New immunization requirements for public school students draw fire

by Colleen Wright
STAFF WRITER

CLARKSBURG — Many state residents have been debating both the legality and the contents of an interpretive rule put into effect Feb. 28 that changed school immunization requirements.

Under the new rule, students entering the public school system for the first time will be required to show proof they were vaccinated for hepatitis B, vericella (chickenpox), mumps and a fourth dose of diphtheria.

The new immunization requirements are in addition to the previous requirements, which include pertussis (whooping cough), poliomyelitis, rubella, rubeola (measles) and tetanus.

Because the new requirements were put through as an "interpretative rule" by the state Department of Health and Human Resources, no legislative action was required for them to go into effect.

Citizens opposed to the rule and members of West Virginians for Vaccine Exemptions argue that the way the new requirements were put into place does not follow state code.

"Interpretive rule means a rule adopted by an agency independently of any delegation of legislative power, which is intended to provide information or guidance to the public. It is not intended by the agency to be determinative of any issue affecting private rights, privileges or interests," said John Grindley, spokesman for West Virginians for Vaccine Exemptions. "Clearly this rule affects individual rights."

In a memorandum, attorney and state Director of Public Health Regulations Ann A. Spaner explains the legality of the DHHR to put such rules into effect without legislative action.

"The Secretary of the Department of Health and Human Resources and the Commissioner for the Bureau of Public Health have both general and specific statutory authority to promulgate rules to protect public health," Spaner wrote.

Included in their duty to protect public health, Spaner explains, "is the specific charge to prevent illness and promote good health for children."

State law, Spaner continues, requires compulsory vaccinations for children prior to school entry.

Section 5-16-9 of state code gives the health commissioner the authority to add more immunizations without legislative rule. As noted by Spaner, it reads "additional immunizations may be required by the commissioner of the Bureau for Public Health for public health purposes."

Those opposed to the new requirements also argue that certain vaccinations are not necessary and there should be a way for students to become exempt from receiving the vaccinations based on philosophical or religious beliefs.

"Forty-eight other states allow religious exemptions to comply with First Amendment rights. In West Virginia, the only way to opt out is if you have a medical exemption," Grindley said.

For example, Grindley said, many parents do not agree with giving their child the vericella vaccine because it contains "residual components of aborted fetal cells including DNA and protein," as stated on the Merck label.

Parent and strong anti-abortion advocate Mary Tillman of Lost Creek calls the contents of the vaccine "disturbing."

"It is only fair that parents can choose to do something that is not against their conscience," said Tillman, who homeschools her children and refuses to give them the vaccine.

Jeremy Dys, president and general counsel for The Family Policy Council of West Virginia, does not think it is fair to deny children schooling because they did not receive a vaccine.

"Christians and other people with moral objections should not be punished for abiding by their beliefs," Dys said.

Many opposed to the rule also argue the hepatitis B vaccine is not necessary for all children entering the school system, as most are of elementary age and not at risk for the disease.

However, DHHR officials say that "at least 200,000 new infections occur yearly and only universal immunization can reduce the number of new infections," said John Law, spokesman for the state DHHR.

Dr. Richard Terr, a physician who practiced in Morgantown for 34 years prior to retirement, does not see hepatitis B as a threat to students.

"I think it is absurd to require it. Any vaccination can carry risks, and the decision to vaccinate a child should be a parent and physician decision, not government," Terr said.

Despite the controversy, state DHHR officials stand by the new immunization requirements, stating that they are a "crucial part of the public health safety net and provide the capability not only to control diseases but to eradicate them," Law said.

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