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**COMMENTS RELATED TO PROPOSED RULES AND REGULATIONS PERTAINING
TO IMMUNIZATION AND COMMUNICABLE DISEASE TESTING IN PRESCHOOL,
SCHOOL, COLLEGES OR UNIVERSITIES
January 16, 2014**

The ACLU of Rhode Island has a number of serious concerns regarding the proposed *Rules and Regulations Pertaining to Immunization and Communicable Disease Testing in Preschool, School, Colleges or Universities*. The Department of Health's continued emphasis on mandating vaccination against influenza, despite the lack of any evidence indicating that such mandates significantly benefit public health in the long run, represents a serious intrusion on the ability of individuals and families to make their own medical decisions. Further, exclusion from school on the basis of influenza or HPV immunization status serves only to stigmatize unvaccinated individuals and stymie the education of students while providing no increased protection to children or individuals at risk for contracting illness.

The vaccination of children against illness is a laudable goal, and the ACLU appreciates that there are some illnesses and some situations that may warrant imposition of mandatory vaccinations. However, mandatory vaccinations must be reserved only for those diseases where the vaccine has an undeniable preventative effect on the illness, where the illness is easily transmitted by the individuals and in the situations under consideration. While vaccinations may be recommended for the individuals affected by these regulations, the illnesses and circumstances in question do not meet the threshold for which mandated vaccinations are appropriate.

The proposed regulations would require annual flu vaccinations for children ages 6-59 months of age who attend any preschool or day care program in the state of Rhode Island, except when there is a documented medical contraindication or religious exemption. Mandated vaccination of children against influenza represents a very serious erosion of a parent's ability to make decisions based on informed consent for the safety of their child. While we understand the frustration of public health officials who have been unable to convince parents to willingly vaccinate their children against influenza, state intervention in the medical decisions of families must be limited and rare. In the case of vaccines, state intervention must be limited only to those instances in which the vaccine can reliably prevent the illness, and where an unvaccinated child is at high risk of transmitting the illness to the children around them within the confines of the classroom or daycare. For the tens of thousands of children who attend preschool or day care in Rhode Island, the Department of Health well effectively overrule the decisions of parents and family doctors on an annual basis, in favor of a vaccine with limited efficacy and no permanence.

For instance, many individuals who possess a medical contraindication for the flu shot do so based on an egg allergy. Yet such an allergy would likely be undetected for many children in this age threshold, for whom eggs have not yet been introduced in their diet. Because these

regulations allow only for religious or medical exemptions, parents concerned about potential egg allergies will be required to ignore those concerns and subject their child to the flu vaccine, a direct contradiction to the basic tenets of informed consent. (We are aware that there is a non-egg based flu vaccine available, but we understand that it is recommended for use only in adults over the age of 18. Further, while some childhood vaccines do contain traces of egg protein, it is our understanding that they contain much lower levels of egg than the flu vaccine.) Parents who object to the flu vaccine for this or many other reasons will have no recourse available to them, beyond keeping their children out of daycare altogether. For the tens of thousands of working parents in Rhode Island, this is an impossibility.

While these regulations aim to protect the public health of children, the provisions requiring the automatic exclusion of an unvaccinated child from an outbreak of the flu or HPV raise very serious public health concerns. While existing regulations have required the exclusion of unvaccinated students from school in the case of prior outbreaks, the diseases for which students were excluded were those where outbreaks were unlikely, and where the illness prevents a significant health risk for most or all who contract it. These regulations, however, all but guarantee the exclusion of unvaccinated students for months at a time, year after year. While the efficacy of the flu vaccine varies from year, an outbreak of the flu is all but guaranteed to occur every year – particularly because “outbreak” remains undefined in these regulations. For students who do not receive a vaccination either because of a religious, philosophical or medical exemption, these regulations essentially amount to a required out-of-school suspension, one that can last days or weeks depending on the severity of the flu season.

The exclusion of middle and high school students who are unvaccinated against HPV is additionally inappropriate, because HPV is unlikely to spread in the school environment. HPV transmission requires sexual contact, but the regulations still allow for a student to be excluded from school in the event of an outbreak, for a period of time determined by the Department. Although it is highly unlikely that an unvaccinated student would be in a position to transmit HPV to another student during school hours and on school property, these regulations treat them a walking time bombs who should be excluded from school – left at home, likely with little supervision – in the name of public health.

The educational disparity this creates between those who cannot or do not receive vaccinations cannot be ignored. In 2013, the American Academy of Pediatrics both condemned the use of exclusionary suspension policies and called for greater early intervention for preschool children, recommendations these regulations would greatly contradict. As public officials work to keep more students in school, these regulations would exclude students from school even when they pose no greater risk to the students around them than the public at large.

For both influenza and HPV, exclusion from school is a penalty that will do little to protect the unvaccinated student from those around them, but which will certainly leave unvaccinated students segregated from their teachers and peers, suffering the myriad ill-effects that such exclusion brings – many of which will last much longer than the symptoms they could catch.

The regulations further require annual flu vaccines for child care workers, with no option for religious or philosophical exemptions. “Child care worker” remains undefined, therefore coercing into vaccination every employee of the hundreds of preschools or day care facilities throughout Rhode Island. Preschool and daycare workers are no more at risk for contracting or passing the flu as every other individual with whom a child comes in contact, and this regulation raises serious concerns regarding the Department of Health’s apparent desire to require vaccination of any individual over whom they have some jurisdiction. This regulation places qualified individuals who are of no risk to the children they serve of having to receive a vaccine to which they are diametrically opposed, or lose their jobs. This is an inappropriate overstep by the Department of Health that will provide little benefit for children or staff while infringing upon the medical rights of these professionals.

The Department of Health is well-aware of the ACLU’s concerns surrounding the mandated flu vaccination of health care workers, and those concerns are just as valid in regard to the mandatory vaccination of child care workers. While there has been considerable discussion regarding the mandatory vaccination of health care workers – with the Centers for Disease Control and Prevention and the Occupational Safety and Health Administration clearly favoring voluntary education programs over the type of compulsory program these regulations proposed – we are aware of no recommendations for mandatory vaccination of child care workers. As you know, the efficacy of flu vaccine can vary significantly from season to season. While the MMR vaccination has an efficacy rate of 95%, the CDC’s *Morbidity and Mortality Weekly Report* identifies a flu vaccine efficacy rate only in years where the vaccine is “a good match” to the influenza virus strain. The CDC’s mid-season estimates placed the efficacy rate of the flu vaccine at just 47% for the main virus circulating during the 2012-2013 season.¹

Further, mandated flu vaccination programs like the one proposed herein are often untenable for a number of reasons. In 2008, New Jersey imposed a mandatory flu vaccination requirement for preschool students very similar to the one in these regulations. The New Jersey Health Department claimed the requirement was critical for public health, but the regulation had to be almost immediately suspended when it became clear there would not be enough vaccine available to meet demand. That flu vaccine mandates are routinely suspended due to the lack of available vaccine indicates that the vaccine is not as necessary to public health as it is often promoted.

Finally, the ACLU remains very concerned by a new section dealing with the reporting of immunization status to the Department. While it may be appropriate for schools to be aware of the immunization status of their students, we can think of no reason why the transmission of this information to the Department of Health might be necessary outside of the inappropriate monitoring of immunization status by the Department. Without enumerating the procedures and format for transmission of this information, the sharing of information between the Department and schools raises a number of concerns regarding the security of students’ personally identifiable medical records, how that information will be transmitted, and the purpose of its use.

¹ <http://www.cdc.gov/flu/pastseasons/1213season.htm>

In light of all of these concerns, we respectfully encourage the Department of Health to eliminate these mandatory vaccine requirements as well as the reporting requirements. If the suggestions we have made are not adopted, we request that, pursuant to R.I.G.L. §42-35-3(a)(2), you provide us with a statement of the principal reasons for and against adopt of these rules, incorporating therein your reasons for overruling our suggestions. Thank you for your time and attention to these concerns.