

**Department of State Health Services
Council Agenda Memo for State Health Services Council
November 18-19, 2015**

Agenda Item Title: Amendments to rules concerning the communicable disease exposure and testing of emergency response employees or volunteers

Agenda Number: 4.a

Recommended Council Action:

☐ For Discussion Only

☒ For Discussion and Action by the Council

Background:

The Infectious Disease Prevention Section, Infectious Disease Control Unit, located in the Disease Prevention and Control Division, provides services to prevent, control, and reduce infectious disease. Such services include:

- investigating clusters of foodborne illnesses to identify contaminated food sources, when possible, and remove them from circulation;
- recommending control measures (e.g. staying home from school, disinfection) to stop the spread of communicable diseases;
- arranging diagnostic testing of persons with suspected communicable diseases; and
- accepting required reports of notifiable conditions to be used to understand the burden and trends of infectious diseases and other conditions, to conduct disease investigations, and to inform public health interventions.

Funding to the Infectious Disease Control Unit is provided through the Centers for Disease Control and Prevention federal funds and through state general revenue funds.

Summary:

The purpose of the amendments is to update communicable disease exposure and testing protocols for emergency response employees or volunteers and require each entity to nominate a designated infection control officer. The amendments clarify the conditions and diseases that must be reported, clarify the minimal reportable information requirements for the conditions and diseases, and adjust the list of reportable diseases to include diseases and conditions of concern to public health. The amendments are necessary to comply with Senate Bill 1574, 84th Legislature, Regular Session, and guidance from the Centers for Disease Control and Prevention regarding surveillance of reportable conditions.

The rule changes:

- Redefine “emergency medical service employees, peace officers, detention officers, county jailers, or fire fighters” and “emergency responders” as simply “emergency response employees or volunteers.”
- Require an emergency response employee or volunteer entity to have a primary and alternate designated infection control officer and disclose who these individuals are to local health authorities or local health care facilities.
- Allow designated infection control officers to receive notice of potential exposures to reportable diseases and positive or negative test results of their entity’s emergency response employees or volunteers.
- Revise the list of diseases and criteria that constitute exposure to include any other reportable disease or a disease caused by a select agent or toxin identified or listed under 42 C.F.R. Section 73.3.
- Add novel influenza and poliomyelitis to the list of diseases that constitute exposure and revise references to SARS, *Haemophilus influenzae*, and Shiga-toxin producing *E. coli* infection.

The rules impact emergency response employees or volunteers of Texas whose risk of illness is decreased through early detection and control or prevention of infectious diseases in the community.

Key Health Measures:

The expected outcomes as a result of the proposed rule changes include:

- an increased awareness and alertness of the exposure to infectious diseases for volunteers and emergency response employees;
- a designated infection control officer to act on behalf of employees and volunteers to enhance awareness and response to infectious disease exposures; and
- a reduction of risk of infectious disease among emergency response employees or volunteers.

The rules will require additional staff time for more notifications and an increase of resources for testing of exposures. There is currently no statewide data collected, because the rules are applied at a local level. Additional costs in time and money, along with improved disease control, will be dependent on observations and feedback from emergency response employees, volunteers, and their entities, along with local health departments. The Department of State Health Services has regular contact with local health departments and emergency response entities through which they may communicate their observations.

Summary of Input from Stakeholder Groups:

Stakeholders' feedback solicited by email includes the Texas Association of City and County Health Authorities, Texas Medical Association, Texas Hospital Association, and Texas Department of Emergency Management, Emergency Management Association of Texas. Feedback was also solicited from Local Health Departments and other DSHS areas, including regional offices, HIV/STD Prevention and Care Branch, Regulatory Services Division, and Tuberculosis and Refugee Health Services Branch.

Feedback received focused on:

- establishing a timeline for notification;
- including good Samaritans or healthcare workers under those that may be exposed and tested for diseases during an emergency response;
- modifying the list of diseases and criteria that constitute exposure; and
- using standardized language for emergency response employees or volunteers.

DSHS considered comments that clarified or enhanced rule modifications directly associated with legislation, such as using consistent references to emergency response employees or volunteers. Stakeholders will have an additional opportunity to comment on the rules during the 30-day public comment period.

Proposed Motion:

Motion to recommend HHSC approval for publication of rules contained in agenda item **#4.a.**

Approved by Assistant Commissioner/Director:	Janna Zumbrun	Date:	10/28/2015
Presenter:	Marilyn Felkner	Program:	Emerging and Acute Infectious Disease Branch
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Approved by CPEA:	Carolyn Bivens	Date:	10/28/2015

Title 25. HEALTH SERVICES
Part 1. DEPARTMENT OF STATE HEALTH SERVICES
Chapter 97. Communicable Diseases
Subchapter A. Control of Communicable Diseases
Amendments §§97.11 - 97.12

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§97.11 - 97.12, concerning the communicable disease exposure and testing of emergency response employees or volunteers.

BACKGROUND AND PURPOSE

The purpose of the amendments is to update communicable disease exposure and testing protocols for emergency response employees or volunteers and require each emergency response employee or volunteer entity to nominate a designated infection control officer for their organization. The amendments are necessary to comply with Senate Bill (SB) 1574, 84th Legislature, Regular Session, which amended Health and Safety Code, Chapter 81; Article 18, Code of Criminal Procedure; and Government Code, Chapter 607, and requires the department to expand the diseases and criteria that constitute exposure; prescribe the qualifications for an individual to become a designated infection control officer; and in certain circumstances, order testing of a person who may have exposed emergency response employees or volunteers to a reportable disease; and give notice of test results to designated infection control officers.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 97.11 and 97.12 have been reviewed, and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed to administer the program effectively.

SECTION-BY-SECTION SUMMARY

The amendments to §§97.11 - 97.12 replace the terms “emergency medical service employee, peace officer, detention officer, county jailer, or fire fighter” and “emergency responder” with “emergency response employee or volunteer” to conform with changes made to Health and Safety Code, §81.003, to reclassify these individuals under the broad term “emergency response employee or volunteer.” These amendments are necessary to comply with SB 1574.

The amendments to §97.11(b)(1) define “designated infection control officer” and grant these individuals the ability to receive notice of exposure and positive or negative test results. The entities that employ these individuals must notify the local health authority or local health care facilities that they have a designated infection control officer or alternate designated infection control officer. Section 97.11(b)(2) defines “emergency response employer or volunteer.” These amendments are necessary to comply with SB 1574.

The amendments to §97.11(c)(6) revise the list of diseases and criteria which constitute exposure to include “any other reportable disease or a disease caused by a select agent or toxin identified or listed under 42 C.F.R. §73.3, if there has been an exposure via the usual mode of transmission of that disease as determined by the department or the local health authority.” These amendments are necessary to comply with SB 1574.

The amendments to §97.11(d)(2)(B) allow an emergency response employee or volunteer entity’s designated infection control officer to determine if a risk of exposure to a notifiable condition has occurred in compliance with SB 1574.

The amendments to §97.11 and §97.12 in the following paragraph were originally presented at the June 14, 2015, State Health Services Council (council) meeting as a part of the state agency four-year review of rules, but were withdrawn from that rulemaking timeline so that the amendments concerning SB 1574 could be included and presented at the November 18 - 19 council meetings. The purpose of the amendments is to clarify the conditions and diseases that must be reported; clarify the minimal reportable information requirements for the conditions and diseases; and adjust the list of reportable diseases to include diseases and conditions of concern to public health. The amendments comply with guidance from the Centers for Disease Control and Prevention regarding surveillance for reportable conditions, and allow the department to conduct more relevant and efficient disease surveillance. The amendments comply with Health and Safety Code, Chapter 81, which requires the department to identify each communicable disease or health condition which is reportable under the chapter.

The amendments to §97.11(c)(1) delete the term “SARS” and update the condition to “novel coronavirus causing severe acute respiratory disease” to account for different novel coronaviruses (including Middle Eastern Respiratory Syndrome (MERS)) that could emerge. Novel influenza was added to the list of diseases and criteria which constitute exposure because it is a high consequence infection disease. The amendments to §97.11(c)(2) revise “*Haemophilus influenzae* type b infection, invasive” to “*Haemophilus influenzae*, invasive” to ensure that all *Haemophilus influenzae* in Texas are identified, especially in children under five years of age (the age group targeted for vaccine and at most risk from the disease). In §97.11(c)(4), “Shiga-toxin producing *E.coli* infection” nomenclature is updated to “Shiga toxin-producing *E.coli* infection” to align with the Centers for Disease Control and Prevention’s use of hyphenation. Poliomyelitis was also added in subsection (c)(4) to account for potential fecal-to-oral transmission. The amendments to §97.12(c) add a condition, “Methicillin-resistant *Staphylococcus aureus* (MRSA) wounds, skin infections or soft tissue infections,” which is referenced in §97.11(c)(5), as a notifiable condition that constitutes exposure for possible testing of an emergency response employee or volunteer.

The amendments to §97.12(c) add the rule reference to §97.11(c)(6) which states “any other reportable disease or a disease caused by a select agent or toxin identified or listed under 42 C.F.R. §73.3...” as notifiable conditions that constitute exposure for possible testing of an emergency response employee or volunteer in compliance with SB 1574.

FISCAL NOTE

Ms. Imelda Garcia, Director, Infectious Disease Prevention Section, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Garcia has also determined that there will be no adverse impact on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. Therefore, an economic impact statement and regulatory flexibility analysis for small and micro-businesses are not required.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Garcia has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections will be a decreased risk of illness through early detection and control or prevention of infectious diseases in the community, especially among emergency response employees or volunteers.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Marilyn Felkner, Emerging and Acute Infectious Disease Branch, Infectious Disease Control Unit, Infectious Disease Prevention Section, Division for Disease Control and Prevention Services, Department of State Health Services, Mail Code 1960, P.O. Box 149347, Austin, Texas 78714-9347 or by email to Marilyn.felkner@dshs.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §81.004, which authorizes rules necessary for the effective administration of the Communicable Disease Prevention and Control Act; Health and Safety Code §81.048, which provides the department with the authority to designate reportable disease for notification, define the conditions that constitute possible exposure to those diseases, and notify emergency response employees or volunteers of test results; Health and Safety Code, §81.050, which provides the department with the authority to order testing of a person who may have exposed an emergency response employee or volunteer to a reportable disease; and Government Code, §531.0055 and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

The amendments affect Health and Safety Code, Chapters 81 and 1001; and Government Code, Chapters 531 and 2001.

Legend: (Proposed Amendments)

Single Underline = Proposed new language

[Bold, Print, and Brackets] = Current language proposed for deletion

Regular Print = Current language

(No change.) = No changes are being considered for the designated subdivision

Subchapter A. Control of Communicable Diseases.

§97.11. Notification of Emergency Response Employees, Volunteers, **[Emergency Medical Personnel, Fire Fighters, Peace Officers, Detention Officers, County Jailers,]** or Other Persons Providing Emergency Care of Possible Exposure to a Disease.

(a) Purpose. The Communicable Disease Prevention and Control Act (Act), §81.048, requires a licensed hospital to notify a health authority and designated infection control officer in certain instances when an emergency response employee or volunteer **[emergency medical service employee, peace officer, detention officer, county jailer, or fire fighter]** may have been exposed to a reportable disease during the course of duty from a person delivered to the hospital under conditions that were favorable for transmission. A hospital that gives notice of a possible exposure under this section or a local health authority or designated infection control officer that receives notice of a possible exposure under this section may give notice of the possible exposure to a person other than an emergency response employee or volunteer **[emergency medical service employee, a peace officer, a detention officer, a county jailer, or a fire fighter]** if the person demonstrates that the person was exposed to the reportable disease while providing emergency care.

(b) Definitions.

(1) Designated infection control officer--The person serving as an entity's designated infection control officer under Health and Safety Code, §81.012, who has a health care professional license or specific training in infection control, acts as liaison between the entity and the destination hospital, and monitors all follow-up treatment provided by the affected emergency response employee or volunteer.

(2) Emergency response employee or volunteer--An individual acting in the course and scope of employment or service as a volunteer as emergency medical service personnel, a peace officer, a detention officer, a county jailer, or a fire fighter, as defined under Health and Safety Code, §81.003.

(c) **[(b)]** Disease and criteria which constitute exposure. The following diseases and conditions constitute a possible exposure to the disease for the purposes of the Act, §81.048:

(1) chickenpox; diphtheria; measles (rubeola); novel coronavirus causing severe acute respiratory disease; novel influenza; pertussis; pneumonic plague; [SARS;] smallpox; pulmonary or laryngeal tuberculosis; and any viral hemorrhagic fever, if the worker and the patient are in the same room, vehicle, ambulance, or other enclosed space;

(2) *Haemophilus influenzae* [**Haemophilus influenzae type b infection**], invasive; meningitis; meningococcal infections, invasive; mumps; poliomyelitis; Q fever (pneumonia); rabies; and rubella, if there has been an examination of the throat, oral or tracheal intubation or suctioning, or mouth-to-mouth resuscitation;

(3) acquired immune deficiency syndrome (AIDS); anthrax; brucellosis; dengue; ehrlichiosis; hepatitis, viral; human immunodeficiency virus (HIV) infection; malaria; plague; syphilis; tularemia; typhus; any viral hemorrhagic fever; and yellow fever, if there has been a needlestick or other penetrating puncture of the skin with a used needle or other contaminated item; a splatter or aerosol into the eye, nose, or mouth; or any significant contamination of an open wound or non-intact skin with blood or body fluids;

(4) amebiasis; campylobacteriosis; cholera; cryptosporidiosis; *Escherichia coli* O157:H7 or other Shiga toxin-producing [**Shiga-toxin producing**] *E. coli* infection; hepatitis A; poliomyelitis; salmonellosis, including typhoid fever; shigellosis; and *Vibrio* infections, if fecal material is ingested; **[and]**

(5) Methicillin-resistant *Staphylococcus aureus* (MRSA) wounds, skin infections or soft tissue infections, if there has been contact of non-intact skin to these infections or drainage from these infections; and [.]

(6) any other reportable disease or a disease caused by a select agent or toxin identified or listed under 42 C.F.R. §73.3, if there has been an exposure via the usual mode of transmission of that disease as determined by the department or the local health authority.

(d) [(c)] Notification processes. The entity that employs or uses the services of an emergency response employee or volunteer is responsible for notifying the local health authorities or local health care facilities that the entity has a designated infection control officer or alternate designated infection control officer. The following notification processes shall apply when possible exposures to notifiable conditions occur.

(1) If the hospital has knowledge that, on admission to the hospital, the person transported has any of the notifiable conditions listed in subsection (c)(1) **[(b)(1)]** of this section, then notice of a possible exposure of an emergency response employee or volunteer [**emergency medical service employee, peace officer, detention officer, county jailer, or fire fighter**] to the disease shall be given to the health authority for the jurisdiction where the hospital is located and the designated infection control officer of the entity that employs or uses the services of the emergency response employee or volunteer.

(2) For possible exposures to any of the diseases listed in subsection (c)(2) - (6) **[(b)(2) - (5)]** of this section, the emergency response employee or volunteer or the designated infection control officer of the employing entity [**emergency medical service employee, peace officer, detention officer, county jailer, or fire fighter**] shall provide a medical professional at the hospital with notice, preferably written, of the circumstances of the possible exposure. Once the hospital has knowledge of a possible exposure, then notice shall be given as follows.

(A) The hospital shall report the following information to the health authority for the jurisdiction where the hospital is located and the designated infection control officer of the entity that employs or uses the services of the emergency response employee or volunteer:

(i) the name of the emergency response employee or volunteer **[emergency medical service employee, peace officer, or fire fighter]** possibly exposed;

(ii) the date of the exposure;

(iii) the circumstances of the exposure;

(iv) whether laboratory testing was performed for diseases potentially transmitted by such exposures; and

(v) positive or negative test results for these diseases.

(B) The health authority or designated infection control officer of the entity that employs or uses the services of the affected emergency response employee or volunteer shall determine whether or not significant risk of disease transmission exists and report his/her assessment of the possible exposure event to the emergency response employee or volunteer **[director of the entity that employs the emergency medical service employee, peace officer, detention officer, county jailer, or fire fighter]**.

[(C) [The director of the entity that employs the emergency medical service employee, peace officer, detention officer, county jailer, or fire fighter shall inform the employee of the health authority's assessment.]

(C) **[(D)]** A person notified of a possible exposure under this section shall maintain the confidentiality of the information provided to him or her.

(e) **[(d)]** Obligation to test. This section does not create a duty for a hospital to perform a test that is not necessary for the medical management of the person delivered to the hospital.

§97.12. Mandatory Testing of Persons Suspected of Exposing Certain Other Persons to Notifiable Conditions and Workers' Compensation Issues Relevant to Postexposure Management of Emergency Response Employees or Volunteers **[Emergency Responders]**.

(a) Purpose. The Communicable Disease Prevention and Control Act, Health and Safety Code, §81.050, provides a mechanism by which an emergency response employee or volunteer **or [emergency medical service employee, paramedic, fire fighter,] correctional officer [, or law enforcement officer,]** who receives a bona fide exposure that places him or her at risk of a notifiable condition in the course of employment or volunteer service may request the Department of State Health Services (department) or the department's designee to order testing of the person who may have exposed the worker.

(b) Definitions. For the purposes of this section, the following words and/or terms will have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Emergency response employee or volunteer--An individual acting in the course and scope of employment or service as a volunteer as emergency medical service personnel, a peace officer, a detention officer, a county jailer, or a fire fighter, as defined under Health and Safety Code, §81.003.

[(2) Emergency responder--An emergency medical services employee, paramedic, fire fighter, correctional officer, or law enforcement officer who is employed by or volunteers for an employer with the responsibility of answering emergency calls for assistance.]

(3) Requestor--An emergency response employee or volunteer **[emergency responder]** who presents a sworn affidavit to a health authority to request testing of a person who may have exposed him/her to a notifiable condition in the course of his/her duties.

(4) Source--The person who may have exposed an emergency response employee or volunteer **[emergency responder]** to a notifiable condition during the emergency response employee or volunteer's **[emergency responder's]** course of duties.

(c) Diseases and criteria that constitute exposure. The notifiable conditions and the criteria that constitute exposure to such diseases are as outlined in §97.11(c)(1) - (6) [§97.11(b)(1) - (4)] of this title (relating to Notification of Emergency Response Employees, Volunteers, [Emergency Medical Personnel, Fire Fighters, Peace Officers, Detention Officers, County Jailers,] or Other **[other]** Persons Providing Emergency Care of Possible Exposure to a Disease).

(d) The department's designee. For the purposes of implementing the Health and Safety Code, §81.050(d), (e), and (h), the following physicians have been delegated by the department to be the department's designee who will determine if a risk of exposure to a notifiable condition has occurred:

(1) the health authority for the jurisdiction in which the emergency response employee or volunteer **[emergency responder]** is employed;

(A) - (B) (No change.)

(2) (No change.)

(e) Criteria under which a request for mandatory testing can be made. A request under this section may be made only if the emergency response employee or volunteer **[emergency responder]**:

(1) - (3) (No change.)

(f) Initial actions required of the department's designee. Upon receiving a request for mandatory testing in accordance with subsection (e) of this section, the department's designee shall:

(1) review the emergency response employee or volunteer's **[emergency responder's]** request and inform him or her whether the request meets the criteria establishing risk of infection with a notifiable condition;

(2) - (4) (No change.)

(g) (No change.)

(h) Court proceedings. The district court proceedings include:

(1) a determination as to whether exposure occurred and whether the exposure presents a possible risk of infection as outlined in §97.11(c)(1) - (6) **[§97.11(b)(1) - (4)]** of this title;

(2) - (4) (No change.)

(i) - (j) (No change.)

(k) Workers' compensation issues. For the purposes of qualifying for workers' compensation or any other similar benefits for compensation, the following shall apply:

(1) An emergency response employee or volunteer **[emergency responder]** who claims a possible work-related exposure to a notifiable condition must provide the employer with a sworn affidavit of the date and circumstances of the exposure and document that, not later than the tenth day after the date of the exposure, the emergency response employee or volunteer **[emergency responder]** had a test result that indicated an absence of the notifiable condition.

(2) An emergency response employee or volunteer **[emergency responder]** exposed to a notifiable condition during the course of employment shall be entitled to the benefits described in the Government Code, Chapter 607.

(3) A state emergency response employee or volunteer **[emergency responder]** claiming an exposure to HIV infection in the normal course of his/her duties must follow the postexposure procedure mandated by the Health and Safety Code, §85.116, and §97.140 of this title (relating to Counseling and Testing for State Employees Exposed to Human Immunodeficiency Virus (HIV) Infection on the Job).

(4) (No change.)

(5) For further clarification of workers' compensation issues, emergency response employees or volunteers [**emergency responders**] and their employers should contact the Texas Department of Insurance, Division of Workers' Compensation at 1-800-252-7031.

(1) Testing of the exposed person. An emergency response employee or volunteer [**emergency responder**] who may have been exposed to a notifiable condition, may not be required to be tested.