

## **FINDING OF EMERGENCY**

Pursuant to Health and Safety Code (HSC), Section 120335, the adoption of these regulatory changes to the California Code of Regulations (CCR), Title 17, Articles 2, 3, and 5, Sections 6020, 6035, 6051, 6065, 6070, and 6075 is deemed an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare.

### Specific Facts Showing the Need for Immediate Action

Assembly Bill (AB) 354 (Arambula, Chapter 434, Statutes of 2010) states that the California Department of Public Health (Department<sup>1</sup>) is given the authority to adopt emergency regulations to implement HSC, Section 120335. Emergency regulations are needed to make specific and clarify the definition of the requirement for the pupil to be “fully immunized against pertussis” at admission or advancement into the 7<sup>th</sup> through 12<sup>th</sup> grades and delete the hepatitis B vaccine requirement for 7<sup>th</sup> grade as a result of the new law. Because the requirements in HSC, Section 120335, are effective beginning July 1, 2011, emergency regulations are required. The Department could not have written regulations prior to enactment of this law since California law did not allow a requirement for immunization against pertussis for pupils ages seven years or older; this restriction was deleted in the recently enacted statute. Unless readopted, the current emergency regulations shall become inoperative on December 29, 2011.

Specifically, HSC, Section 120335, states:

The department may adopt emergency regulations to implement subdivisions (c) and (d) including, but not limited to, requirements for documentation and immunization status reports, in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The initial adoption of emergency regulations shall be deemed to be an emergency and considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, or general welfare. Emergency regulations adopted pursuant to this subdivision shall remain in effect for no more than 180 days.

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<sup>1</sup> Effective July 1, 2007, the California Department of Health Services was split into two separate agencies, the Department of Health Care Services, and the Department of Public Health. This split was effected by the passage of S.B. 162, Chapter 241, Statutes of 2006. The subject of this emergency regulatory package was assigned in that legislation to the Department of Public Health.

The Department proposes emergency amendments to CCR, Title 17, Article 2, Section 6020, Article 3, Sections 6035 and 6051, and Article 5, Sections 6065, 6070, and 6075 to preserve the health, safety and welfare of Californians and to fulfill the requirements of HSC, Section 120335. Without emergency amendments, the affected public will not have clear guidance for pertussis immunization requirements for admission or advancement into the 7<sup>th</sup> through 12<sup>th</sup> grades. This could potentially impact compliance thereby hindering immunization efforts and protection against pertussis for middle and high school students in California.

### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

HSC, Section 131200, authorizes the Department to adopt and enforce regulations for the execution of its duties. HSC, Section 120330, authorizes the Department to promulgate regulations, in consultation with the California Department of Education (CDE), to carry out Chapter 1, Educational and Child Care Facility Immunization Requirements (commencing with Section 120325 but excluding Section 120380).

The legislative intent as stated in HSC, Sections 120325 and 120335, is to achieve total immunization of appropriate age groups against specific diseases and any other disease deemed appropriate by the Department, taking into consideration national recommendations. HSC, Sections 120325 through 120375, require pupils to provide proof of certain immunizations in order to attend public and private elementary and secondary schools, child care centers, family day care homes, nursery schools, day nurseries and developmental centers. HSC, Sections 120325(c), 120365 and 120370, allow for medical or personal beliefs exemptions and requires that the governing authority report on immunization status of new entrants.

California experienced a pertussis (whooping cough) epidemic in 2010. Childhood immunization against pertussis does not provide lasting immunity needed to control the disease. Pertussis remains widespread in the United States despite high levels of immunization in early childhood. Until 2005, there was no licensed pertussis vaccine for persons age seven years or older. Based on recent survey data, many adolescents and adults have not received a recommended pertussis booster. This pool of susceptible persons is likely a major contributor to the spread of pertussis and prolongation of the epidemic throughout the state. Previously, state law prohibited the requirement of pertussis immunization for children seven years of age or older. Because of the urgency of the epidemic, the Legislature enacted AB 354 (Arambula, Chapter 434, Statutes of 2010) and removed the age restriction, requiring full immunization against pertussis for admission or advancement to the 7<sup>th</sup> through

12<sup>th</sup> grades. AB 354 also eliminated the requirement for hepatitis B vaccine for admission or advancement to the 7<sup>th</sup> grade.

This package reflects the Tdap requirement for pupils in 7<sup>th</sup> through 12<sup>th</sup> grades, and becomes effective July 1, 2011 through June 30, 2012. The ongoing pertussis immunization requirement for 7<sup>th</sup> grade becomes effective July 1, 2012, ongoing.

Originally, this package reflected the Tdap requirement for pupils in the 7<sup>th</sup> through 12<sup>th</sup> grades. The regulation package was revised to reflect the ongoing requirement for 7<sup>th</sup> grade students.

This inclusion of the 7<sup>th</sup> grade ongoing requirement prompted revisions to the 399, the Cost Estimating Methodology, and the incorporation by reference of a new reporting form. The Department has been diligent in its efforts to comply with Government Code 11346.1, and is preparing for a Notice of Public Availability and subsequent submittal of the package to the Department of Finance for review and approval, in order to file a Certificate of Compliance with OAL.

The emergency circumstances are unchanged since the initial adoption.

These emergency amendments do the following:

Amend Section 6020, Required Immunizations, for consistency with HSC, Section 120335 to remove the requirement for hepatitis B vaccine for admission or advancement to the 7<sup>th</sup> grade, and specify the requirement for full immunization against pertussis and the immunizing agent, pertussis vaccine (Tdap), to meet the one-year requirement for 7<sup>th</sup> through 12<sup>th</sup> grades beginning July 1, 2011 through June 30, 2012.

Amend Section 6035, Conditional Admission, to be consistent with HSC, Section 120335 by specifying the requirement for full immunization against pertussis for admission or advancement to the 7<sup>th</sup> through 12<sup>th</sup> grades.

Amend Section 6051, Unconditional Admission with Permanent Medical Exemption or Personal Beliefs Exemption, to require a separate PBE for the pertussis booster, and incorporate by reference the optional form to document personal beliefs exemption (PBE) for Tdap, Personal Beliefs Exemption [CDPH 8261 (03/11)] and to reformat into two subparagraphs to delineate between medical and personal beliefs exemptions.

Amend Section 6065, Documentary Proof, to require documentary proof of immunization for the one-year pertussis immunization requirement and to delete an obsolete immunization requirement.

Amend Section 6070, School/Child Care Facility Immunization Record, to add a recording requirement for Tdap dose given during the month of the 7<sup>th</sup> birthday and to incorporate by reference the form Tdap (Pertussis Booster) Requirement [PM 286 S (01/11)], for the governing authority to record the pertussis immunization.

Amend Section 6075, Reporting, to incorporate by reference the following forms: Pertussis Booster Immunization Assessment of Seventh Grade Students, CDPH 8259 (09/11), for the governing authority to report pertussis immunization status for 7<sup>th</sup> grade students beginning July 1, 2012, ongoing; and, Pertussis (Tdap) Assessment of 7-12<sup>th</sup> Grade Students [(CDPH 8260 (01/11)] for the governing authority to report pertussis immunization status for 7<sup>th</sup> through 12<sup>th</sup> grade, for the year beginning July 1, 2011 through June 30, 2012.

The following obsolete form is repealed: Immunization Assessment of Seventh Grade Students (DHS 8259, 8/98)

This emergency action amends CCR, Title 17, Sections 6020, 6035, 6065, 6070 and 6075 to remove a requirement for the hepatitis B vaccine, define the term Tdap, define age and dose requirements for school-age children receiving the pertussis vaccine, and specify the manner by which schools shall record and report pertussis immunization status. The following newly adopted forms are incorporated by reference:

- Tdap (Pertussis Booster) Requirement (PM 286 S, 01/11)
- Personal Beliefs Exemption (CDPH 8261, 03/11)
- Pertussis (Tdap) Assessment of 7-12<sup>th</sup> Grade Students (CDPH 8260, 01/11)
- Pertussis Booster Immunization Assessment of Seventh Grade Students (CDPH 8259, 09/11)

#### Authority and Reference Citations

Authority: Sections 120330, 120335, and 131200, Health and Safety Code

Reference: Sections 120325, 120335, 120370 and 120375, Health and Safety Code