weeks to receive the DSHS form. The student must complete the form and have it notarized. The student must submit the notarized form to the office designated by the institution to oversee compliance with the new vaccination requirements no later than the 90th day after the date on which the form was notarized.

1. **We have heard that SB 62 allows students to establish that they are exempt from the vaccination requirement based on a conscientious objection can do so online. Why can’t our students uses an on-line process, too?**

SB 62 clarifies that an on-line process can be used only by students seeking enrollment at a state junior colleges. Students seeking enrollment at public universities and health- related institutions of higher education must use the DSHS form as described in FAQ # 11.

1. **We have students who take most of their classes on-line and only come to classes on campus a couple of times a semester. Do they have to comply?**

Yes. If a course involves any face-to-face contact with other students, such as meeting in a testing lab or meeting to view video instructions or other presentations, the student must comply.

1. **We teach classes off campus, do those students have to comply?**

The law does not exempt classes that are held off campus. In general, enrollment in any class that requires in-person attendance will trigger the vaccination requirement. Note however, that the Coordinating Board regulations do exempt Texas high school students in a dual enrollment program under which dual enrollment courses are taught at a Texas high school.

1. **Why are student over 22 not required to comply?**

Statistically, bacterial meningitis is most prevalent among individual in their late teens and early twenties. The legislature amended the law to make 22 years of age the cut-off point to coincide with recommendations from national health authorities. UT System interprets the law to impose the requirement upon any new student who will be less than 22 years of age on the first day of the semester.

1. **Does the requirement apply to continuing education and “informal classes?”**

The Coordinating Board regulations provide that the requirements do apply to individuals participating in a Texas Higher Education Coordinating Board approved CE Certificate course or program that requires 360 or more contact hours. The requirements would not apply to any such program or course consisting of less than 360 contact hours

The regulations also clarify that individuals involved in “corporate” continuing education are also exempt. UT System takes the position that any informal, continuing education or other class that does not require approval by the Coordinating Board is not subject the new law and that a person attending such a class is not subject to the new law.

1. **Will this new law make our institution subject to HIPAA? Do we have to comply with HIPAA as to the vaccination records we receive under the new law?**

No. Receiving and maintaining student vaccination records does not in itself make an institution of higher education a Covered Entity that is required to comply with HIPAA.

* If your institution will be receiving students’ vaccination forms and affidavits from the student or, with the student’s consent, from some other source, such as a health care provider or a health department or another university, the copies you receive will be education records subject to FERPA, just like the student’s transcript, financial aid and other administrative records. They will be subject to FERPA, but not HIPAA.
* If your institution’s health center will be providing the vaccine to students, those records will be *treatment records* which are subject to state medical confidentiality laws, but not HIPAA.Before the health center can use or share a treatment record for any non-treatment purpose (including proof that the student has complied with the new meningitis vaccination requirement), the student will have to sign a medical consent or release form. Once the records are shared or used by the health center for a non-treatment purpose, they will become education records and subject to FERPA. **NOTE:** If the health center will be providing vaccinations *and also* receiving and/or maintainingstudents’ vaccination forms and affidavits as part of the institution’s meningitis vaccination compliance efforts, the records maintained for compliance purposes should be stored separately from the student’s treatment records.
1. **Which office should be in charge of the implementation of and compliance with the new requirement? Can we delegate it to a vendor?**

The new law requires each institution to appoint an office or unit to receive the proof of compliance each student must present. It is up to each institution to determine that best office to do that. Given the fact that this is primarily an enrollment issue, the most logical office in most cases is likely to be the registrar. If the student health center is selected, FAQ #17, above clarifies that compliance records should be kept separately from the center’s treatment records.

 If for some reason an institution feels the need to outsource some or all of the compliance process to a vendor, it must still designate an office in-house that remains ultimately responsible for the institution’s compliance with the requirements and overseeing the vendor’s compliance with the new law and applicable institutional policies. Institutions contemplating use of a vendor should also bear in mind that, since this is a brand new law, it is unlikely that an outside vendor would have any superior knowledge or qualifications with regard to the compliance process that would benefit the institution. Finally, if a vendor is utilized, the institution must follow all applicable procurement processes before selecting or contracting with the vendor.

1. **Our local health department has a shortage of the vaccine. How can we find another low cost source for the vaccine?**

That would be a business issue rather than a legal issue. Institutions may want to exchange information with each other and strategize about whether vaccines can obtained through existing governmental contracts or shared services. However, institutions should ensure that any agreements they enter into to obtain the vaccine must comply with all applicable state and federal laws.

1. **We offer the vaccine to students through the health center. Is it okay if we bill the charge as a fee rather than requiring payment up front from the incoming student at the time we administer it?**

Yes. However, the institution must follow its internal policies, all applicable System policies, and Regents’ Rules and obtain all required approvals before establishing such a fee. **NOTE:**  For a variety of reason, if an institution utilizes a fee option, it is strongly advised that it be made available on an “opt in” or voluntary basis, rather than attempting to impose the fee on all new students and then allowing them to “opt out” only a showing of alternate compliance.

1. **Does the law make any distinctions between students who reside on campus and those that do not?**

No. All students who meet the criteria described in FAQ # 4 above must comply. SB 62 clarifies that all students who must comply use the same process for claiming exemptions based on a conscientious objection. All institutional policies regarding compliance with the former law should be withdrawn in accordance with the institution’s relevant policies for adopting and repealing obsolete policies.

1. **Where can I find more information about meningitis?**

The Center for Disease Control has a very informative webpage at: <http://www.cdc.gov/meningitis/about/faq.html>.