

AN ACT

relating to immunization against human papillomavirus.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 38.001, Education Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) Subject to Subsections (b-1) and ~~[Subsection]~~ (c), the executive commissioner of the Health and Human Services Commission ~~[Texas Board of Health]~~ may modify or delete any of the immunizations in Subsection (a) or may require immunizations against additional diseases as a requirement for admission to any elementary or secondary school.

(b-1) Immunization against human papillomavirus is not required for a person's admission to any elementary or secondary school; however, by using existing resources, the Health and Human Services Commission shall provide educational material about the human papillomavirus vaccine that is unbiased, medically and scientifically accurate, and peer reviewed, available to parents or legal guardians at the appropriate time in the immunization schedule by the appropriate school. This subsection preempts any contrary executive order issued by the governor. This subsection expires January 11, 2011.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as

H.B. No. 1098

1 provided by Section 39, Article III, Texas Constitution. If this
2 Act does not receive the vote necessary for immediate effect, this
3 Act takes effect September 1, 2007.

David Newkirk

President of the Senate

Jim Caddick

Speaker of the House

I certify that H.B. No. 1098 was passed by the House on March 14, 2007, by the following vote: Yeas 118, Nays 23, 1 present not voting; and that the House concurred in Senate amendments to H.B. No. 1098 on April 25, 2007, by the following vote: Yeas 135, Nays 2, 1 present not voting.

Robert Haney
Chief Clerk of the House

I certify that H.B. No. 1098 was passed by the Senate, with amendments, on April 23, 2007, by the following vote: Yeas 30, Nays 1.

Lately Saw
Secretary of the Senate

APPROVED: _____

Date

Governor

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3:12 PM O'CLOCK

MAY 08 2007

Roger Whinnis



STATE OF TEXAS
OFFICE OF THE GOVERNOR

MESSAGE

Today I have allowed House Bill No 1098 to become law without my signature

Since issuing an executive order to make the human papillomavirus (HPV) vaccine as widely available as possible, I have watched with great interest the debate this order has generated. I want to say I am grateful that this issue has received the attention it finally deserves, not only from legislators, but Texas families.

What has too often been lost in this debate is what it is truly about: saving lives. HPV is the most common sexually transmitted virus in America that not only takes the lives of 400 Texas women each year through cervical cancer, but causes great pain and suffering for thousands more women who endure invasive procedures and painful scars.

I want to address some of the specific arguments against making the HPV vaccine widely available.

1. *It encourages promiscuity.* My executive order has always been about protecting life, regardless of how the virus is transmitted. In other words, while some might want to focus judgment on the cause of this virus' transmission, I believe we must focus more on its prevention. It is also worth pointing out that women who have abstained from sex until marriage have still become victims of this insidious virus, as have women who have tragically become the victims of rape. So while we can encourage young people to engage in monogamous behavior, even those who do may contract this terrible disease.

It is also confounding that some members of this legislature who complained my executive order encourages sexual promiscuity later voted for a needle exchange program that provides free needles to drug addicts. If we are worried about the messages we send, it would seem that the mission of discouraging illegal drug use would be just as significant, if not more, than discouraging sexual activity among a population that is mostly not engaged in such activity yet (girls entering sixth grade).

Nonetheless, I do not believe the great majority of eleven year old girls, when given this inoculation prior to entering sixth grade, would be more likely to engage in sexual activity. Most are unlikely to think in those terms at that age, and for the small percentage who might, there is a host of other health concerns that should impact their sexual behavior, such as the spread of HIV and other sexually transmitted diseases.

I therefore wholeheartedly reject the argument that this order encourages promiscuity, and even if I thought the argument had weight, I believe the greater imperative is to protect life. People do make wrong choices. But if we had a vaccine for lung cancer would we discourage its availability because smoking is an inherently unhealthy behavior? Where is our compassion for the health and well-being of our young women if we do not do all we can to protect each other from tremendous pain and suffering in the future? For all

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people of faith who, like me, are grateful for God's grace and forgiveness, how can we not respond with anything but compassion, grace, and forgiveness for those who may have fallen off the path of virtue at one point in their life? Are our houses of worship open only to those who have led sinless lives, or are we a people who encourage redemption and forgiveness? And if we desire redemption and forgiveness for our own mistakes, who among us would stand in condemnation of others who have made their own?

2 *This is about the separation of powers between executive and legislative branch* This argument is nearly as baseless as the aforementioned. In 1971, the Legislature gave authority to the State Board of Health (now vested in the Health and Human Services Commission) to determine the list of required school vaccines. Decades before the issuance of my order, an executive agency had statutory authority to require the HPV vaccine. Therefore, the sole achievement of H B No 1098 is preventing the Executive Commissioner from exercising existing statutory authority.

To those legislators who say this issue is about the separation of powers, I say you have made your point: your statutory authority preempts any order I may issue on the same subject. But if you oppose my order on the grounds of separation of powers, and you care about stopping cancer as much as I do, then you should turn around and pass a bill that makes the HPV vaccine widely available. Ultimately, this issue is not about the separation of powers, but the saving of lives. I respect your right to overturn my order, but I do not believe the sincerity of your argument if you do not then advocate for policies that will make the HPV vaccine as widely available as possible.

In fact, this legislature has not only overturned an order that could save women's lives, but you put rider language in the budget that prevents the state from funding vaccines for low-income women if it is mandated by the commission. Instead of maintaining the current defacto state policy of an "opt in" for this vaccine (where parents simply opt to get their daughters vaccinated), you would do harm by making it harder for the daughters of poor families to get this vaccine. This saddens me greatly that you would make a life-saving inoculation available only to those who can afford it. Life-saving medicines and vaccines should not be dependent on one's family income. And based on the cold calculation of cost alone, the price tag of providing this vaccine to eligible young women through the Vaccines for Children program and Medicaid is less than \$13 million in general revenue each year, while the cost of treating HPV-related cervical diseases is \$173 million in direct medical costs each year.

3 *The order usurped parental rights* It did no such thing. Parents still had total discretion over their children's healthcare decisions under my order. The order even asked health authorities to make the "opt out" procedures easier. Under the false guise of restoring parental rights – which were never usurped to begin with – the legislature has passed policy that will make it likely that only 25 percent of young women will be vaccinated against the most common cause of cervical cancer instead of 95 percent of young women, based on historical vaccination data. One course – the course taken by the legislature – ensures the continued spread of the most common Sexually Transmitted Disease (STD) in America, while the other course that I have advocated

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virtually eliminates the spread of that virus in Texas. The harm caused by this bill under the false guise of restoring parental rights will sadly be reaped in lives lost – hundreds each year – and lives irreparably harmed – thousands each year. Twenty years from now, no one who voted for this bill will say they were glad they made it harder to get a vaccine proven efficient in stopping the second most common form of cancer in women. But the small number of legislators who voted against this bill will never have to think twice about whether they did the right thing. No lost lives will haunt the confines of their conscience, sacrificed on the altar of political expediency.

4 *The vaccine is unproven.* The Centers for Disease Control and Prevention has vowed for the efficacy of Gardasil, as have numerous physicians during legislative testimony. Leaders from the medical community and renowned oncologists from all over the state convened to produce the Texas Cervical Cancer Strategic Plan, which states that widespread HPV vaccination is key to eliminating cervical cancer mortality in Texas. And another vaccine is forthcoming, pending Food and Drug Administration approval.

To those who have said we have not learned all there is about the vaccine, I will concede that indeed we are still learning about how long the effects last. But much of the attempt to discredit Gardasil amounted to hyperbole that doesn't stand up in light of clinical data. There are inherent risks with any vaccine. But when clinical data for this vaccine demonstrated 100 percent efficacy in preventing HPV infection, and it was approved as safe and effective in the prevention of this disease, it became a public health imperative to make it as widely available as possible. The novelty of the vaccine became a convenient argument to mask the less politically acceptable argument that some did not want to make, which is that the state should not include an inoculation against an STD as part of school admission policies. And yet the state already requires Hepatitis B shots for school admission, even though that virus is most often transmitted through needle sharing and sexual activity.

Banning widespread access to a vaccine that can prevent cancer is short-sighted policy. Critics cannot legitimately point to science or medicine to back up their claims. Nor can they hide behind the veneer of parental rights when parents can opt out. Nor can they say that it encourages wrong choices with any real legitimacy, and even if they could, they do so without regard to the higher imperative of saving lives. The sad thing is no one would withhold medicine and treatment to any woman suffering from cervical cancer. But with this bill they are withholding widespread access to a vaccine that can prevent most of that suffering from ever happening. Twenty years from now young women will have to fight this battle because they came from homes that couldn't afford this vaccine, or that didn't understand its public health value. They will be the ones who suffer. This legislature is paving the way for many more Heather Burcham's, who are destined to lose this battle because it was misdiagnosed for several years, and then too late once physicians figured out she had cancer.

I respect the Legislature's authority in this matter. They have had their say. Now that they have expressed their will, I am letting this bill become law without my signature because this issue has been held captive by legislative politics long enough, and it is time

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to move this debate out of the arena of legislative politics and into the court of public opinion without delay. Vetoing this bill would not have changed the final outcome, and it would have subjected this debate to continued political posturing while real lives are being impacted each day. Every day that goes by, another Texas woman loses her battle with cervical cancer. That is a tragedy. But I am confident that one day, when the courage that characterizes our people is reflected by the legislature, that we will largely eradicate this disease, and the virus that spreads it. Let us so hope.



IN TESTIMONY WHEREOF, I
have signed my name officially
and caused the Seal of the State
to be affixed hereto at Austin,
this 8th day of May, 2007

Rick Perry

RICK PERRY
Governor of Texas

ATTESTED BY

Roger Williams
ROGER WILLIAMS
Secretary of State

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_____ O'CLOCK

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