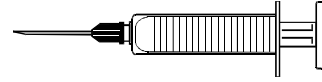


PROVE

Parents Requesting Open Vaccine Education



March 3, 2003

Dear Senator _____,

We urge you to **OPPOSE SB 399 scheduled for Public Hearing today** in the Senate Infrastructure Development and Security Committee **UNLESS AMENDED** to address the concerns listed below. We recognize the similarities between SB 399 and SB 355 and **we prefer the language in SB 399 over SB 355** because of the thoughtful attempt to more reasonably and effectively address emergency powers.

- **SECTION 1**

Definition for “Public Health Emergency” too Broadly Defined – loophole allows for abuse of discretion. The definition of a “Public Health Emergency” fails to limit the threat from a highly infectious communicable disease that poses a high risk of death or serious long-term disability to a large number of people to the general healthy population. In other words, with Texas having over 21 million people, there are many subsets of large numbers of the population with special health concerns that would make almost any communicable disease a public health emergency under this definition. For example, the flu for elderly in a nursing home or people infected with HIV could be classified this way. Is it really this committee’s intention to allow a public health emergency to be declared for the flu? SB 399 would allow for that.

SUGGESTED AMENDMENT: insert qualifying language in SECTION 1 (8) (a) to limit the risk of death or serious long-term disability to a large number of healthy people in the general population.

- **SECTION 3**

EXPANDS power to order quarantine yet codified protections for individuals, while better than SB 355, are still lacking some protections.

SUGGESTED AMENDMENT: Inserting language to accommodate the following concerns would go a long way to alleviating concerns in this area:

- 1) *The right for families to stay together*
- 2) *The right for a parent to designate a temporary guardian for their child*
- 3) *Reasonable Limitations of Quarantine period (example – on suspected exposure – limit time to possible incubation period.*

- **SECTION 6**

Gives unchecked authority for the Health Commissioner to request reports for “other health conditions” creating the opportunity for fishing

expeditions that could have little to do with a public health emergency and could compromise patient privacy on sensitive health information.

SUGGESTED AMENDMENT: Insert language to limit the subjects of the reports to the commissioner to health conditions that might be useful in detecting or confirming a suspected act of bioterrorism or an epidemic of a highly contagious and deadly disease.

- **BROAD POWERS FOR IMPLEMENTATION OF CONTROL MEASURES THAT COVER IMMUNIZATION AND MEDICAL TREATMENT IN THIS BILL AND CURRENT LAW RECKLESSLY CREATES HEALTH RISKS FOR INDIVIDUALS.**

This bill gives new and expanded powers to the Texas Department of Health and the Health Commissioner. The dirty secret in Texas' existing communicable disease statutes is that the department has the authority to order "control measures" which include vaccination or pharmaceutical drug treatments on an individual and the individual has no right to refuse for safety concerns or medical contraindications, religious beliefs, or reasons of conscience – refusal to follow orders for vaccination or drug treatments during an outbreak or epidemic of any communicable disease declared by the health commissioner can land a person in jail and with hefty financial penalties. Some have classified existing Texas law as far worse than the language included in the highly controversial Model State Emergency Health Powers Act.

This is particularly concerning when one considers the large list of contraindications and high risk factors associated with the smallpox vaccine. The Texas Department of Health website states that one case of smallpox in Texas would activate their plan to vaccinate the entire state population within 5-10 days. (<http://www.tdh.state.tx.us/smallpox/posteventspvac.htm>). **The current statute under these circumstances would not give anybody the ability to decline immunization and choose to be quarantined instead.** A person could be put in jail for up to 6 months and fined up to \$2000 for refusing to take a drug or vaccine ordered by the health department. **Because of the health histories of our members, an order for smallpox vaccination by the health department could be either a death sentence or a jail sentence for the majority of our organization's members. This is wrong.**

SUGGESTED AMENDMENT: Amend the highly restrictive and unreasonable Health and Safety Code to allow a person to refuse medical treatment, an immunization, or a control measure that may carry risk of injury or death to their body ordered by the health department or a local health authority for medical, unrestricted religious or conscientious reasons with the reasonable balanced provision that the person who refuses may be ordered to be humanely isolated or quarantined during an emergency. This refusal must be allowed without penalty or liability. Also remove the criminal penalty for a person who refuses medical treatment or immunization and apply the penalty only if the individual refuses to follow or violates an order for quarantine. For example:

§ 81.009, Health and Safety Code, is amended to read as follows:

(a) This chapter does not authorize or require the medical treatment or immunization of an individual, or in the case of a child, the parent, managing conservator, or guardian who refuses treatment or immunization for the following reasons:

(1) the medical treatment or immunization is medically contraindicated based on the opinion of a physician licensed by any state in the United States who has examined the individual;

(2) the individual, or in the case of a child, the parent, managing conservator, or guardian states that the medical treatment or immunization is being declined for reasons of conscience or because of a religious belief. [chooses treatment by prayer or spiritual means as part of the tenets and practices of a recognized church of which the individual is an adherent or member. However,]

(b) [‡]The individual may be humanely isolated or quarantined in the least restrictive means practicable either at home if the individual does not have a confirmed case of a communicable disease or in an appropriate facility and shall obey the rules, orders, and instructions of the department or health authority while in isolation or quarantine.

~~[(b) An exemption from medical treatment under this section does not apply during an emergency or an area quarantine or after the issuance by the governor of an executive order or a proclamation under Chapter 418, Government Code (Texas Disaster Act of 1975).]~~

§ 81.087 (a), Health and Safety Code, is amended to read as follows:

(a) A person commits an offense if the person knowingly refuses to perform or allow the performance of certain control measures ordered by a health authority or the department under Sections 81.083-81.086. If the control measure specifies medical treatment or immunization of the individual, and the individual or in the case of a child, the parent, managing conservator, or guardian, claims an exemption for medical, religious or conscientious reasons as provided in § 81.009 (a), a person commits an offense under

this section only if the person refuses or fails to follow an order by a health authority or the department for isolation or quarantine.

The Texas Department of Health already has a huge credibility problem and a reputation for abusing authority. Expanding the authority of this department while offering individuals little if any legal ability to protect themselves or their family from the dangerous effects some vaccines, drugs or other “control measures” ordered at the whim of a department, whether during an emergency or not, will make people further distrust the department in a true public health emergency, which unfortunately is the precise time we need most to trust and rely upon them.

I would also like to let the committee know that we met with Senator Van de Putte’s staff on February 14th and discussed our concerns in person with her legislative aid in charge of this bill and provided him with written support materials. He was encouraging that they may consider a good number of our suggestions and that he would get back to me and let me know. However, to this date, I have not received any communications back from her staff that any changes would be made to address these concerns. Therefore, we are respectfully requesting that you oppose this bill unless a committee substitute or amendments are offered to address these concerns.

Thank you.

Sincerely,
Dawn Richardson, President
Parents Requesting Open Vaccine Education

PROVE provides information on vaccines, and immunization policies and practices that affect the children and adults of Texas. Our mission is to prevent vaccine injury and death and to promote and protect the right of every person to make informed independent vaccination decisions for themselves and their family.