

CHILDHOOD IMMUNIZATIONS: NORTH CAROLINA LAW

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We the People

- 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 Board of Education*, 419 Fed. Appx. 348 (4th Cir. (W.Va.), unpublished), cert. denied, 565 U.S. 1036 (2011).
 - See also *Prince v. Massachusetts*, 321 U.S. 158 (1944) (“the right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death”).

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)

REQUIRED IMMUNIZATIONS & SCHEDULE

SECTION 0400 - IMMUNIZATION

10A N.C.A.C. 0400 - DOSEAGE AND AGE REQUIREMENTS FOR IMMUNIZATION

040. Every individual in North Carolina required to be immunized pursuant to G.S. 130A-152 through 130A-157 shall be immunized against the following diseases and have documentation of age-appropriate vaccination in accordance with the Advisory Committee on Immunization Practices (ACIP):

- (1) Diphtheria, tetanus, and pertussis (including acellular pertussis) - first dose: three doses by age seven months; and 2 booster doses, the first by age 18 months and the second on or after the fourth birthday and before entering school for the first time. However:
 - (A) Individuals who receive the first booster dose of diphtheria/tetanus/pertussis vaccine on or after the fourth birthday are not required to have a second booster.
 - (B) Individuals attending college or university for the first time on or after July 1, 2008 must have had three doses of tetanus-diphtheria second, one of which must be tetanus-diphtheria/pertussis vaccine is required for individuals who have not previously received it and are entering the seventh grade on or by 12 years of age, who have received five.
- (2) Poliovirus vaccine - first dose: one dose of trivalent type by age four months; a third dose: trivalent type before age 18 months; and a booster dose of trivalent type on or after his or her fourth birthday and before entering school for the first time. However:
 - (A) An individual attending school who has attained his or her 18th birthday is not required to receive a polio vaccine.
 - (B) The requirements for the booster dose on or after the fourth birthday do not apply to individuals who began school before July 1, 2013.
 - (C) Individuals who receive the third dose of poliovirus vaccine on or after the fourth birthday are not required to receive a fourth dose if the third dose is given at least six months after the second dose.
- (3) Measles, mumps, and rubella (MMR) vaccine - first dose: of live, attenuated vaccine administered at least 28 days apart the first dose on or after age 12 months and before age 18 months; and a second dose before entering school for the first time. However:
 - (A) An individual who has been documented by serological testing to have a protective antibody titer against measles is not required to receive measles vaccine.
 - (B) An individual who has been diagnosed before January 1, 1984, by a physician (or a physician assistant or nurse practitioner or physician assistant) as having measles (rubella) disease is not required to receive measles vaccine.
 - (C) An individual born before 1957 is not required to receive measles vaccine except on measles outbreak situations.
- (4) The requirement for a second dose of measles vaccine does not apply to individuals who enter school or to college or university for the first time before July 1, 1994.
- (5) Rabies vaccine - one dose of live, attenuated vaccine on or after age 12 months and before age 18 months. However:
 - (A) An individual who has laboratory confirmation of rabies disease or who has been documented by serological testing to have a protective antibody titer against rabies is not required to receive rabies vaccine.
 - (B) An individual who has attained his or her fifth birthday is not required to receive rabies vaccine except in outbreak situations.
 - (C) An individual who entered a college or university after his or her fourth birthday and before February 1, 2009 is not required to meet the requirement for rabies vaccine except in outbreak situations.
- (6) Mumps vaccine - two doses: the first dose of live, attenuated vaccine administered on or after age 12 months and before age 18 months; and a second dose before entering school, college or university for the first time. However:
 - (A) An individual who has laboratory confirmation of disease, or has been documented by serological testing to have a protective antibody titer against mumps is not required to receive the mumps vaccine.
 - (B) An individual born before 1957 is not required to receive the mumps vaccine.

- Additional information on www.immunizenc.gov includes charts for different ages and information on recommended vs. required immunizations

Kindergarten	
Vaccination requirements for kindergarten-age children can be found below:	
Vaccine	Number Doses Required Before School Entry*
Diphtheria, tetanus and pertussis	5 doses
Polio	4 doses
Measles	2 doses
Mumps	2 doses
Rubella	1 dose
Hæmophilus Influenzæ type B (HIB)	4 doses
Hepatitis B (Hep B)	3 doses
Varicella (chickenpox)	2 doses
Pneumococcal conjugate	4 doses

10A N.C.A.C. 0401

WHO IS RESPONSIBLE FOR OBTAINING A CHILD'S IMMUNIZATIONS?

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

G.S. 130A-152(a)

WHO MAY CONSENT FOR IMMUNIZATION?

- Parent, guardian, person in loco parentis (G.S. 130A-153(d))
- Another adult authorized by the parent (G.S. 130A-153(d))
 - LHD may immunize a minor who is presented by an adult who signs a statement that s/he has been authorized by the parent to obtain the immunization.
 - Note that the statement must be signed by the adult who presents the child. There is no requirement for a written consent from parent.
- Consent from an adolescent (G.S. 90-21.5):
 - Some immunizations covered by minor's consent law: prevention of venereal disease or reportable communicable disease
 - Adolescent must have decisional capacity to give effective consent under this law



WHO MAY CONSENT FOR A CHILD IN DSS CUSTODY?

- DSS is permitted to consent to “routine” medical care for a child in its custody.
- However, if the child’s parent is known to have a bona fide religious objection to immunization, DSS ordinarily must obtain the parent’s consent.
 - There is a provision for a court to authorize DSS to consent. It requires a hearing at which the court finds by clear and convincing evidence that immunization is in the child’s best interest.

G.S. 7B-505.1

North Carolina Department of Health and Human Services | Division of Social Services
General Authorization for Treatment and Medication

Section A - Identifying Information	
Child's Name:	Date of Birth:
Medical Health Provider:	Telephone Number:
Other Medical, Dental, or Mental Health Provider or Specialist Providing or Administering Treatment:	Telephone Number:

Section B - Care, Treatment, and Parental Consent (N.C.G.S. § 7B-505.1)
Check a child in the custody of the receiving child welfare agency; the receiving director may arrange for, provide, or consent to any of the following without obtaining parental consent:

- Routine medical or dental care or treatment (including immunizations in most cases).
- Emergency medical, surgical, psychiatric, orthopedic, or mental health care or treatment, and,
- Testing and evaluation of urgent circumstances.

I hereby authorize _____ (identify child welfare agency to consent to the following treatment of the child identified above (include description))

Prescriptions for psychiatric medication(s) _____

Participation in a clinical trial _____

Child Medical Evaluation not otherwise authorized (DSS-8143 Consent/Authorization for Child Medical/Child Family Evaluation must also be completed) _____

Comprehensive (clinical assessment), or other mental health evaluation(s) _____

Surgical, medical, or dental procedure or test that requires informed consent _____

Psychiatric, psychological, or mental health care or treatment that requires informed consent _____

Other non-routine or non-emergency treatment or procedure _____

DSS-912 (Revised 10/2016)
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EXEMPTIONS

NC MEDICAL EXEMPTION

"If a physician licensed to practice medicine in this State certifies that a required immunization is or may be detrimental to a person's health due to the presence of one of the contraindications adopted by the Commission, the person is not required to receive the specified immunization as long as the contraindication persists." G.S. 130A-156

- Licensed physician must certify
- ACIP-recognized contraindication, or specific approval by State Health Director
- DHHS Form 3987

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

DISCUSSION SCENARIO: "MY CHILD HAD A BAD REACTION TO A VACCINE"

- A 15-month-old child developed a fever and bright red throat within 24 hours of receiving her first MMR vaccine. The child's pediatrician diagnosed strep throat and prescribed an antibiotic. Then the child developed a rash all over her body and began crying inconsolably. The child's mother took her to the emergency room and was advised the child had an allergy to the antibiotic.
- The mother went online and found stories of parents who said their children had bad reactions to the MMR vaccine, ranging from rash with fever, to autism. The mother decided not to allow future vaccinations for her child. She asks her physician to certify a medical exemption for all future vaccines.
- Does this child qualify for a medical exemption under NC law?

NC RELIGIOUS EXEMPTION

- "If the bona fide religious beliefs of an adult or the parent, guardian, or person in loco parentis of a child are contrary to the immunization requirements contained in this Chapter, the adult or the child shall be exempt from the requirements."
- No DHHS form – parent writes statement

G.S. 130A-157

NC DOES NOT RECOGNIZE "PERSONAL BELIEF" OR "PHILOSOPHICAL" OBJECTION

- "There 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."
- 10A NCAC 41A. 0403
- Common philosophical or personal objections:
 - Concern that risk of immunization outweighs benefits.
 - Different views of science of immunization.
 - Don't agree with governmental mandate.

DISCUSSION SCENARIO: "I HAD TO LIE ABOUT RELIGION TO AVOID VACCINATION"

- A mother who claimed a religious objection to vaccinations for her child was profiled in a New York Times story. According to the story, the mother admitted that her objections were based on concerns about vaccine safety, not religion. She was quoted as saying, "I'm an honest person but the state forced me to lie."
- Is this mother's religious objection to vaccines "bona fide," as North Carolina law requires?

VACCINATION & SCHOOL ATTENDANCE

REQUIREMENTS FOR SCHOOL ENTRY

If a child is unimmunized and is not eligible for a medical or religious exemption, the child may be excluded from school or day care.

- 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; 115C-364



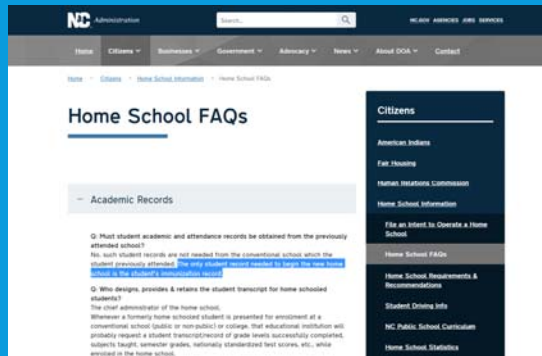
QUARANTINE IN OUTBREAK

- A child who has not been immunized may be subject to quarantine in an outbreak, even if the child has an exemption.
 - "The term [quarantine authority] also means the authority to issue an order to limit the freedom of movement or action of persons who have not received immunizations against a communicable disease when the State Health Director or a local health director determines that the immunizations are required to control an outbreak of that disease." G.S. 130A-2(7a)
 - Quarantine orders that restrict freedom of movement:
 - May not exceed 30 days without a court's permission
 - Are subject to review by a court if a person requests it
- G.S. 130A-145



WHAT ABOUT HOME SCHOOL?

- Home schools must keep immunization records. If child qualifies for an exemption, the home school must document the exemption.
- The NC Division of Nonpublic Education, Department of Administration, must provide information about immunizations to home schools.
- G.S. 115C-564; 115C-565



RESPONDING TO REFUSAL

INFORMED REFUSAL

- Some states specifically require informed refusal processes
- NC does not have a specific process for immunization refusal, but general principles of informed consent apply
- HCP should explain:
 - Purpose of immunization
 - Risks and benefits of receiving; risks and benefits of forgoing
 - NC law requirements and potential legal consequences of refusal

SHOULD HEALTH CARE PROVIDERS USE AAP'S "REFUSAL TO VACCINATE" FORM?

Voluntary, but both HCP & parent should understand:

- The parent's signature on the form does **NOT** exempt the child from NC's immunization requirements.
- Even if the child qualifies for an exemption under NC law, the AAP form is **NOT** proper documentation of the exemption.



OTHER LEGAL APPROACHES

