



Immunizations for Children and Adolescents: Frequently Asked Questions about North Carolina's Laws

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Immunization laws have existed in the United States since the 1800s. The earliest laws required vaccination against smallpox. Later laws extended the requirements to include immunization against other highly feared diseases such as polio, or widely prevalent diseases such as measles. Many of the early laws required immunization only when there was an outbreak in a community, but in the 1960s and 1970s there was a shift toward laws designed to achieve universal immunity against particular diseases by requiring children to be immunized. Today every state has laws requiring children to be immunized.¹

In North Carolina, laws requiring childhood immunizations have been in place for over fifty years. Recently, changes in immunization practices—especially the introduction of new vaccines and new immunization schedules—have raised new questions about the application of long-standing laws. Changes in how immunizations are viewed by the public have also provoked a number of legal questions.

This bulletin uses a question and answer format to provide guidance about several current issues in the application of North Carolina's childhood and adolescent immunization laws. The bulletin is organized into topic areas for quick reference.

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1. Lawrence O. Gostin, *Public Health Law: Power, Duty, Restraint*, 2d ed. (Berkeley and Los Angeles, Calif.: University of California Press, 2008), 379–80. The constitutionality of laws requiring immunization was tested early in the 20th century. In 1905 the United States Supreme Court upheld a law mandating smallpox vaccinations, concluding that the law was a legitimate exercise of a state's police power—that is, the general power of government to protect the health and safety of its citizens. *Jacobson v. Massachusetts*, 197 U.S. 11 (1905). The North Carolina Supreme Court upheld a similar law five years earlier. *State v. Hay*, 126 N.C. 999, 35 S.E. 459 (1900).

Basic Childhood Immunization Requirements

1. Does North Carolina law require children to be immunized?

Yes. A state statute requires “[e]very child present in this state” to be immunized against certain diseases. The person responsible for ensuring a child is immunized is the child’s parent, guardian, person standing in loco parentis, or other person or agency with legal custody of the child.²

A state rule specifies which vaccines are required, how many doses of each are required, and when a child should receive each dose.³ For example, the rule requires four doses of polio vaccine: two before the child reaches the age of five months, a third before the child reaches nineteen months, and a fourth before the child enters school. Children must be immunized according to this schedule, which appears in the North Carolina Administrative Code—a multivolume document that contains rules adopted by administrative agencies.⁴ Such rules are effective statewide and have the force of law.

The rule establishing the schedule identifies some limited circumstances in which a child or adolescent is not required to have a particular vaccine. For example, the varicella (chickenpox) vaccine is not required for a child who has a documented history of having had chickenpox.⁵

The state health director has the authority to temporarily suspend an immunization requirement under certain emergency conditions, such as a shortage of the required vaccine. When the state health director takes this action, the North Carolina Department of Health and Human Services (DHHS) must give written notice of the suspension to local health departments and other health care providers who receive state-supplied vaccine. Additionally, DHHS must notify health departments and providers in writing when the suspension is lifted. When a child misses an immunization as a result of such a suspension, the required immunization schedule must be resumed within ninety days after the suspension is lifted.⁶

2. How are childhood immunizations documented?

North Carolina law requires health care providers who administer required vaccines to provide a certificate of immunization for each child the provider immunizes. The certificate must include specific information, including the child’s name, date of birth, and sex; the number of doses of vaccine given and the dates given; and the name and address of the health care provider who administered the vaccine.⁷ North Carolina vaccine providers who use the North Carolina Immunization Registry (NCIR) can produce the certificate of immunization by creating a report called “Immunization Record-Patient Copy.”⁸

2. N.C. GEN. STAT. (hereinafter G.S.) § 130A-152.

3. North Carolina Administrative Code, title 10A, subchapter 41A, section .0401 (typically cited in state government documents as 10A N.C.A.C. 41A .0401).

4. Immunization rules are adopted by the North Carolina Commission for Public Health. G.S. 130A-152(c) (authorizing the Commission to adopt rules implementing an immunization program); *see also* G.S. 130A-29 (establishing the Commission and giving it rule-making authority).

5. 10A N.C.A.C. 41A .0401(a)(8)(A).

6. 10A N.C.A.C. 41A .0401(c).

7. G.S. 130A-154.

8. NCIR User Manual, Chapter 10: Reports and Forms, at 10.3 (available at www.immunizenc.com/images/PDFs/Reports_and_Forms.pdf).

3. Are there any exemptions or exceptions to the immunization requirements?

Yes. There are two exemptions: one for children with medical contraindications,⁹ and one for children whose parents or guardians have bona fide religious objections to immunization.¹⁰ North Carolina law does not recognize a nonreligious “philosophical” or “personal” exemption to immunizations.¹¹

Medical Exemptions

4. Who qualifies for a medical exemption?

A child with a medical contraindication to an immunization may qualify for this exemption. In most cases the contraindication must be one that is recognized in the most recent version of the general recommendations of the federal Advisory Committee on Immunization Practices (ACIP).¹² The recommendations identify both *contraindications* to vaccination and *precautions*. According to ACIP, if a child has a contraindication, the vaccine should not be administered. If a child has a precaution, the vaccine should not be administered at the time the precaution is present (most precautions are temporary and the vaccine may be administered at a later date).¹³

There is a limited exception to the general rule that a contraindication must be recognized by ACIP—upon request of a licensed physician, the state health director may grant a medical exemption for a contraindication that is not on the list.¹⁴

5. How is a medical exemption documented?

A licensed physician must certify that the immunization is medically contraindicated for the child.¹⁵ In most cases, the physician may use a form developed by the North Carolina Immunization Branch.¹⁶ The form provides boxes for a physician to check to indicate which contraindication or precaution the child has, and a space for indicating the length of time the exemption applies. The check-boxes reflect the contraindications and precautions recognized by ACIP. The

9. G.S. 130A-156.

10. G.S. 130A-157.

11. 10A N.C.A.C. 41A .0403 (“[T]here is no exception to these requirements for the case of a personal belief or philosophy of a parent or guardian not founded upon a religious belief.”).

12. G.S. 130A-156 authorizes the Commission for Public Health to develop a list of medical contraindications. Instead of creating its own list, the Commission has adopted the ACIP’s General Recommendations. See 10A N.C.A.C. 41A .0404. ACIP was established to advise and guide the U.S. Secretary of Health and Human Services and the Centers for Disease Control and Prevention on the control of vaccine-preventable diseases. See Charter, Advisory Committee on Immunization Practices (2008), available at www.cdc.gov/vaccines/recs/acip/charter.htm.

13. Andrew T. Kroger, William L. Atkinson, Edgar K. Marcuse, and Larry K. Pickering. *General Recommendations on Immunization: Recommendations of the Advisory Committee on Immunization Practices (ACIP)*. 55 Morbidity & Mortality Weekly Report 1 (December 1, 2006), available at www.cdc.gov/mmwr/preview/mmwrhtml/rr5515a1.htm.

14. G.S. 130A-156.

15. *Id.* The statute specifies that the physician must be licensed to practice medicine in North Carolina.

16. The form is available for download through the Immunization Branch’s website. Go to www.immunizenc.com/forms.htm and click on “Medical Exemption Statement” (DHHS Form 3987).

medical exemption statement may be presented to schools, day cares, or others to document the child's exemption. Neither physicians nor parents are required to submit it to the state for approval.

However, if the physician is seeking to certify a medical exemption for a child for a contraindication that is *not* listed on the form, the form may not be used. Instead, the physician must submit a written request for the exemption to the state health director. If the medical exemption is granted, the state health director will provide a letter verifying the exemption and this letter serves as documentation of the exemption.

6. Does a physician's note that a child has not been immunized for medical reasons constitute adequate certification of a medical exemption?

The law does not require physicians to use the state's Medical Exemption Statement. A physician may provide a note instead, but to constitute a valid certification of a medical exemption, the note must meet specific criteria. It must be written by a physician licensed to practice in North Carolina and it must certify that the child has a medical contraindication to vaccination that is recognized by ACIP or has been approved by the state health director, and state all of the following: the basis for the exemption, the specific vaccine or vaccines the child should not receive, and the length of time the exemption will apply.¹⁷ The document should also include the child's name and date of birth, clearly identify the certifying physician, and be signed and dated by the physician.

Thus whether a note is adequate depends on the contents of the note. For example, a note that states only that a child was "not immunized for medical reasons" would not be adequate certification of a medical exemption.

7. May a physician certify a medical exemption for a child whose parents choose to follow an alternative (usually slower) schedule for immunizations?

A physician may certify a medical exemption only if a child has a medical contraindication or precaution that is recognized by ACIP or has been approved by the state health director. If a child has such a contraindication or precaution, and as a result an alternative immunization schedule is indicated, the physician may certify the medical exemption. However, if the child does not have a contraindication or precaution for which an alternative schedule is indicated, the child does not qualify for medical exemption.

Religious Exemptions

8. Who qualifies for a religious exemption?

A parent, guardian, or person standing in loco parentis who has bona fide religious beliefs that are contrary to the immunization requirements may obtain a religious exemption for his or her child. The objections must be based on *religious* beliefs for this exemption to apply. State law explicitly states that the religious exemption does not include personal or philosophical objections to immunization that are not founded upon a religious belief.¹⁸

17. 10A N.C.A.C. 41A .0404.

18. 10A N.C.A.C. 41A .0403.

9. Is a person required to belong to a particular religion or denomination to qualify for this exemption?

No. North Carolina's religious exemption law does not require affiliation with any particular religion or denomination.

10. How is a religious exemption documented?

North Carolina's religious exemption law requires "a written statement of the bona fide religious beliefs and opposition to the immunization requirements."¹⁹ The state does not provide a religious exemption form, but the North Carolina Immunization Branch website offers advice on how to claim a religious exemption.²⁰ The written statement need not be prepared by an attorney or notarized, nor must it be submitted to or approved by the state.

Immunizations and School or Day Care**11. Must a child be immunized before attending school or day care?**

North Carolina's childhood immunization requirements apply to all children, not just those enrolling in school or day care. "Every child present in this state" must be immunized according to the schedule in the state immunization rules.²¹

Thus North Carolina's childhood immunization requirements are not triggered by school or day care enrollment—but they are reinforced by it. When a child enrolls in school or day care, the child's parent or other responsible person must present a certificate of immunization verifying that the child has received the immunizations required by law.²² This requirement applies to public, private, and religious schools that serve children in grades pre-K through 12, and to licensed or registered child day care facilities.

12. May children who have medical or religious exemptions from the requirements attend school or day care?

Yes, if proper documentation of the exemption is provided to the school or day care in lieu of the certificate of immunization. If there is an outbreak of a vaccine-preventable disease in the school or day care, children with exemptions may be excluded from school or day care for the duration of the outbreak.²³

13. Are children who are homeschooled required to be immunized?

Yes. Again, this is because North Carolina law extends the immunization requirements to "[e]very child present in this state." Home schools in North Carolina are required by law to

19. G.S. 130A-157.

20. See www.immunizenc.com/Exemptions.htm.

21. G.S. 130A-152; 10A N.C.A.C. 41A .0401.

22. G.S. 130A-155.

23. G.S. 130A-145 (authorizing local health directors to exercise quarantine authority); 130A-2(7a) (defining "quarantine authority" to include the authority to limit the freedom of movement of unimmunized individuals during an outbreak).

maintain immunization records for each child being homeschooled.²⁴ If a homeschooled child qualifies for an exemption from the immunization requirements, the home school must maintain documentation of the exemption.

Consent for Immunizations

14. Does a health care provider need consent to immunize a child?

Yes. Because immunizations are required by law, health care providers sometimes believe consent is not necessary. It is true that when a medical treatment is required by law, refusing the treatment can have legal consequences for the person who refuses.²⁵ However, those consequences are carried out in courts, not in health care providers' offices. Therefore, it is not appropriate for a health care provider to attempt to immunize a child without the consent of either the child's parent or another person authorized by law to give consent.

15. Who is authorized by law to give consent for a child's immunization?

Under North Carolina law, the following people can give consent for a minor child's immunization:

- A parent
- A legal guardian
- A person standing in loco parentis
- Any adult (a person age 18 or older) who signs a statement affirming that he or she has been authorized by the child's parent to obtain the immunization for the child²⁶
- The department of social services, if it has custody of the child²⁷
- In some cases—generally involving adolescents or teens—the minor child himself or herself²⁸

16. Who is a "legal guardian"?

A legal guardian is a person who has gone through formal legal proceedings and has obtained a court order granting guardianship of a child.²⁹

24. G.S. 115C-564 requires a home school to comply with either the legal requirements pertaining to church/religious schools or those pertaining to other qualified nonpublic (private) schools. The home school is permitted to choose which requirements it wishes to comply with, but in either case, the requirements specify that immunization records must be maintained. *See* G.S. 115C-548 (requiring church/religious schools to maintain the records); G.S. 115C-556 (requiring other nonpublic schools to maintain the records).

25. For more information about the potential legal consequences of refusing required immunizations, see question 23.

26. G.S. 130A-153(d).

27. G.S. 7B-903(a)(2)c.; 130A-152(a).

28. G.S. 90-21.5(a).

29. A district court may appoint a guardian for a child who is the subject of a juvenile proceeding, if the court finds that appointment of a guardian is in the child's best interest. G.S. 7B-600 (appointment of a guardian for a child who is abused, neglected, or dependent); 7B-2001 (appointment of a guardian for a child who is undisciplined or delinquent). A clerk of superior court may appoint a guardian for a child who does not have a parent. G.S. 35A-1203(a).

17. Who is a “person standing in loco parentis”?

A “person standing in loco parentis” (PILP) is an adult who has taken on parental responsibility for a child without going through formal legal guardianship or adoption proceedings. A PILP can be hard to identify. Since there has been no formal court proceeding, there is no court order or other document stating that he or she is a PILP.

As a matter of practice, the key to identifying a PILP is to look for evidence that a person is more than just a regular babysitter—that he or she is truly acting as the child’s *parent* by taking on the duties associated with actually rearing the child, such as providing basic necessities (shelter, food) and financial support, ensuring that the child goes to school, and supervising the child or arranging for the child’s supervision.

18. When may an adult who is not a parent, guardian, or PILP give permission for a child’s immunizations?

North Carolina law allows a physician or local health department to immunize a minor who is presented for immunization by *any* adult who signs a statement that he or she has been authorized by the child’s parent, guardian, or PILP to obtain the immunization.³⁰ Any person age 18 or older who signs the statement that the parent, guardian, or PILP has authorized the immunization may fall under this provision. It could be a grandparent or other adult relative, but it could also be an unrelated adult, such as a babysitter.

19. When may a department of social services (DSS) give permission for a child’s immunizations?

A county department of social services may give permission for the immunization of a child in its custody. The immunization laws specifically state that agencies with legal custody of children are responsible for obtaining immunizations that are required by law.³¹ Furthermore, a child welfare law permits DSS to consent to routine or emergency medical care for children in its custody (unless there is a court order to the contrary).³² The North Carolina Court of Appeals has held that children in DSS custody as a result of parental neglect may be immunized with DSS’s permission, even if the parents have a religious objection to immunization.³³

20. When may a minor child (a person under age 18) give consent for his or her own immunizations?

A North Carolina law, commonly known as the minor’s consent law, allows physicians to accept the consent of an unemancipated minor in some circumstances. First, the minor must have the decisional capacity to give informed consent (in other words, the minor must be competent to make health care decisions).³⁴ Second, the law permits unemancipated minors to give con-

30. G.S. 130A-153(d). We sometimes say that an adult who presents a child for immunization under this provision has “consented” to the immunization, but strictly speaking, this is incorrect. The parent, guardian, or person standing in loco parentis has decided to permit the immunization. The nonparent is simply acting on behalf of the parent, guardian, or PILP by presenting the child to the health care provider.

31. G.S. 130A-152.

32. G.S. 7B-903(a)(2)c.

33. *In re Stratton*, 153 N.C. App. 425, 571 S.E.2d 234, *reconsideration dismissed, appeal dismissed, and discretionary review denied*, 336 N.C. 436, 573 S.E.2d 513 (2002).

34. Decisional capacity is discussed in more detail later in this document. See question 34.

sent only for medical services that prevent, diagnose, or treat particular conditions—including venereal diseases and reportable communicable diseases.³⁵ Most of the immunizations that are required or recommended for children and adolescents prevent either venereal diseases or communicable diseases that are reportable under North Carolina law.³⁶ Therefore, a minor who has the decisional capacity to give informed consent may consent to those immunizations. For more questions and answers about a minor’s consent to immunizations, see the section below titled “Special Issues with Adolescent Immunizations.”

21. Does consent for immunizations need to be in writing? Should a parent (or other authorized person) sign something before a child is immunized?

With one notable exception (see the next paragraph), whether to obtain a signature is a judgment call for the health care provider to make. No law requires a provider to obtain consent for immunizations in writing. Nevertheless, health care providers’ attorneys sometimes advise them to obtain consent in writing, because if the question of whether a health care provider had consent to give a particular immunization is ever disputed, a signature is evidence that consent was given.³⁷ Different attorneys may advise differently; therefore, health care providers should seek and follow their own attorneys’ advice on this issue.

There is one case in which a signature is required. If the child is presented for immunization by an adult who has been authorized by the parent, guardian, or PILP to obtain the immunization, that adult *must* sign a statement affirming that he or she has been authorized by the parent, guardian, or PILP to obtain the immunization. The law specifically requires a signature in this case.³⁸

Refusal of Immunizations

22. What should a health care provider do if a parent refuses to have his or her child immunized?

No North Carolina law addresses this situation specifically, but it is advisable for the health care provider to take steps to ensure that it is an informed refusal. The provider can explain to the parent the following:

- The purpose of the immunization, its risks and benefits
- The medical consequences of refusing to immunize the child

35. G.S. 90-21.5(a). Emancipated minors may give effective consent to any medical treatment, G.S. 90-21.5(b), except an unmarried, emancipated minor may not consent to sterilization. *See* G.S. 90-272. A minor may be emancipated only by marriage or a court decree of emancipation. G.S. Ch. 7B, Art. 35. A minor who is serving in the U.S. armed forces is effectively emancipated and may consent to any medical treatment, except sterilization, if he or she is unmarried. G.S. 7B-3402; 90-272.

36. *See* 10A N.C.A.C. 41A .0101 for the complete list of communicable diseases that are reportable in North Carolina.

37. *See* G.S. 90-21.13(b) (“A consent which is evidenced in writing . . . which is signed by the patient or other authorized person, shall be presumed to be a valid consent.”).

38. G.S. 130A-153(d) (authorizing physicians and local health departments to immunize “a minor who is presented for immunization by an adult who *signs a statement* that he or she is authorized by a parent, guardian, or person standing in loco parentis to obtain the immunization for the minor” (emphasis added)).

- The North Carolina law that requires immunization
- The legal consequences of refusing to immunize the child

23. What are the legal consequences of refusing to immunize a child?

In North Carolina, if a parent refuses immunizations for a child who does not qualify for a medical or religious exemption, there are several potential legal consequences. The most likely consequence is that the child may be prohibited from enrolling in public or private school or day care.³⁹ Also, the child may be quarantined if there is an outbreak of the disease the immunization prevents.⁴⁰

Other legal consequences are possible, though perhaps less likely to be pursued. For example, any person in North Carolina who violates a state public health law or rule commits a misdemeanor and may be criminally prosecuted.⁴¹ Although this method is not often used to enforce the immunization laws, it is available as a legal remedy. Another remedy that is available to public health officials is a civil (noncriminal) action: a local health director may seek a court order compelling a person to comply with the immunization laws.⁴²

24. The American Academy of Pediatrics (AAP) has a form, “Refusal to Vaccinate” that some providers use with parents who refuse to immunize their children. What is the legal effect of this form? Should health care providers ask parents who refuse immunizations to sign it?

Whether or not to use this form is a decision for the health care provider. However, it is important for both the provider and the parent to understand what the form is, and perhaps more importantly, what it is not.

The AAP form is not a means for obtaining a legal exemption to North Carolina’s immunization requirements. As explained earlier in this document, a child is legally exempt from the requirements only if the child has a medical contraindication to the immunization or the parent has a bona fide religious objection to the immunization requirements.⁴³

The AAP form is not proper documentation of an exemption for a child who qualifies for an exemption. The state provides a form for health care providers to document medical exemptions.⁴⁴ The state does not provide a form for documenting religious exemptions, but the Immunization Branch website explains the written statement a parent should prepare to request a religious exemption.⁴⁵

The AAP form *is* evidence that the provider has offered immunization and given the parent important information to attempt to ensure that the parent’s refusal of the immunization is an informed refusal. More information on the form and the AAP’s recommendations regarding its use are available on the Internet.⁴⁶

39. G.S. 130A-155.

40. G.S. 130A-2(7a); 130A-145.

41. G.S. 130A-25(a).

42. G.S. 130A-18.

43. See questions 3, 4, and 8.

44. Physicians are not required to use the form, but any alternate method for documenting a medical exemption must meet the particular criteria outlined in question 6.

45. See question 10.

46. This information is available through the AAP’s Childhood Immunization Support Program (www.cispimmunize.org). The form and recommendations for its use are available at www.cispimmunize.org.

Confidentiality of Immunization Information

25. Is immunization information confidential?

Yes. Individually identifiable health information—including information about immunizations—is confidential under both North Carolina law and the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) privacy rule (for health care providers and others who are “covered entities” under that rule).

Information about a child’s immunizations may be disclosed only when the applicable confidentiality laws permit the disclosure. A full review of those laws is beyond the scope of this bulletin. The remainder of this section addresses some of the most frequently asked questions about disclosing immunization information, but it does not provide a comprehensive treatment of every question that may arise. Providers should seek an attorney’s advice if they have questions about disclosures not addressed by these provisions, or specific questions about the application of these provisions.

26. Must a health care provider obtain a written release (or authorization) before disclosing immunization information?

Sometimes, but not always. Written permission to disclose information is required *unless* a particular provision of law allows disclosure of the information without it.

The general rule is that health information created or obtained by health care providers may not be disclosed without the permission of either the patient or, if the patient cannot make his or her own health care decisions, the patient’s personal representative.⁴⁷ The HIPAA privacy rule uses the term “authorization” to describe the permission that is required. To comply with HIPAA, an authorization must be in writing and must include particular elements spelled out in the privacy rule.⁴⁸

Under the general rule, the starting assumption is always that information may be released with authorization—but that does not mean that authorization is always required. There are a number of exceptions to the general rule, two of which are particularly relevant to the release of immunization information.

- *The “required by law” exception.* When disclosure of information is required by law, authorization is not required.⁴⁹
- *The “public health purposes” exception.* When information is disclosed to a public health agency or official that is authorized by law to collect the information for certain public health purposes (including preventing or controlling disease and conducting public health surveillance), authorization is not required.⁵⁰

.org/pro/pdf/RefusaltoVaccinate.pdf (accessed July 20, 2009).

47. 45 C.F.R. 164.508(a)(1) (establishing the general rule that written authorization is required); 164.502(g) (defining the role of personal representatives). A full discussion of personal representatives is beyond the scope of this bulletin. In most cases, the personal representative for a minor child is the child’s parent, guardian, or person standing in loco parentis. For more information about who may authorize the disclosure of a minor’s health information, see www.sog.unc.edu/programs/ncphl/ReqsForConfMedInfo/Disclosing%20Minors.pdf.

48. 45 C.F.R. 164.508(c).

49. 45 C.F.R. 164.512(a).

50. 45 C.F.R. 164.512(b).

In North Carolina, there are a number of circumstances in which immunization information either may or must be released *without* authorization. For example, North Carolina law requires health care providers to release immunization information to schools, public health agencies, and certain others upon request.⁵¹ Authorization is not required for those disclosures.

27. When are health care providers required to disclose immunization information upon request?

North Carolina law requires health care providers to disclose immunization certificates and certain other information upon request to the following entities:

- Local health departments in North Carolina
- The North Carolina Department of Health and Human Services
- The patient's attending physician⁵²
- K–12 schools (whether public, private, or religious)
- Licensed and registered child care facilities
- Head Start programs
- Colleges and universities (whether public, private, or religious)
- Health maintenance organizations (HMOs)
- State or local health departments in other states⁵³

The information that must be disclosed upon request is the patient's name and address; name of the parent, guardian, or person standing in loco parentis; date of birth; gender; race and ethnicity; vaccine type, date and dose number administered; the name and address of the physician or local health department that administered each dose; and the existence of a medical or religious exemption, if applicable.⁵⁴

Because these disclosures are required by law, the health care provider does not need the patient's (or patient's representative's) authorization for the disclosure.

28. Suppose the local health department requests "tracking information" or asks to see the immunization records of some or all of the children served by a private health care provider. Must the provider comply with this request?

Yes. When the local health department requests this information, the health care provider must disclose the information to the health department, because North Carolina law requires health care providers to disclose immunization information to local health departments upon the department's request.⁵⁵ Authorization is not needed because this disclosure is required by law.

29. Suppose a parent refuses to immunize a child who does not qualify for an exemption to the immunization requirements. May the health care provider report the refusal to the local health department?

No. The provider may not make such a report without the parent's authorization. This may appear to contradict the answer to question 28, but the key distinction between the two ques-

51. G.S. 130A-153(c); 10A N.C.A.C. 41A .0406.

52. G.S. 130A-153(c).

53. 10A N.C.A.C. 41A .0406.

54. *Id.* See the rule for more details on the specific information to be disclosed about exemptions.

55. G.S. 130A-153(c).

tions lies in who initiates the disclosure. Question 28 describes a situation in which the health department initiates the disclosure by requesting the information. There is a state law that requires health care providers to disclose immunization information to health departments *upon request*; thus the provider must disclose it and authorization is not required. In contrast, this question describes a circumstance in which a provider would not be responding to the health department's request, but would be initiating a disclosure by making a report. In North Carolina there is no law that either authorizes or requires a health care provider to initiate a report of an immunization refusal to the local health department. In the absence of such a law, the provider lacks the legal authority to disclose the information.

30. Suppose a school requests a copy of a child's immunization record. Must the parent give authorization for the record to be disclosed to the school?

No. North Carolina law requires health care providers to disclose immunization information upon request to public and private schools, public and private colleges and universities, and licensed and registered child care facilities.⁵⁶ Authorization is not needed because this disclosure is required by law.

31. Do confidentiality laws allow providers to enter information into the North Carolina Immunization Registry (NCIR)?

Yes. Under HIPAA, health care providers are specifically permitted to disclose information to public health authorities who are authorized by law to collect the information for certain public health purposes, including preventing and controlling diseases, and conducting public health surveillance.⁵⁷ The NCIR is maintained by the North Carolina Department of Health and Human Services (DHHS). DHHS is a public health authority as that term is defined by HIPAA,⁵⁸ and it is authorized by law to prevent and control disease and to collect information about immunizations.⁵⁹ NCIR is one means by which it carries out those duties.

32. Must a health care provider give a copy of a child's immunization record to a parent upon request?

Yes, in most cases. Under the HIPAA privacy rule, patients or their personal representatives have a "right of access" to this information.⁶⁰ The right of access includes the right to obtain a copy of the record. There are only a few limited circumstances in which this right may be denied.

Children who are immunized according to the state schedule receive most of their immunizations when they are infants or preschoolers. The child's parent (or a parent substitute, such as a legal guardian or PILP) makes decisions about the child's health care and thus is the child's "personal representative" for HIPAA purposes. Therefore, the parent is ordinarily the person

56. 10A N.C.A.C. 41A .0406.

57. 45 C.F.R. 164.512(b).

58. 45 C.F.R. 164.501 (defining "public health authority" to include state and local public health agencies and their employees).

59. G.S. 130A-5 (general authority to provide for the control of disease); 130A-153 (specific authority to collect immunization information).

60. 45 C.F.R. 164.524.

who may exercise HIPAA's right of access to immunization records.⁶¹ There is a limited exception to this when adolescents receive immunizations on their own consent, which is discussed in more detail below in the section, "Special Issues with Adolescent Immunizations."

33. Suppose there is an unpaid balance on a child's account. Can a health care provider refuse to give the child's parent a copy of the immunization record until the bill is paid?

No. HIPAA grants patients or their personal representatives a right of access to information which includes the right to obtain a copy of a record.⁶² Although there are a few circumstances in which the right of access may be denied, they are quite limited and this circumstance is not one of them.⁶³

Special Issues with Adolescent Immunizations

34. May adolescents consent to their own immunizations?

Under North Carolina's minor's consent law, some adolescents may consent to receive immunizations on their own. The law allows physicians to accept an unemancipated minor's consent for the prevention of venereal diseases and reportable communicable diseases.⁶⁴ Most of the immunizations that are required or recommended for children and adolescents prevent either venereal diseases or communicable diseases that are reportable under North Carolina law.⁶⁵ The minor's consent law therefore authorizes physicians to accept a minor's consent for those immunizations.

The law actually says that "any" minor may give effective consent, but "any" must not be taken literally. A health care provider must not accept a minor's consent unless the minor has both *legal capacity* to consent to the treatment, and *decisional capacity* (or competence)—that is, the ability to understand health care treatment options and make informed decisions. Ordinarily, unemancipated minors lack the legal capacity to consent to their own treatment. The minor's consent law gives unemancipated minors legal capacity to consent to immunizations for venereal disease or reportable communicable diseases, but a health care provider still must deter-

61. 45 C.F.R. 164.502(g)(3).

62. 45 C.F.R. 164.524; see also question 32.

63. See also North Carolina Medical Board, Position Statement: Access to Medical Records (August 2003), available at www.ncmedboard.org/position_statements/detail/access_to_medical_records/ ("Medical records should not be withheld because an account is overdue or a bill is owed.").

64. G.S. 90-21.5 authorizes physicians and those working under their supervision to accept an unemancipated minor's consent for the prevention, diagnosis, and treatment of (1) venereal diseases and reportable communicable diseases, (2) pregnancy (but not including sterilization or abortion), (3) abuse of controlled substances or alcohol (but not including inpatient services, except in emergencies), or (4) emotional disturbance (but not including inpatient services, except in emergencies). Emancipated minors may consent to most medical services. G.S. 90-21.51(b); see also footnote 35, *supra*.

65. See 10A N.C.A.C. 41A .0101 for the complete list of communicable diseases that are reportable in North Carolina. Varicella is the only required vaccine that prevents a disease that is neither venereal nor reportable under North Carolina law. The following diseases for which vaccines are required are all reportable: diphtheria, tetanus, pertussis (whooping cough), polio, measles, mumps, rubella, haemophilus influenzae b, and hepatitis B.

mine that a particular minor who presents himself or herself for immunization has the capacity to make that decision on his or her own.⁶⁶

35. What is the minimum age for a minor to give consent for immunizations?

The law does not establish a minimum age. It says “any minor”—but obviously, an infant cannot give consent. On the other hand, most older adolescents can. Whether or not to accept a particular minor’s consent is a decision that must be made on a case-by-case basis. Before accepting a minor’s consent, the health care provider must determine that the particular minor in question has the ability to make this health care decision for himself or herself.

36. May a minor consent to human papillomavirus (HPV) vaccination?

HPV is not reportable under North Carolina law, but state public health officials consider it a venereal disease.⁶⁷ Since the minor’s consent law permits a minor to consent to medical services that prevent venereal diseases, a minor with capacity to give informed consent may consent to the HPV vaccine.

37. Suppose a minor has capacity to consent to immunization and the provider accepts the minor’s consent. The minor would like to keep the immunization confidential from his or her parents. Can the health care provider keep this information confidential from the parents?

Ordinarily, when a minor receives treatment under North Carolina’s minor’s consent law, information about the treatment is confidential and may not be disclosed to the minor’s parent without the minor’s consent. This general rule has two exceptions, which allow the provider to give the parent information about the minor’s treatment in two circumstances:

1. if the provider believes that notifying the parent about the treatment is essential to the minor’s life or safety (in this case the provider initiates the disclosure of information), or
2. if the parent contacts the provider and asks for information about the minor’s treatment (in this case, the parent initiates the disclosure of information).⁶⁸

The application of this rule to immunization information can be complicated. A minor’s immunization record may include information about immunizations for which the minor’s parent gave consent, immunizations for which the minor gave consent, or both. When a parent consents to a child’s treatment, the parent is the child’s personal representative with respect to information about that treatment. Among other things, this means that under HIPAA the parent has a right of access to information about the treatment, as described above.⁶⁹ However, the parent is not the minor’s personal representative with respect to information about the

66. For more information about decisional capacity, see Anne Dellinger & Arlene Davis, *Health Care for Pregnant Adolescents: A Legal Guide*, 6–9, (Chapel Hill, NC: Institute of Government, 2001), available at www.adolescentpregnancy.unc.edu/pdf/HCP91901.pdf.

67. See Memorandum from Beth Rowe-West, North Carolina Immunization Branch, to Universal Childhood Vaccine Distribution Participants, *Minors’ Consent for Human Papilloma Virus (HPV) Vaccine* (April 23, 2007), available at www.immunizenc.com/images/PDFs/4-23-07%20HPV%20Minor%20Privacy.pdf.

68. G.S. 90-21.4.

69. See question 32.

treatment the minor received upon his or her own consent under the minor's consent law.⁷⁰ Therefore, in North Carolina, a parent does not have the HIPAA right of access to information about immunizations a minor receives upon his or her own consent. Instead, parents may receive information only in accordance with the state law described in the first paragraph of this answer.

As a result, when a parent requests an immunization record that includes information about immunizations a minor received upon his or her own consent, a health care provider must decide how to respond. State law *allows* the provider to give the parent information about the immunizations to which the minor consented in this circumstance, but it does not *require* the provider to do so. Thus, the provider could choose to release a complete immunization record to a parent who requests it, even if it includes information about immunizations a minor received upon his or her own consent. Alternatively, the provider may choose not to provide information about the immunizations the minor received upon her own consent.⁷¹

Regardless of how a provider chooses to deal with disclosing the provider's own records to parents, the provider should keep in mind that he or she is required by law to release the *entire* immunization record to schools, public health agencies, and certain others upon request.⁷² It is possible that those entities will make the complete record available to a minor's parent. Thus parents might learn about an immunization a minor has received on his own consent, even if the health care provider who gave the immunization does not notify the parent. For this reason it is advisable to tell minors who receive immunizations on their own consent that the information will become part of an immunization record that may be disclosed to others, potentially including the minor's parents.

70. 45 C.F.R. 164.502(g)(3)(i)(A).

71. Choosing not to provide the complete immunization record to the parent is a practice that may make providers uncomfortable. See Memorandum from Beth Rowe-West, North Carolina Immunization Branch, to Universal Childhood Vaccine Distribution Program Participants, *Update to Privacy Issues as Stated in April 23, 2007 Memo, Minor's Consent for Human Papillomavirus (HPV) Vaccine* (September 17, 2007), available at www.immunizenc.com/images/PDFs/09_17_2007_HPV_memo.pdf (acknowledging provider concerns with an earlier memorandum that addressed this issue). Providing a partial record is supported by G.S. 90-21.4, but it is appropriate for providers to consider other professional and practical concerns as well in deciding how to handle this situation.

72. 10A N.C.A.C. 41A .0406 (requiring disclosures to schools and others upon request); see also question 27.

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