



JOINT COMMITTEE FOR THE REVIEW OF ADMINISTRATIVE RULES

COMMITTEE CO-CHAIRS: SENATOR STEVE NASS AND REPRESENTATIVE ADAM NEYLON

Clearinghouse Rule 19-079

Report to the Legislature
Clearinghouse Rule 19-079
The Joint Committee for Review of Administrative Rules
Produced pursuant to 227.19 (6) (a), Stats.

Clearinghouse Rule 19-079, promulgated by the Department of Health Services (DHS), makes changes to required immunizations for students and changes to definitions of substantial outbreaks for specified diseases, and various other changes to DHS Chs. 110-199, relating to student immunization.

Description of Problem

On March 5, 2020, the Assembly Committee on Constitution and Ethics objected in part to CR 19-079, relating to required student immunizations, on a 6-2 vote. The committee had previously held a public hearing on the rule on March 3, 2020 and received public testimony for more than 9 hours, with the testimony overwhelming against the rule. The general consensus of much of the public testimony against the rule was that it was excessive in its mandates of certain vaccines and unduly infringed on parental rights.

When a standing committee of either house of the legislature objects to an administrative rule, the Joint Committee for Review of Administrative Rules (JCRAR) is required by statute to either sustain or reject the objection. JCRAR held an executive session on Clearinghouse Rule 19-079, relating to required student immunizations, on May 5, 2020. The committee objected in part to the rule, and upheld the Assembly Committee on Constitution and Ethics' full objections to the rule.

Arguments In Favor of Objection

- *The rule changes are excessive and unnecessary in its mandates of certain vaccinations and unduly infringes on parental rights to determine appropriate vaccinations for their children to receive.*
- *Changing the current administrative code practice of allowing parents to self-report their child's chickenpox infection, to require a healthcare provider's confirmation of the infection is an unnecessary burden. The Department provided no evidence that self-reporting practice was abused or insufficient.*
- *Mandating the meningococcal vaccine (MenACWY) for all 7th graders, with a booster dose in 12th grade is unnecessary as Wisconsin's vaccination rates are already very high for this vaccine and already above the national average.*

- *The JCRAR co-chairs attempted to work with DHS to make modifications to the rule, however the Department refused to address the concerns raised by the co-chairs or the Assembly Committee on Constitution and Ethics.*

Arguments Against Objection

- *DHS believed updates to the student immunization chapters are necessary to correct outdated provisions and additional vaccination requirements would be beneficial to public health and help reduced chances of and response to future outbreaks of various diseases.*

(It should be noted that JCRAR left substantial portions of CR 19-079 in effect that were commonsense updates and only objected to parts of the rule the committee determined to be arbitrary and capricious and impose an undue hardship).

- *Making additional vaccinations mandatory and requiring healthcare provider confirmation of certain infections will increase vaccination rates in Wisconsin.*

Action by Joint Committee for Review of Administrative Rules

On May 5, 2020, the Joint Committee for Review of Administrative Rules held an executive session on Clearinghouse Rule 19-079. The committee passed the following motion on a 6-4 vote, partially objecting to the rule, and supporting the Assembly Committee on Constitution and Ethics' full objections to the rule (YES: Nass, Ballweg, Stroebel, Craig, Neylon, Quinn; No: Larson, Wirch, Hebl, Subeck):

CHR 19-079: Motion language to partially object to CHR 19-079 with respect to:

- A. Objection to inclusion of varicella and meningitis in the definition of substantial outbreak.*
- B. Objection to revision to the treatment of mumps in the definition of substantial outbreak.*
- C. Objection to revision to the Tdap vaccine requirement to apply in 7th grade instead of applying in 6th grade as under the current rule.*
- D. Objection to Meningitis vaccination requirements.*
- E. Objection to elimination of parental indication of history of varicella.*

Motion

Moved, that the Joint Committee for Review of Administrative Rules, pursuant to s. 227.19 (5) (d), Stats., partially object to Clearinghouse Rule 19-079, relating to immunization of students (DHS), as indicated in items A. to E., below, on the grounds that the proposed rule is arbitrary and capricious, and imposes an undue hardship:

- A. Object to s. DHS 144.02 (21) (h) and (i) as recreated in s. 3 of CHR 19-079.*
- B. Object to the repeal, as applied to Mumps, of s. DHS 144.02 (12) (intro.), (a), and (b) (intro.) and 2., Wis. Adm. Code, as repealed in s. 3 of CHR 19-079; and object to the creation of s. DHS 144.02 (21) (b), as recreated in s. 3 of CHR 19-079.*

- C. *Object to the repeal, as applied to Grade 6 Tdap requirements, of Table DHS 144.03-A, as repealed in s. 5 of CHR 19-079; and object to the creation, as applied to Grade 7 Tdap requirements, of Table DHS 144.03-A, as recreated in s. 5 of CHR 19-079.*
- D. *Object to the references to “1 Mening” and “2 Mening” in Table DHS 144.03-A as recreated in s. 5 of CHR 19-079; and object to s. DHS 144.03 (2) (k) as created in s. 6 of CHR 19-079.*
- E. *Object to the repeal of the sentence “A parent of a minor student or an adult student may indicate a reliable history of varicella by signing a statement that the student has had varicella disease.” in s. DHS 144.03 (2) (f), Wis. Adm. Code, as repealed in s. 5 of CHR 19-079; and object to the creation of the sentence “A physician, physician assistant, or an advanced practice nurse prescriber, must document a reliable history of varicella disease by indicating on the department’s student immunization record form that the student has had varicella disease.” in s. DHS 144.03 (2) (g) as recreated in s. 5 of CHR 19-079.*

On May 5, 2020, the Joint Committee for Review of Administrative Rules voted 6-4 (YES: Nass, Ballweg, Stroebel, Craig, Neylon, Quinn; NO: Larson, Wirch, Hebl, Subeck) to introduce LRB-6194/1 and LRB-6203/1, relating to prohibiting certain actions by the Department of Health Services related to the immunization program, in support of the committee’s May 5, 2020, partial objection to Clearinghouse Rule 19-079 (DHS), and issue its report on the bills. The bills were submitted to the Senate and Assembly Chief Clerks, and will be introduced in the 2021-22 legislative session, pursuant to s. 227.19 (5) (g), stats.

On January 21, 2021, the Joint Committee for Review of Administrative Rules voted 6-4 (YES: Nass, Neylon, Stroebel, Bradley, August, Spiros; NO: Roys, Larson, Hebl, Subeck) to introduce LRB-1449 and LRB-1459, relating to prohibiting certain actions by the Department of Health Services related to the immunization program, in support of the committee’s May 5, 2020, partial objection to Clearinghouse Rule 19-079, and issue its report on the bills. The bills were introduced as Senate Bill 35 and Assembly Bill 12 in the 2020-21 legislative session.

Passage of one of these bills in support of the JCRAR objection would permanently remove the Department of Health Service’s (DHS) ability to promulgate the portions of Clearinghouse Rule 19-079 objected to by JCRAR and the Assembly Committee on Constitution and Ethics.