

Testimony
Administrative Rules Committee
Thursday, December 12, 2013
North Dakota Department of Health

Chapter 33-06-05

1. These rule changes did not result from statutory changes made by the Legislative Assembly.
2. These rule changes did result from a federal statute change. On January 25, 2013, rules relating to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) under the Health Information Technology for Economic and Clinical Health (HITECH) Act were published in the Federal Register. These rules require there to be a state mandate for health-care providers or the North Dakota Department of Health to disclose immunization records to schools. Without a state mandate, parents will have to verbally authorize their health-care provider or the Department of Health to release immunization records to schools. Unfortunately, the new HIPAA/HITECH rules were released too late during the legislative session to be corrected in North Dakota law.

Since the administrative rules had to be changed due to HIPAA-HITECH changes, the Department of Health decided to make an additional change to better clarify at which grade immunizations are required for middle school entry.

3. A hearing notice was published in 52 daily or weekly newspapers in the state in April of 2013. A public hearing was held May 13, 2013. Oral and written comments were received through May 24, 2013. The State Health Council adopted the proposed changes on August 13, 2013.
4. The Department of Health did not receive any comments from the public regarding the rule changes.
5. Approximate costs for public notice:

Newspaper publication of hearing notice: \$1,349.68

6. The intent of the proposed rule change is to allow health-care providers to continue to share required immunization records with schools. Secondly, the

change simplifies middle school immunization requirements, so all schools in the state require immunizations at seventh grade, not sixth or seventh grade, as currently required.

North Dakota law (23-07-17.1) requires that “A child may not be admitted to any public, private, or parochial school, or day care center, child care facility, head start program, or nursery school operating in this state or be supervised through home-based instruction unless the child's parent or guardian presents to the institution authorities a certification from a licensed physician or authorized representative of the state department of health that the child has received age appropriate immunization...”

North Dakota law (23-01-05.3) allows “a health-care provider, elementary or secondary school, early childhood facility, public or private postsecondary educational institution, city or county board of health, district health unit, and the state health officer to exchange immunization data in any manner with one another.” In order to be in compliance with the new HIPAA rules, the sharing of immunization data must be mandated, not just permitted, as it is currently in North Dakota law.

Currently, North Dakota schools have direct access to the North Dakota Immunization Information System (NDIIS) to review students' immunization records. All childhood immunizations are mandated by state law (23-01-05.3) to be entered into the NDIIS within four weeks of administration. If the administrative rules (33-06-05) are not changed to mandate the disclosure of immunization records to schools, schools will no longer be able to have access to the NDIIS and health-care providers will have to obtain parental consent before releasing immunization records to schools. Requiring parental consent would put a burden on parents who are requesting immunization records be sent to schools, on schools who have to request parents find their immunization record, and on health-care providers who have to obtain parental consent and mail or fax immunization records to schools.

The Department of Health is also requesting to change the same administrative rules to specify middle school entry as seventh grade for immunization requirements. It is currently defined as sixth or seventh grade, which has led to confusion for schools and health-care providers. It has also made it difficult for the Department of Health to determine the number of children in compliance with the middle school requirements.

7. A regulatory analysis was not issued or required.
8. A regulatory analysis and economic impact statement of impact on small businesses was prepared and is attached.
9. These rules have no fiscal effect on state revenues and expenditures.
10. A constitutional takings assessment was not prepared.
11. These rules were not adopted as emergency rules.

CHAPTER 33-06-05

SCHOOL IMMUNIZATION REQUIREMENTS

Section

33-06-05-01 Requirements

33-06-05-01. Requirements.

1. Definitions. As used in this section:

- a. "Advisory committee on immunization practices" refers to a panel of experts in fields associated with immunization who have been selected by the secretary of the United States department of health and human services to provide advice and guidance to the secretary, the assistant secretary for health, and the centers for disease control and prevention on the most effective means to prevent vaccine-preventable diseases.
- b. "Age-appropriate immunizations" refers to the vaccines a child should receive based on age and previous immunization history as recommended by the advisory committee on immunization practices of the United States department of health and human services and outlined by the North Dakota immunization schedule.
- c. "Beliefs" as used in subsection 3 of North Dakota Century Code section 23-07-17.1 means sincerely held religious, philosophical, or moral beliefs which are not a pretense for avoiding legal requirements.
- d. "Institution" includes all early childhood facilities, head start programs, preschool educational facilities, public and private kindergartens, and elementary, middle, and high schools operating in North Dakota.
- e. "Institutional authority" means anyone designated by the governing body of an institution.
- f. "Medical exemption" means an exemption from an immunization requirement based on a form signed by a licensed physician stating

that the physical condition of the child seeking the exemption is such that the vaccine administered would endanger the life or health of the child.

2. Minimum requirements.

a. Minimum requirements for children attending early childhood facilities, head start programs, and preschool educational facilities shall be age-appropriate immunizations against diphtheria, pertussis, tetanus, poliomyelitis, measles, mumps, rubella, haemophilus influenzae type B disease, varicella (chickenpox), pneumococcal disease, rotavirus, and hepatitis A.

b. Minimum requirements for children attending kindergarten through grade twelve shall be age-appropriate immunizations against diphtheria, pertussis, tetanus, poliomyelitis, measles, mumps, rubella, varicella (chickenpox), and meningococcal disease.

3. Effective dates.

a. Effective with the 1992-93 school year, a second dose of measles, mumps, and rubella vaccine is required for school entry into kindergarten or first grade if the student's school does not have a kindergarten. Each subsequent year, the next higher grade will be included in the requirement so those students transferring into North Dakota schools are added to the measles, mumps, and rubella immunization cohort.

b. Effective with the 2000-01 school year, a student must complete the hepatitis B vaccine series prior to entry into kindergarten or first grade if the student's school does not have a kindergarten. Each subsequent year, the next higher grade will be included in the hepatitis B immunization requirement so those students transferring into North Dakota schools are added to the hepatitis B immunization cohort.

c. Effective January 1, 2004, in order to attend an early childhood

facility, head start program, or preschool educational facility, each child must be adequately immunized against varicella (chickenpox) disease according to the advisory committee on immunization practices.

d. Effective with the 2004-05 school year, a student must receive the varicella (chickenpox) vaccine before being admitted into any kindergarten or first grade if the student's school does not have a kindergarten. Each subsequent year, the next higher grade will be included in the varicella immunization requirement so those students transferring into North Dakota schools are added to the varicella immunization cohort.

e. Effective January 1, 2008, in order to attend an early childhood facility, head start program, or preschool educational facility, each child must be adequately immunized according to the advisory committee on immunization practices against pneumococcal disease, rotavirus, and hepatitis A.

f. Effective with the 2008-09 school year, a student must receive a second dose of varicella (chickenpox) vaccine before being admitted into kindergarten or first grade if the student's school does not have a kindergarten. Each subsequent school year, the next higher grade will be included in the second dose varicella (chickenpox) immunization requirement so those students transferring into North Dakota schools are added to the second dose varicella (chickenpox) immunization cohort.

g. Effective with the ~~2008-09~~ 2014-2015 school year, a student must receive meningococcal and tetanus, diphtheria, and pertussis (tdap) vaccine before being admitted into ~~any middle school (sixth or seventh grade)~~.

4. Exemptions. A child with a medical or a beliefs exemption is exempt from any one or all of the immunization requirements. A physician must

sign an exemption form indicating the vaccines that are included in the medical exemption. A parent or guardian must sign an exemption form stating that the child has a beliefs exemption and indicate which vaccines are exempt because of beliefs. A child with a reliable history of chickenpox disease is exempt from varicella (chickenpox) immunization requirements. A physician or parent or guardian must sign an exemption form stating that the child has had chickenpox disease. Exemption forms must be kept on file with the immunization records at the child's school, early childhood facility, head start program, or preschool educational facility.

5. **Recordkeeping and reporting.** Records and reports requested by the state department of health shall be completed and submitted to the state department of health.

a. Certificates of immunization, a North Dakota Immunization Information System (NDIIS) record, or other official proof of immunization must be presented to the designated institutional authority before any child is admitted to an institution.

b. Upon request by the institutional authority and approval by the department, the department shall provide access to the NDIIS by institutional authority. The department of health shall disclose immunization records maintained by the NDIIS to an institutional authority to fulfill the required proof of immunization.

c. The parent or guardian of a child claiming a medical or beliefs exemption shall present an appropriately signed statement of exemption to the designated institutional authority. Proof of immunization or the statement of exemption must be maintained by the child's school or early childhood facility.

d. The school or early childhood facility immunization summary report must be submitted to the state department of health by November first of each year or such other annual date as the department may designate.

6. **Appointment of an institutional authority.**

a. An institutional authority shall be appointed for each institution by its governing board or authorized personnel. The authority must be an employee of such institution.

b. The name of the designated institutional authority, the institution, address, and telephone number shall be submitted to the appropriate governing state department by July first of each year.

7. **Provisional admission - Exclusion.** Any child admitted to school or early childhood facility under the provision that such child is in the process of receiving the required immunizations shall be required to receive the immunizations according to the recommended schedule set forth by the state department of health. Any child not adhering to the recommended schedule shall provide proof of immunization or a certificate of immunization within thirty days of enrollment or be excluded from school or early childhood facility.

History: Amended effective November 1, 1979; September 1, 1991; January 1, 1998; February 1, 2000; January 1, 2004; January 1, 2008.

General Authority: NDCC 23-01-03

Law Implemented: NDCC 23-07-17.1

Small Entity Regulatory Analysis for Proposed Changes to Administrative Code 33-06-05 –
School Immunization Requirements

1. Was establishment of less stringent compliance or reporting requirements for small entities considered?

Yes. The proposed changes allow for health care providers to continue to release required immunization records to schools, without parental consent. This also means that schools may continue to have direct access to the North Dakota Immunization Information System, the state immunization registry, which consolidates immunization information for children in North Dakota. This reduces the burden on health care providers to obtain parental consent before sharing required immunization information with schools.

2. Was establishment of less stringent schedules or deadlines for compliance or reporting requirements considered for small entities?

Not applicable. North Dakota Century Code 23-07-17.1 requires that students present an immunization record prior to admission to school.

3. Was consolidation or simplification of compliance or reporting requirements for small entities considered?

Yes. This administrative rule change allows for health care providers to continue to share required immunization records with schools, without parental consent. This means that schools may continue to have direct access to the North Dakota Immunization Information System, the state immunization registry, which consolidates immunization information for children in North Dakota.

4. Were performance standards established for small entities for replacement design or operational standards required in the proposed rule?

Not applicable. Administrative Code 33-06-05 applies to schools, which are not considered small entities.

5. Was exemption of small entities from all or any part of the requirements in the proposed rule considered?

Not applicable. Administrative Code 33-06-05 applies to schools, which are not considered small entities.

Small Entity Economic Impact Statement for Changes to Administrative Code 33-06-05 –
School Immunization Requirements

1. Which small entities are subject to the proposed rule?

The proposed rules mainly affect schools, which are public entities. The rules also affect health care providers who administer immunizations.

2. What are the administrative and other costs required for compliance with the proposed rule?

There is no expected increase in the administrative costs required to comply with the proposed rule. The proposed changes to administrative rules prevent a negative impact on immunization data sharing between health care providers and schools that would have been caused by federal HIPAA Rule changes. The proposed changes also clarify the grade for middle school entry immunization requirements that were already in effect.

3. What is the probable cost and benefit to private persons and consumers who are affected by the proposed rule?

The probable costs are not expected to change for the proposed rule. The benefit to the consumer is a reduced burden to give parental consent to health care providers prior to the release of required immunization records to schools. There is also a benefit to health care providers in not being required to obtain parental consent to report immunization data to the NDIIS or schools. The clarification of middle school entry as seventh grade, instead of sixth grade, allows the consumer (parents) additional time to get their children up-to-date for the middle school immunization requirements.

4. What is the probable effect of the proposed rule on state revenues?

There would be no effect on state revenues.

5. Is there any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule?

No. Less intrusive or less costly alternative methods have not been found.