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My name is Allison Lucas. I am an attorney licensed to practice in Michigan. I stand here today fully appreciating that the Health Department promotes vaccination in MI. However, like any state agency, the Health Department must work toward this goal within the confines of the law, the constitution, and the legislative process. Administrative Rule 325.171 (12), otherwise known as "the rule" violates these confines. Here's why.

1. **The rule usurps the statute and is an unprecedented abuse of the administrative process.**

    - Only 3 other states require education by the health department and this requirement was implemented via the *legislative process* (Arizona, Arkansas, and Oregon).

    - To my knowledge, no other state has mandated educational sessions via the administrative process.

2. **The rule is based upon arbitrary assumptions.**

    - As indicated in the Regulatory Impact Statement [included as exhibit], the rule was implemented to reduce frivolous waivers and waivers of convenience. Not only are these vague terms undefined by the Health Department but it offered no statistical data in support of the assumption that parents who opt their children out of vaccines do so because it is easier than vaccinating.

    - IF the real goal is to raise vaccination rates among the lazy, it makes more sense to make vaccines '**more**' convenient than is does to make exemptions '**less**' convenient.

    - For example, the health department has the statutory power to hold accessible immunization clinics.

3. **The rule impermissibly creates a condition precedent to obtaining a statutorily given right.** Meaning, the rule denies a parent a statutory right if that parent doesn't submit to the educational session. A ***rule*** cannot take away a statutory ***right***.

4. **The rule conflicts with the clear and unambiguous procedure set forth in the statute.** To state the rule only creates an extra step in the waiver process is absolute absurdity. The rule creates a new and conflicting process wherein the parent must

   - provide the personal information of the child,
   - be unfairly questioned about the sincerity of the objection,
   - succumb to state-sponsored speech,
   - have the objection validated by the Health Department,
   - have the waiver form certified by the Health Department,
   - sign a form that cannot be altered, and
   - have the Health Department submit the waiver form to the school.

   The statutory process requires only that the parent submit a written objection to the school.

   - The act of the Health Department providing an extra copy to the parent to "submit to the school" is a shallow attempt by the Health Department to create the illusion that the statutory process is still intact.

   - Also, the statute allows a parent to submit a religious exemption and Health Departments have disallowed parents to do so—again, completely usurping the statute.

   - Moreover, the revised state-waiver form indicates with an asterisk that the local health department can set policies that would dictate whether the waiver form is accepted. There is no basis in the statute or law that would support this statement.

5. **The rule is written in a vague and ambiguous manner.**

   - Local Health Departments and schools across the state are creating different, conflicting, and inappropriate exclusion and waiver policies based upon their interpretation of the rule.

6. **Health Department are enforcing the rule in an arbitrary and capricious manner.**

- Many times the health educator is calling into question the validity of the parent's objection and playing judge and jury on the sincerity of the Parent's objection resulting in arbitrary enforcement of the rule.

7. The rule has the effect of excluding students based solely upon the students' waiver-status.

- Where the statue was written to ensure that no child whose parents object to vaccination be excluded, the rule actively works to exclude students, which has the effect of coercing an unwanted medical procedure **and is punitive.**

- This also implicates the First Amendment for students opting out of vaccination due to a sincerely held religious conviction.

- The intent of Nick Lyons and Superintendent Flanagan was highlighted in an April 6th, 2015, memo to schools, [included as exhibit] which specifically instructed schools to exclude children on Day 1 if they do not have the certified health department waiver.

    - Also, it implies the absence should be unexcused unless an excused absence is permitted by the local Board of Education.

    - Conveniently, these children can still be counted toward "Count Day".

8. The rule violates a parent's right to opt-out of MCIR, the state immunization tracking system.

- Parents have a statutory right to prevent tracking of the immunization status of their children.

- The rule violates this right because it forces parents to provide the Health Department with the name, birthdate, school, and vaccine history of their child. In some counties parents are required to provide insurance information.

- **This is not an educational session—it is an information collection session and it commandeers the parent's legal right NOT to provide this information to the Health Department.**

9. The rule is an undue burden on parents, students, local health departments, and schools.

- Parents are forced to miss work and find childcare to attend these sessions. Some parents must drive upwards of 50 miles.

- Students face unexcused exclusion from school for not having the waiver on Day 1, despite health departments not able to meet the capacity of waivers needed.

- According to the Regulatory Impact Statement this is an UNFUNDED MANDATE for local Health Departments.

- To put this in perspective, parents filed almost 16,000 non-medical exemptions in 2014, equating to approximately 8,000 nurse hours for the 30-minute educational session.

In Sum, the rule

- Greatly oversteps the Health Department's authority,
- Is an egregious abuse of the administrative process,
- Violates the clear process outlined in the statue,
- Is discriminatory
- Actively seeks to exclude children from school,
- Is punitive, and
- Creates an undue burden for everyone involved in the waiver process.

<u>The rule is absolutely improper and should be rescinded.</u>