

DATE: July 27, 2017
SUBJECT: Student Immunization Rules Repeal
ACTION RECOMMENDED: Adoption

BACKGROUND INFORMATION

Since 2003, the Tennessee Higher Education Commission has had rule promulgation authority relating to the immunizations required of newly matriculating students in the state’s higher education institutions under T.C.A. §§ 49-7-124 (regarding Meningococcal disease) and 49-7-125 (regarding Hepatitis B). Public Chapter 166, enacted by the legislature this year, transfers this authority to the governing boards of each institution, thereby rendering obsolete the THEC Rules under Chapter 1540-01-09.

PROPOSED RULE REVISIONS

Chapter 1540-01-09: Immunizations for Newly Matriculating Students

- Repeals the Rule due to the enactment of Public Chapter 166 this year.

RECOMMENDATION

- 1) That the Commission adopt the proposed repeal of Chapter 1540-01-09; and,
- 2) That the Commission authorize the Executive Director to comply with any recommendations suggested by the Tennessee Attorney General.



State of Tennessee

PUBLIC CHAPTER NO. 166

SENATE BILL NO. 393

By Gresham

Substituted for: House Bill No. 1002

By Goins

AN ACT to amend Tennessee Code Annotated, Title 49, Chapter 6 and Title 49, Chapter 7, relative to higher education immunization requirements.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 49-7-124(e), is amended by deleting the language "The Tennessee higher education commission is" and substituting instead the language "The governing boards of each public institution of higher learning are".

SECTION 2. Tennessee Code Annotated, Section 49-7-125(c), is amended by deleting the language "The Tennessee higher education commission is" and substituting instead the language "The governing boards of each public institution of higher learning are".

SECTION 3. Tennessee Code Annotated, Section 49-7-124, is amended by adding the following language as new subsections:

(g) The governing board of each public institution of higher learning, in consultation with the department of health, shall promulgate rules regarding immunization requirements for students enrolled within each respective institution. All such rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(h) Notwithstanding subsection (g), each public institution of higher learning shall strive to collect immunization records for students enrolling in the institution.

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring it.

SENATE BILL NO. 393

PASSED: April 10, 2017



RANDY McNALLY
SPEAKER OF THE SENATE



BETH HARWELL, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 24th day of April 2017



BILL HASLAM, GOVERNOR

**RULES
OF
TENNESSEE HIGHER EDUCATION COMMISSION**

**CHAPTER 1540-01-09
IMMUNIZATIONS FOR NEWLY MATRICULATING STUDENTS**

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1540-01-09-.01 DEFINITIONS.

- (1) "New incoming students" or "student" for the purpose of this chapter shall mean those students enrolling in an institution of higher learning for the first time, regardless of the level at which the student is matriculating. Additionally, the terms shall apply only to persons enrolled in a course or courses offered for college credit toward an associate's degree or higher.
- (2) "Institution of higher learning" for the purposes of this chapter shall mean any institution of postsecondary education that generally limits enrollment to graduates of secondary schools, and awards degrees at either the associate, baccalaureate, or graduate level. It is the intent that the Tennessee Colleges of Applied Technology operating under the jurisdiction of the Tennessee Board of Regents would be among the institutions exempt from the requirements of these rules.

Authority: Acts of 2003; Public Chapters 104 and 136, 2013 Public Acts, Chapters 114 and 473, T.C.A. §§ 49-7-124 and 49-7-125,. **Administrative History:** Original rule filed August 14, 2003; effective December 29, 2003. Emergency rule filed September 3, 2013; effective through March 2, 2014. Amendment filed September 3, 2013; effective February 28, 2014.

1540-01-09-.02 NOTICE OF INFORMATION.

Each institution of higher learning in the state shall provide to all new incoming students, and/or the parent or guardian of new incoming students, information concerning hepatitis B disease. The information shall be provided to the student and/or parent or guardian prior to matriculation and include the risk factors and dangers of each disease as well as information on the availability and effectiveness of the respective vaccines for persons who are at-risk for the diseases. The institutions shall utilize information from the Centers for Disease Control and/or the American College Health Association in satisfying this requirement.

Authority: Acts of 2003; Public Chapters 104 and 136, and 2013 Public Acts, Chapters 114, and 473, and T.C.A. §§ 49-7-124 and 49-7-125. **Administrative History:** Original rule filed August 14, 2003; effective December 29, 2003. Emergency rule filed September 3, 2013; effective through March 2, 2014. Amendment filed September 3, 2013; effective February 28, 2014.

1540-01-09-.03 WAIVER FOR HEPATITIS B VACCINATION.

- (1) Prior to matriculating into the institution, the new incoming student and/or the student's parent or guardian shall complete and sign a waiver form to indicate that the student and/or the student's parent or guardian has received the information required by Rule 1540-01-09-.02 and has chosen to have the student vaccinated or has not chosen to have the student vaccinated.

(Rule 1540-01-09-.03, continued)

- (2) The waiver may be part of the information document required by Rule 1540-01-09-.02.
- (3) A student who is eighteen (18) years of age may sign the waiver, but for minors, the student's parent or guardian must sign the waiver.
- (4) The institution shall maintain the signed waiver forms in a manner and location consistent with the maintenance of similar confidential education records.

Authority: Acts of 2003; Public Chapters 104 and 136, 2013 Public Acts, Chapter 114, and T.C.A. §§ 49-7-125. **Administrative History:** Original rule filed August 14, 2003; effective December 29, 2003. Emergency rule filed September 3, 2013; effective through March 2, 2014. Amendment filed September 3, 2013; effective February 28, 2014.

1540-01-09-.04 PROOF OF IMMUNIZATION AGAINST MENINGOCOCCAL DISEASE.

- (1) New incoming students through the age of 21 who live in on-campus student housing at public institutions of higher learning shall provide proof of adequate immunization against meningococcal disease as recommended for adults in the current advisory committee on immunization practices "Recommended Adult Immunization Schedule" published by the Centers for Disease Control and Prevention.
- (2) A student may be exempted from this requirement only under the following circumstances:
 - (a) Where a physician licensed by the board of medical examiners, the board of osteopathic examiners or a health department certifies in writing that a particular vaccine is contraindicated for one (1) of the following reasons:
 1. The individual meets the criteria for contraindication set forth in the manufacturer's vaccine package insert; or
 2. The individual meets that criteria for contraindication published by the centers for disease control or the advisory committee on immunization practices; or
 3. In the best professional judgment of the physician, based upon the individual's medical condition and history, the risk of harm from the vaccine outweighs the potential benefit.
 - (b) Where a parent or guardian or, in the case of an adult student, the student provides to the school a written statement, affirmed under penalties of perjury, that vaccination conflicts with the religious tenets and practices of the parent or guardian or, in the case of an adult student, the student.

Authority: 2013 Public Acts, Chapter 114. **Administrative History:** Emergency rule filed September 3, 2013; effective through March 2, 2014. Original rule filed September 3, 2013; effective February 28, 2014.