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# JOINT COMMITTEE FOR THE REVIEW OF ADMINISTRATIVE RULES

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

Administrative Code Chapter DHS 144, Wis. Adm. Code

## Report to the Legislature

### Ch. DHS 144

### The Joint Committee for Review of Administrative Rules

Produced pursuant to 227.26 (6) (g), Stats.

Administrative Code Chapter DHS 144, 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 relating to student immunizations.

#### Description of Problem

The Joint Committee for Administrative Rules (JCRAR) held a public hearing on Chapter DHS 144, relating to required immunization of students, on March 7, 2023, to review concerns raised by numerous citizens and stakeholder groups that portions of the rule as promulgated were arbitrary and capricious and imposed an undue hardship on parents.

The committee received public testimony on the rule for more than 9 hours at its March 7, 2023 public hearing, with the testimony overwhelming against the rule. The general consensus of much of the public testimony against the rule was that portions of it was excessive and unnecessary in its mandates of certain vaccines and unduly infringed on parental rights.

In response to public testimony, on March 9, 2023 the committee suspended the rule in part, rendering portions of it temporarily unenforceable as detailed further below in this report.

#### 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 previous 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 7<sup>th</sup> graders, with a booster dose in 12<sup>th</sup> 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 prior to promulgation to make modifications to the rule, however the Department refused to address the concerns raised by the co-chairs and committee members.*

### **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 reduce chances of and response to future outbreaks of various diseases.*

*(It should be noted that JCRAR left substantial portions of DHS 144 in effect and only suspended narrow provisions 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 March 9, 2023, the Joint Committee for Review of Administrative Rules held an executive session on DHS Chapter 144. The committee passed the following motion on a 6-4 vote, temporarily suspending the rule in part (YES: Nass, Neylon, Stroebel, Bradley, Petersen, Spiros; No: Roys, Larson, Conley, Baldeh):

*Moved, that the Joint Committee for Review of Administrative Rules, pursuant to s. 227.26 (2) (d), Stats., suspend certain provisions of ch. DHS 144, relating to immunization of students, as indicated in items A. to C., below, on the grounds that the provisions of the rule are arbitrary and capricious, and impose an undue hardship:*

- A. *Suspend s. DHS 144.02 (21) (h) and (i).*
- B. *In s. DHS 144.03 (2) (g), suspend 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."*
- C. *Suspend the references to "1 Mening" and "2 Mening" in Table DHS 144.03-A and suspend s. DHS 144.03 (2) (k).*

On March 30, 2023, the Joint Committee for Review of Administrative Rules voted 6-4 (YES: Nass, Neylon, Stroebel, Bradley, Petersen, Spiros; No: Roys, Larson, Conley, Baldeh) to introduce LRB-2600/1 and LRB-2630/1, relating to prohibiting certain actions by the Department of Health Services related to the immunization program, which support the partial suspension of DHS Ch. 144, Wis. Adm. Code, by the joint committee. The bills were introduced as Senate Bill 228 and Assembly Bill 229 in the 2023-24 legislative session.

Passage of one of these bills in support of the JCRAR suspension would permanently remove the Department of Health Service's (DHS) ability to enforce the suspended portions of Ch. 144.