



**Texas House Public Health Committee  
House Bill 44 by Rep. Valoree Swanson  
March 20, 2023**

Written Testimony submitted on behalf of:

Texas Pediatric Society  
Texas Medical Association  
Texas Academy of Family Physicians  
Texas Public Health Coalition  
American College of Physicians – Texas Services Chapter

Chairwoman Klick and esteemed members of the Texas House Public Health Committee, the Texas Pediatric Society, Texas Medical Association, Texas Academy of Family Physicians, and the more than 30 member organizations of the Texas Public Health Coalition appreciate the opportunity to submit written comments **in opposition to** House Bill 44.

**Vaccines Are Safe, Effective, and Save Lives**

As physicians, the first responsibility to our patients and to our communities is to do no harm. To carry out this responsibility, we must make difficult decisions about how to provide best-practice care in complex situations. One such situation is that of parents who are vaccine hesitant. Vaccines have been consistently proven to be safe, effective, and prevent the spread of terrible infectious diseases. This is why physicians and other health care professionals who support evidence-based medicine strongly recommend parents fully immunize their children according to the approved recommended immunization schedule of the American Academy of Pediatrics (AAP), American Academy of Family Physicians, American College of Obstetricians and Gynecologists, and CDC Advisory Committee on Immunization Practices (ACIP).<sup>1</sup>

**Counseling Patients About the Benefits of Vaccines is a Core Physician Responsibility**

If a parent is concerned about getting their child fully immunized on time, the job of a health care professional is to counsel the parent about the benefits of immunization, not only for their child, but also for their community. This counsel is taken seriously to ensure the parent is aware of the potential risks associated with their child going unimmunized. Due to the importance of this crucial clinical recommendation, reminders and information are provided to the parent at subsequent wellness checks, should they continue to have hesitations. If we fail to convince the parent to immunize their child according to what is required for public school entry, then we ask the parent to seek care for the child elsewhere. This is not done out of spite or frustration, but in the best interest of a clinic's entire patient population. This practice is a clinical decision born out of a physician's first responsibility – to do no harm to patients. We believe that HB 44 encroaches on the autonomy of a physician and other health care professionals to treat and practice according to these foundational clinical and medical principles and responsibilities. Furthermore, if parents cannot trust their health care professional to immunize their children according to the CDC and AAP schedule then there is a

<sup>1</sup> Centers for Disease Control and Prevention. (2019). Vaccine Recommendations and Guidelines of the ACIP. Retrieved from: <https://www.cdc.gov/vaccines/hcp/acip-recs/index.html>

fundamental mistrust issue that speaks to a family's right to seek care from a different health care professional. In fact, the AAP has outlined considerations and best practices when dismissing a patient for refusal to adhere to clinical recommendations including vaccine refusal.<sup>2</sup>

#### **HB 44 Would Endanger Patients in a Physician's Waiting Room Who May be Susceptible to Infectious Diseases and Would Compromise a Physician's Clinical Judgment and Decisionmaking**

We have a duty to ensure patients have a safe place to receive medical care. Herd immunity is an essential public health strategy to keep those who cannot get vaccinated due to a medical condition safe from infectious disease. Immunocompromised children, such as children with leukemia and infants too young to receive vaccinations, are vulnerable to the spread of infectious diseases from those near them who have not been vaccinated. As a practical matter, should an infectious disease be brought into a waiting room, not only would it endanger patients with fragile immune systems, but logistically the facility might have to be shuttered for a period for decontamination, disrupting patient care. A parent has the right in Texas not to vaccinate their child. However, other parents likewise have a right not to see their own – possibly medically fragile – children exposed to illness because of the decisions of others. It is the responsibility of the individual healthcare professional to make clinical and business workflow decisions on behalf of the safety and well-being of their patient population. With infectious disease outbreaks like measles on the rise, health care professionals must make tough decisions to keep vulnerable populations – including children, pregnant women, and the elderly – safe in their own waiting rooms. For instance, in a clinic that sees 150 pediatric patients in a day, approximately 20% may be under 12 months of age, and the youngest just 2 days old. None of these children can receive their MMR (measles, mumps, rubella) vaccination yet, as they are too young. Physicians and other health care professionals must think of the health and safety of all patients, and thus make the decision not to accept new patients whose parents are firm in their decision not to vaccinate; and to transition patients out of the practice whose parents are unwilling to vaccinate after counseling.

#### **HB 44 Infringes Upon the Right of a Physician or Other Health Care Provider to Provide Services to Limit or Control Their Practice Responsibilities**

Just like any other small business, a physician or health care professional may decline to undertake care of a patient as long as he or she is not violating federal or state laws or AMA ethical guidelines prohibiting discrimination based on a protected class, including race, color, or religion, among others.<sup>3</sup> Immunization status is not a protected class. Patients who require care within an insurance network – whether through commercial or public insurance – are guaranteed access to a physician, but not a specific physician. If a health care professional and patient cannot reach an agreement on establishing or continuing a relationship, it is the obligation of the patient's health plan to find another in-network provider.

#### **HB 44 Targets Physicians and Providers Who Are Willing to Care for Medicaid and CHIP Patients**

Violation of this legislation would lead to removal of all state funding from a health care professional, including Medicaid and CHIP funding, undermining the ability of this low-income population to access care in their community. Meanwhile, those who refuse to vaccinate tend to reside in higher-income areas and utilize commercial insurance instead of qualifying for Medicaid or CHIP.<sup>4</sup> This population would typically find it easier to transition to a different health care professional than a low-income patient. The bill could have the inadvertent consequence of increasing barriers to care for low-income patients – through no fault of their own – who, statistically speaking, adhere to vaccine regimens in higher numbers. Texas already has too few physicians and providers accepting Medicaid patients due to low reimbursement and administrative hassles. Adding another barrier to providing best-practice clinical care to their patients will cause even more providers to drop out of the program.

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<sup>2</sup> Kathryn M. Edwards, Jesse M. Hackell, THE COMMITTEE ON INFECTIOUS DISEASES, THE COMMITTEE ON PRACTICE AND AMBULATORY MEDICINE. Countering Vaccine Hesitancy. *Pediatrics* Sep 2016, 138 (3) e20162146; DOI: 10.1542/peds.2016-2146. Retrieved from: <https://pediatrics.aappublications.org/content/138/3/e20162146>

<sup>3</sup> American Medical Association Council on Ethical and Judicial Affairs. E-9.12 Patient-physician relationship: respect for law and human rights. *Code of Medical Ethics*. Updated November 2007. Available at <http://journalofethics.ama-assn.org/2010/08/coet1-1008.html>

<sup>4</sup> Wei F, Mullooly JP, Goodman M, et al. Identification and characteristics of vaccine refusers. *BMC Pediatr*. 2009; 9:18 pmid:19261196 Available at: <https://www.ncbi.nlm.nih.gov/pubmed/19261196>

Thank you for the opportunity to comment. For any questions or follow-up please contact Clayton Travis, TPS director of advocacy and health policy, at [Clayton.Travis@txpeds.org](mailto:Clayton.Travis@txpeds.org) or Matt Dowling, TMA director of public affairs, at [matt.dowling@texmed.org](mailto:matt.dowling@texmed.org).