

Childhood Immunizations: Law & Practice

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NC immunization requirements



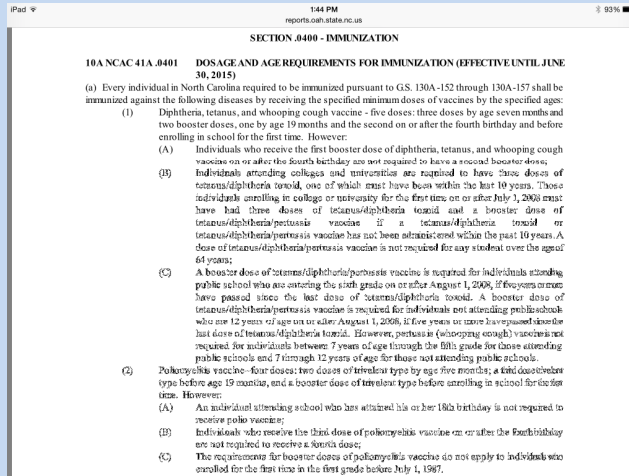
General rule: all children

- “Every child present in this State shall be immunized” (G.S. 130A-152)

Exemptions

- Medical (G.S. 130A-156)
- Religious (G.S. 130A-157)

Vaccines and doses



10A N.C.A.C. 41A .0401 (new schedule effective July 1, 2015)

Complying with requirements

Responsibility to ensure child's immunization

- Parent
- Guardian
- Person in loco parentis
- Person or agency with legal custody of a child

G.S. 130A-152(a)

Authority to consent to child's immunization

- Parent, guardian, or person in loco parentis
- DSS when authorized to consent to medical treatment (G.S. 7B-903)
- Adult authorized by parent, guardian, or person ILP (must sign)
- Minor alone (limited circumstances)

G.S. 130A-153(d)



Connection to school entry

- Parent or guardian must present certificate of immunization or documentation of exemption
- No certificate (or incomplete) → notice of deficiency
- 30 days provided to obtain immunizations (or begin series)
- After 30 days, if no action child must be excluded



G.S. 130A-155

Role of quarantine



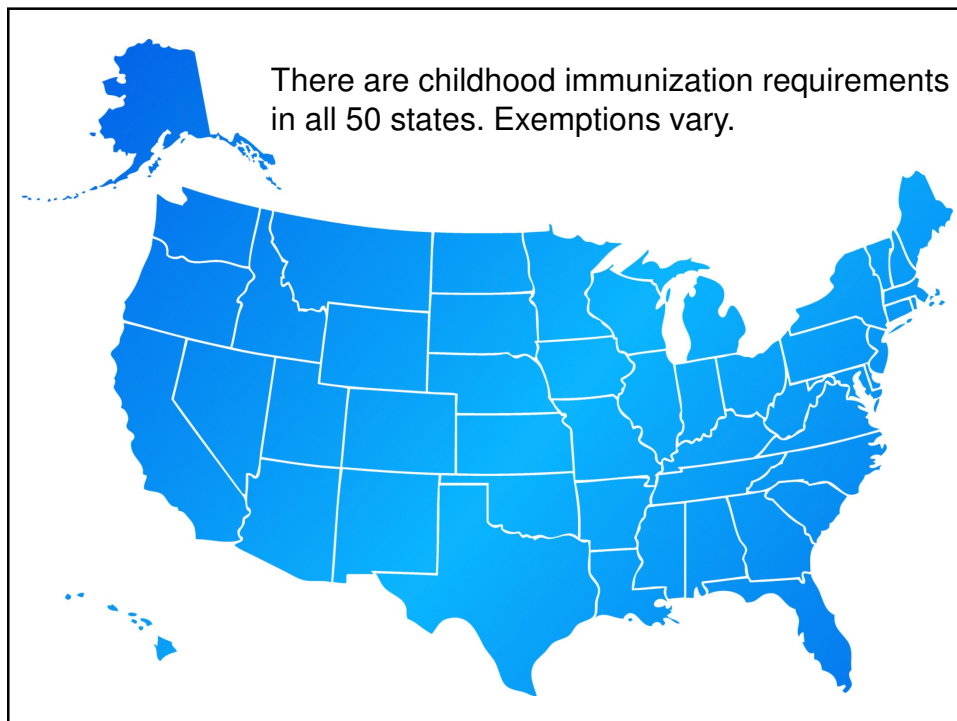
The quarantine authority may be used to separate unimmunized children from others during an outbreak of a vaccine-preventable disease, even if the child qualifies for an exemption.

G.S. 130A-2(7a)



Vaccines and the Constitution

- States may require vaccinations necessary to protect the public health. *Jacobson v. Massachusetts*, 197 U.S. 11 (1905).
- Vaccinations may be required as a condition of school entry. *Zucht v. King*, 260 U.S. 174 (1922).
- Exemptions for medical contraindications are constitutionally required, see *Jacobson*, but exemptions for religious objections are not. *Workman v. Mingo County Schools*, 419 Fed. Appx. 348 (4th Cir. (W.Va.), unpublished), cert. denied, 132 S.Ct. 590 (2011).
- A parent's right to control a child's religious upbringing may be limited to protect the welfare of the child. *Prince v. Massachusetts*, 321 U.S. 158 (1944).
 - See also *In re Stratton*, 153 N.C. App. 428 (2002) (a parent who loses custody due to neglect loses the authority to claim a religious exemption for the child).



Exemptions in the US

Medical

- Constitutionally required
- All states
- G.S. 130A-156; 10A N.C.A.C. 41A .0404

Religious

- Not constitutionally required
- 48 states (not West Virginia or Mississippi)
- G.S. 130A-157

Personal/ Philosophical

- Not constitutionally required
- 20 states (AZ, AR, CA, CO, ID, LA, ME, MI, MN, MO, ND, OH, OK, OR, PA, TX, UT, VT, WA, WI)
- Not recognized in NC: 10A N.C.A.C. 41A .0403

NC Medical Exemption

North Carolina Department of Health and Human Services
Immunization Program (IDIP), Public Health Services, U.S. Department of Health and Human Services, published by the Center for Disease Control and Prevention publication, The Morbidity and Mortality Weekly Report.

Medical Exemption Statement

Physician: Please mark the true contraindications/precautions that apply to this patient, then sign and date the back of the form. The signed Medical Exemption Statement certifying true contraindications/precautions is submitted to and accepted by schools, child care programs and other agencies that require proof of immunization. This signed form does not require approval from the State Health Director. For medical exemptions, the conditions are listed below; for religious exemptions, the physician must submit a Physician's Request for Medical Exemption to writing to the State Health Director for approval.

Attach a copy of the most current immunization record.

Name of Patient: _____ DOB: _____
 Name of Parent/Guardian: _____
 Address (patient/parent): _____
 School/Child Care: _____

Medical contraindications for immunizations are determined by the most recent Current Recommendations of the Advisory Committee on Immunization Practices (ACIP), Public Health Service, U.S. Department of Health and Human Services, published by the Center for Disease Control and Prevention publication, The Morbidity and Mortality Weekly Report.

A **contraindication** is a condition in a recipient that increases the risk for a serious adverse reaction. A vaccine will not be administered when a contraindication is present.
 A **precaution** is a condition in a recipient that might increase the risk for a serious adverse reaction or that might compromise the ability of the vaccine to produce immunity. Under normal conditions, vaccinations should be deferred when a precaution is present.

True Contraindications and True Precautions	
Vaccine	X
General for all vaccines	<input type="checkbox"/> Contraindications • Serious allergic reaction (e.g., anaphylaxis) after a previous vaccine dose; document vaccine <input type="checkbox"/> • Serious allergic reaction (e.g., anaphylaxis) to a vaccine component; document component <input type="checkbox"/> • Document type of reaction <input type="checkbox"/> Precautions • Moderate or severe acute illness with or without fever
DTaP	<input type="checkbox"/> Contraindications • Severe allergic reaction after a previous dose or a vaccine component • Encephalopathy within seven days after receipt of previous dose of DTaP or DTaP-IP • Progressive encephalopathy, including infantile spasms, associated primarily (or exclusively) with DTaP or DTaP-IP and neurologic events (epilepsy and intellectual delay) <input type="checkbox"/> Precautions • Fever greater than 104°F (40°C) within 48 hours after vaccination of previous dose of DTaP or DTaP-IP • Hypersensitivity (hypersensitivity episode) 48 hours after vaccination of previous dose of DTaP or DTaP-IP • Severe wheezing 72 hours after vaccination of previous dose of DTaP or DTaP-IP <input type="checkbox"/> • Persistent inconsolable crying lasting three hours or more 48 hours after receiving a previous dose of DTaP or DTaP-IP <input type="checkbox"/> • Persistent inconsolable crying lasting three hours or more 48 hours after receiving a previous dose of DTaP or DTaP-IP <input type="checkbox"/> • Moderate or severe acute illness with or without fever
DT, Td	<input type="checkbox"/> Contraindications • Severe allergic reaction after a previous dose or a vaccine component <input type="checkbox"/> • Document type of reaction <input type="checkbox"/> Precautions • Guillain-Barre syndrome six weeks after a previous dose of tetanus toxoid-containing vaccine <input type="checkbox"/> • Moderate or severe acute illness with or without fever

DHHS 3987 (Revised 1/09)
Immunization (Revised 7/10)

- Certified by licensed physician
- ACIP-recognized contraindication or specific approval by state health director
- DHHS Form 3987

**G.S. 130A-156
10A N.C.A.C. 41A .0404**

NC Religious Exemption

- Bona fide religious beliefs of parent, guardian, or person in loco parentis are contrary to requirements
- No form – parent writes statement
- Personal belief not founded in religion does not satisfy this exemption

G.S. 130A-157
10A N.C.A.C. 41A .0403

Scenarios

Immunized older child but not younger

Selective objection to vaccinations

Claimed religious exemption after request for medical exemption denied

Statement of objection not founded in religion

Religious denomination not opposed to immunization



Future directions?

Legislation & regulation in other states

- Mississippi rejected religious exemption; push in some other states to end or limit non-medical exemptions
- Proposals to attach requirements to obtaining exemptions, such as informed refusal procedures

Lawsuits

- Civil: Tortious negligence. Caplan et al., *Free to Choose but Liable for the Consequences: Should Non-Vaccinators Be Penalized for the Harm They Do?*, *Journal of Law, Medicine & Ethics* (Fall 2012).
- Criminal: In NC, G.S. 130A-25 allows misdemeanor charge if immunization laws violated; may be other theories (see Caplan article).

Provider practices

