

COVID-19 Vaccination: Emerging Issues

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Consent to Vaccination for Minor Children



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Consent to health care for emancipated minors



- Who is an emancipated minor? G.S. Ch. 7B Art. 35:
 - Married (age 14+)
 - Court order of emancipation (age 16+)
- Emancipated minors may consent for themselves unless they lack capacity to consent—that is, cannot make or communicate health care decisions. G.S. 90-21.5(b).
- An emancipated minor who cannot make or communicate health care decisions needs a substitute decision-maker. See G.S. 90-21.13.

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Consent to health care for unemancipated minors (most children < 18)

- **General rule** – Unemancipated minors need the consent of a parent, guardian, or person standing in loco parentis. *See, e.g., Adams v. Tessener*, 354 N.C. 57 (2001) (discussing fundamental right of parents to care, custody, and control of child); *see also* G.S. 7B-3400; 90-21.1.
- **Exceptions** –
 - *Emergency/urgent circumstances* in which parent's consent cannot reasonably be obtained during the time treatment is needed. G.S. 90-21.1.
 - Parent executes a type of *power of attorney* that authorizes another to consent to treatment for the minor. G.S. Ch. 32A Art. 4.
 - *Minor's consent law*: Minor may give effective consent for certain medical health services, including services for the prevention of reportable communicable diseases. G.S. 90-21.5
- **Special rule that applies to immunizations only** – A physician or local health department may immunize a minor who is presented for immunization by an adult who attests in writing that the minor's parent has authorized the adult to obtain the immunization. G.S. 130A-153(d).



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Minor's consent law (G.S. 90-21.5)

Any* minor may give effective consent for medical health services for the prevention, diagnosis, or treatment of:

- Venereal disease and ***other reportable communicable diseases/conditions***
- Pregnancy (includes family planning, except for sterilization; does not include abortion, which falls under G.S. 90-21.7)
- Abuse of alcohol or controlled substances
- Emotional disturbance

*Minor must have decisional capacity, AKA clinical capacity or competence to make this health care decision

COVID-19 is reportable (G.S. 130A-134; 10A NCAC 41A .0101 & .0107)

Vaccination is a medical health service for the prevention of SARS-CoV-2 infection and COVID-19

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G.S. 130A-153(d)

"A physician or local health department may immunize a minor with the consent of a parent, guardian, or person standing in loco parentis to the minor. A physician or local health department may also 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."

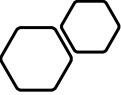
DOES:

Create a way for parent/guardian/person in loco parentis to easily obtain children's immunizations if parent/guardian/person in loco parentis is unable to take the child (e.g., because of work schedule), by allowing another adult to present the child.

DOES NOT:



Alter the ability of a minor with decisional capacity to consent under G.S. 90-21.5. See DPH COVID-19 Vaccine Provider Guidance (published Jan. 5, 2021; updated Mar. 26, 2021).



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Decisional capacity

Individual is capable of making and communicating a health care decision, such as the decision to receive a COVID vaccination

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What varies based on who presents an unemancipated minor for vaccination?

Parent/Guardian/In Loco Parentis

- Should be asked if they consent and can affirm orally

Minor alone

- May be able to give effective consent under minor's consent law, if the minor has decisional capacity
- Should be asked if they consent and can affirm orally

Another adult (person 18+) authorized by the parent to take the child for vaccination

- Does not have to have power of attorney or writing of any kind from parent, but must attest in writing that they have the parent's permission to get the child vaccinated

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Children in DSS Nonsecure Custody (G.S. 7B-505.1)

Unless court orders otherwise, DSS director may arrange for, provide, or consent to ***routine medical and dental care or treatment*** and certain other care specified in the statute

DSS director shall obtain authorization from juvenile's parent, guardian, or custodian to consent to care not covered by the statute, ***including immunizations when it is known that the parent has a bona fide religious objection to the standard schedule of immunizations.***

- Exception: Court may authorize director to provide consent after a hearing at which court finds by clear and convincing evidence that the care, treatment, or evaluation requested is in the juvenile's best interest.

G.S. 7B-903.1(e): Provisions of 7B-505.1 apply to juveniles in custody pursuant to G.S. 7B-903

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DSS Form 1812

Purpose

- To ensure children in DSS custody receive necessary care and treatment
- To ensure parents are engaged in children's care and treatment

Use

- To obtain parental authorization for DSS to consent to care or treatment that director lacks authority to consent to under 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 Home Provider:	Telephone Number:
Other Medical, Dental, or Mental Health Provider or Specialist Prescribing or Administering Treatment:	Telephone Number:
Section B – Care, Treatment, and Parental Consent (N.C.G.S. § 7B-505.1)	
When a child is in the custody of the county child welfare agency, the county director may arrange for, provide, or consent to any of the following without obtaining parental consent:	
<ul style="list-style-type: none"> • Routine medical or dental care or treatment (including immunizations in most cases); • Emergency medical, surgical, psychiatric, psychological, or mental health care or treatment; and, • Testing and evaluation in exigent circumstances 	
I hereby authorize _____ county child welfare agency to consent to the following treatment of the child identified above (include description):	
<input type="checkbox"/> Prescriptions for psychotropic medication(s): _____	
<input type="checkbox"/> Participation in a clinical trial: _____	
<input type="checkbox"/> Child Medical Evaluation not otherwise authorized (DSS-5143 Consent/Authorization for Child Medical/ChildFamily Evaluation must also be completed): _____	
<input type="checkbox"/> Comprehensive clinical assessment, or other mental health evaluation(s): _____	
<input type="checkbox"/> Surgical, medical, or dental procedure or test that requires informed consent: _____	
<input type="checkbox"/> Psychiatric, psychological, or mental health care or treatment that requires informed consent: _____	
<input type="checkbox"/> Other non-routine or non-emergency treatment or procedure: _____	

DSS-1812 (Created 02/2016)
Child Welfare Services

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Issue I'm
keeping an
eye on ...



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"Vaccine passport"

- Will proof of vaccination be required as a condition of entry into certain places, or as a condition for provision of certain services?

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When might
proof of
vaccination
be required?

Travel

Employment

Education

Community

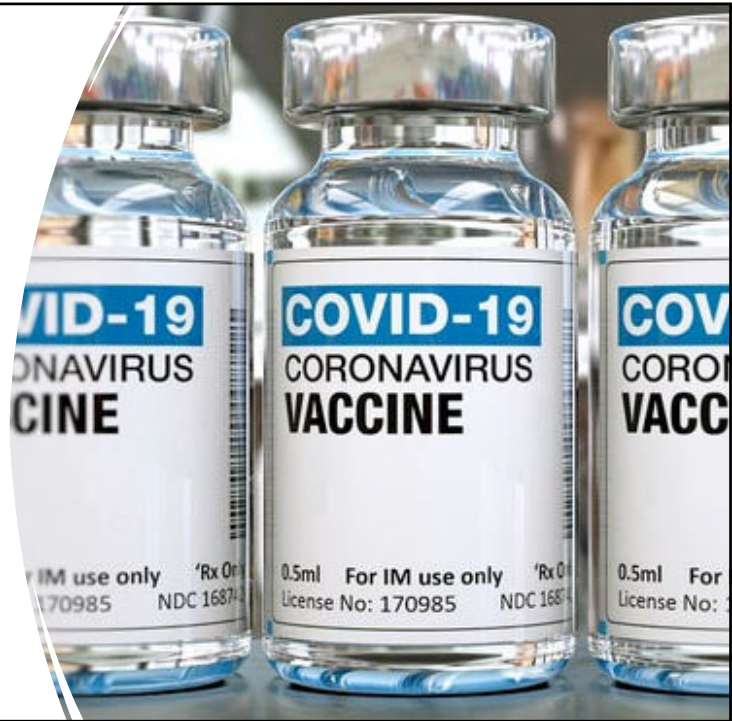
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Proof of
vaccination for
programs or
services:
Some initial
considerations

- What kind of proof will be required?
- Are the individuals who are being asked for proof **eligible** for vaccination?
- Is vaccination **reasonably available** to the individuals who are being asked for proof?
- How will the program or service deal with individuals who are not vaccinated for medical reasons?
- How will the program or service deal with individuals who are not vaccinated for religious reasons?
- Other considerations?

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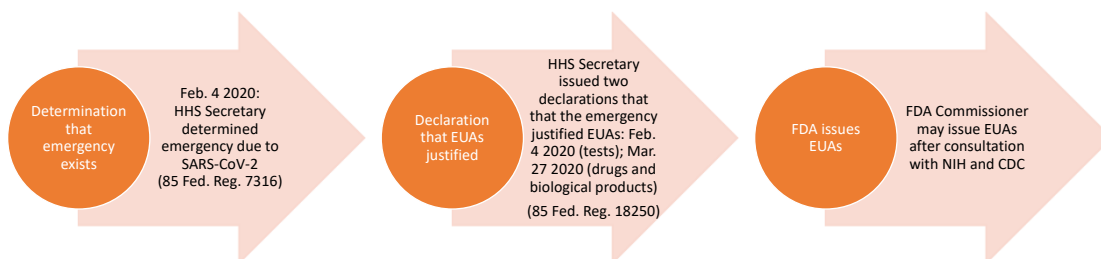
Emergency Use Authorizations



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Emergency Use Authorizations (EUAs)

- Allows use of vaccines (and other drugs, devices, and biological products) that have not yet received full FDA approval in certain emergency situations, including a public health emergency.
 - 21 U.S.C. 360bbb-3 (aka Section 564 of the federal Food, Drug, and Cosmetic Act)
- EUA Process during COVID-19:

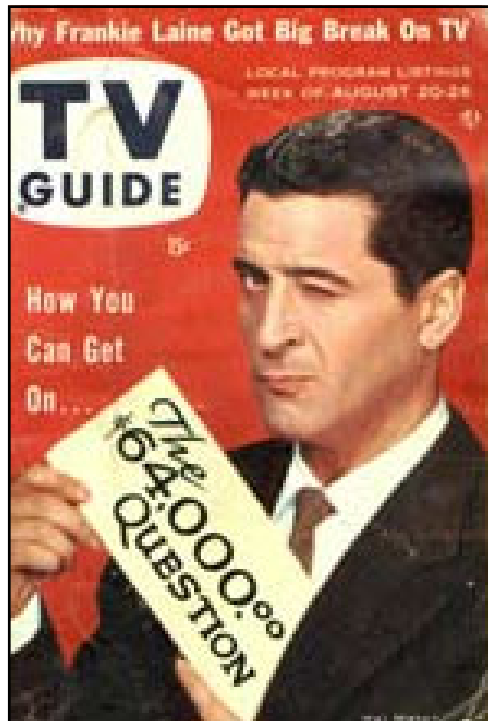


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EUAs as of
4/7/2021

Product	EUA Date	Dosage	Age Groups
Pfizer	Dec. 11, 2020	2 doses 21 days apart	16 +
Moderna	Dec. 18, 2020	2 doses 28 days apart	18 +
Johnson & Johnson (Janssen)	Feb. 27, 2021	1 dose	18 +

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Making a vaccine a condition of participation while it's under an EUA?

- **EUA Notice Requirements:**
When a product is under an EUA, the recipient of the product must be informed of certain things, including “the option to accept or refuse administration of the product, of the consequences, if any, of refusing administration of the product and of the alternatives to the product that are available and of their benefits and risks.”
21 U.S.C. 360bbb-3(e)(ii)
- Different schools of thought on what this provision means
- May be additional considerations as well

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Questions?

