



Members Only

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Ohio Immunization Laws*

PREPARED BY: MICHELLE PALUGA, LSC INTERN

REVIEWED BY: SHELAGH BAKER, LSC DIVISION CHIEF

SUMMARY

In Ohio, immunization laws affect children attending day-care centers, day-care center employees, schoolchildren, college students, hospital patients, and residents of long-term care facilities.

Children must be immunized against a number of illnesses as a condition of being admitted to school. However, a child can be excused from immunization if the child has already had the disease, the immunization is medically contraindicated, or the child's parent or guardian objects in writing for reasons of conscience. Immunization requirements for schoolchildren have been challenged on a number of grounds, but have been upheld by the courts.

College students seeking to reside in on-campus housing must disclose whether they have been immunized against meningococcal meningitis and hepatitis B.

Long-term care facilities and hospitals are required to offer residents and patients vaccinations against influenza and pneumococcal pneumonia, subject to certain exceptions.

Health care workers are generally not required by law to be immunized. But federal law requires that the hepatitis B vaccination be offered to all health care workers who have occupational exposure to blood and other potentially infectious materials.

Immunization requirements for school children

In Ohio, public school district boards of education are authorized to make and enforce rules to secure the immunization of and prevent the spread of communicable diseases among children attending or eligible to attend the schools of the district, as in its opinion the safety and interest of the public

Children attending most schools in Ohio must be immunized against chicken pox, poliomyelitis, diphtheria, tetanus, pertussis, measles, mumps, rubella, and hepatitis B.

* This *Members Only* brief is an update of an earlier brief on immunization of schoolchildren dated August 30, 2006 (Volume 126 Issue 5).



Ohio law permits exemption of a school child from immunization requirements for certain reasons.

Boards of health, municipal corporations, and townships must provide the means of immunization against certain diseases, not including chicken pox, to pupils who are not provided immunizations by their parents or guardians. The Department of Health is required, to the extent appropriations made by the General Assembly make this possible, to provide the means of immunization against chicken pox to local entities.

require (R.C. 3313.67). Children attending public schools or nonpublic schools that meet state educational requirements must be immunized against chicken pox, poliomyelitis, diphtheria, tetanus, pertussis, measles (rubeola), mumps, rubella, and hepatitis B. Unless exempted from the immunization requirements, a child cannot be permitted to remain in school for more than 14 days unless the child presents written evidence satisfactory to the school of having received the required immunizations or being in the process of receiving the required immunizations. (R.C. 3313.671(A).)

Exceptions to immunization requirements

Under the following circumstances, a schoolchild does not have to provide proof of one or more of the required immunizations (R.C. 3313.671(B)):

- (1) The child has had natural measles, mumps, or chicken pox and presents a signed statement from the child’s parent, guardian, or physician to that effect;
- (2) The child presents a written statement of the child’s parent or guardian in which the parent or guardian declines to have the child immunized for reasons of conscience, including religious convictions;
- (3) A physician certifies in writing that immunization against a particular disease is medically contraindicated for the child.

Ohio law provides that if the Director of Health notifies a school’s

principal or chief administrative officer that a chicken pox epidemic exists in the school’s population, a school may deny admission to an unimmunized child who is otherwise exempt from the chicken pox immunization requirement (R.C. 3313.671(C)).

Provision of immunizations

On application of the local school board, Ohio law requires boards of health, municipal corporations, and townships to provide the means of immunization against poliomyelitis, diphtheria, tetanus, pertussis, measles, mumps, rubella, and hepatitis B to pupils who are not provided the immunizations by their parents or guardians. The immunizations must be provided without delay and at public expense. (R.C. 3313.671(D).)

Although local entities are not required to provide a means of immunization against chicken pox, the Department of Health is required, to the extent appropriations made by the General Assembly make this possible, to provide the means of immunization against chicken pox to local boards of health, municipal corporations, and townships (R.C. 3313.671(D) and 3701.134).¹

Case law on schoolchild immunizations

Although widely accepted as serving important public-health purposes, mandatory immunization laws have also provoked resistance. Parents and others have challenged



such laws on a number of grounds, including:

- The effectiveness of immunization;
- The need for immunization;
- Potential harmful effects of the vaccines used in immunization;
- The source of certain vaccines;
- Legal and constitutional objections, including objections based on religious freedom, personal liberty, privacy, due process, and equal protection.²

The law is well established that a state may compel immunization under its police powers (the broad power of a state to regulate matters relating to the health, safety, and welfare of the public).³ The constitutionality of requiring immunization for school attendance has been upheld by the United States Supreme Court.⁴ Many courts have rejected challenges to compulsory immunization laws on the basis of personal liberty, illegal search and seizure, due process, equal protection, and freedom of religion.⁵

In 1907, the Ohio Supreme Court considered the case of a father seeking to compel the local board of education to admit his unimmunized children to school (*State ex rel. Milhoof* (1907), 76 Ohio St. 297). In denying the father's appeal, the court held that the board could make and enforce rules under its police powers to promote the common good and protect and preserve the public health. Similarly, in *State ex rel. Dunham* a parent filed an action to compel the board of education to admit a child to school. The board had refused admittance

because the parent refused to have his child vaccinated for the reason that vaccination in any form was contrary to his religion and conscience and interfered with his constitutional right to freedom of religion. The court determined that the board of education had statutory authority under what is now R.C. 3313.67 to adopt a rule excluding pupils from public school who have not been vaccinated. Further, it held that enforcement of such a rule is not a violation of the constitutional right to religious freedom. ((1951) 154 Ohio St. 469.)⁶

Authority to exclude unimmunized children from school

The most recent legislation regarding schoolchild immunizations was Substitute House Bill 463 of the 125th General Assembly. H.B. 463 made several changes to the immunization laws, including requiring children to be immunized against chicken pox before entering kindergarten. What remains unclear since the enactment of H.B. 463 is whether unimmunized pupils can be barred from attending school despite their parents' objections to immunization. The act broadened the circumstances under which parents can object to immunization and eliminated a prior provision in R.C. 3313.671 authorizing school boards to make and enforce rules to secure immunization. Because the later provision was stricken in the act, a court could conclude that it

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It remains unclear since the enactment of H.B. 463 whether unimmunized pupils can be barred from attending school despite their parents' objections to immunization.



was the General Assembly's intent to eliminate the authority of local school officials to make and enforce such rules. But the absence of a provision is not as indicative of legislative intent as an affirmative statement.

Further complicating the issue is that H.B. 463 did not amend another section, R.C. 3313.67. This section, in language nearly identical to the stricken provision, states that a public school district board of education may make and enforce rules to secure the immunization of and prevent the spread of communicable diseases among the pupils attending the schools of the district, "as in its opinion the safety and interest of the public require."

Even if a court were to conclude that H.B. 463 removed the authority of a public school district board of education to exclude an unimmunized child from school, it is possible that the Ohio Department of Health or a local board of health could bar the child from attending school.⁷ R.C. 3107.13 provides that the Department has supervision of all matters relating to the preservation of the life and health of the people and has ultimate authority in matters of quarantine and isolation. A person who is not immunized could be quarantined as part of the effort to prevent the spread of disease.

The Revised Code permits the Department to make special orders, standing orders, and rules for preventing the spread of contagious or infectious diseases and empowers it to take such actions as are necessary to

encourage vaccination against certain diseases (R.C. 3701.13).

A person who violates any order that the Director or Department of Health issues to prevent a threat to the public caused by a pandemic or epidemic is guilty of a second-degree misdemeanor. (R.C. 3701.99.) Further, the Director or a board of health may petition the court of common pleas for appropriate relief requiring a person violating an order issued by the Director to comply with the rule or order. (R.C. 3701.57.) It is possible that "other appropriate relief" could include excluding unimmunized children from school.

Disclosure requirement for college students

Ohio law requires each college or university student⁸ seeking to reside in on-campus housing to disclose whether the student has been immunized against meningococcal meningitis and hepatitis B. The law does not expressly require that a student be immunized against meningococcal meningitis and hepatitis B to reside in on-campus housing, only that the information be disclosed. The student or the student's parent or guardian must complete the appropriate form from the Ohio Department of Health or an equivalent form from the school to indicate immunization. (R.C. 1713.55, 3332.25, 3345.85, and 3701.133(B).)

If a court were to conclude that H.B. 463 removed the authority of a public school district board of education to exclude an unimmunized child from school, it is possible that the Ohio Department of Health or a local board of health could bar the child from attending school.

College students living in dorms must disclose whether they have been immunized against meningococcal meningitis and hepatitis B.



Immunization requirements for child day-care centers

The Director of Job and Family Services is responsible for licensing child day-care centers and is required to establish rules governing those centers, including immunization requirements (R.C. 5104.011 and 5104.02(A)). Each child attending a day-care center who has not yet attended kindergarten or a higher grade must have had a medical examination performed within the past 12 months. Documentation verifying the medical examination must be on file within 30 days of the child's date of admission. The examination is valid for 13 months after the examination date and must state the child's name and birth date, the date of the examination, the physician's professional information, and a record of immunizations that the child has received. The medical examiner is to review the child's immunization record against the immunizations recommended by the Department of Health.⁹ The record must show the month, day, and year of each immunization. The day-care center administrator may waive the immunization requirements on receipt of a parent or guardian's written objection for religious reasons, or a physician's or certified nurse practitioner's written request for medical exemption. (Ohio Administrative Code 5101:2-12-37.)

Immunization requirements for child day-care employees and staff

Each administrator, employee, and childcare staff member must receive a medical examination from a licensed physician, physician's assistant, or certified nurse practitioner within three years prior to starting employment, and then every three years from the date of the medical examination. The medical form must verify that the employee or staff member is free of communicable tuberculosis, and has been immunized against measles, mumps, rubella, tetanus, and diphtheria.¹⁰ A written request by the employee or staff member for religious reasons, or a licensed physician's written request for medical reasons may exempt an employee or staff member from fulfilling the immunization requirements. (O.A.C. 5101:2-12-25.)

Immunization in long-term care facilities and hospitals

Nursing homes and residential care facilities¹¹ must offer all residents vaccinations against influenza and pneumococcal pneumonia.¹² The influenza vaccination must be offered on an annual basis and both vaccinations must be in accordance

Immunization is required of children in day-care centers and staff of the centers.

Nursing homes, residential care facilities, and hospitals are required to offer residents and patients vaccinations against influenza and pneumococcal pneumonia unless a physician has determined that an immunization is medically inappropriate.

OSHA requires the employer of health care workers who have occupational exposure to blood or other potentially infectious material to offer the Hepatitis B vaccination to each such employee.

with guidelines issued by the Advisory Committee on Immunization of the U.S. Centers for Disease Control and Prevention. The vaccinations must be of a form approved by the Advisory Committee for that calendar year. (R.C. 3721.041.)

Hospitals are required to offer each patient admitted to the hospital vaccination against influenza and pneumococcal pneumonia. The vaccinations must be offered in accordance with guidelines issued by and on a form approved for that calendar year by the Advisory Committee. (R.C. 3727.19.)

A nursing home, residential care facility, or hospital is not required to offer a resident or patient an influenza or pneumococcal pneumonia vaccination if a physician has determined that vaccination is medically inappropriate. A nursing home or residential care facility is also not required to offer a resident vaccination against pneumococcal pneumonia if the resident has already received the vaccination. A resident or patient may refuse vaccination. (R.C. 3721.041 and 3727.19.)

Immunization of health care workers

There are no requirements in Ohio law that health care workers be immunized against disease, but federal law requires that the hepatitis B vaccination be offered to health care workers who have occupational exposure to blood or other potentially

infectious materials. And, although immunization of workers is not a requirement for hospital accreditation, individual hospitals or hospital systems may have their own requirements.

Federal hepatitis B requirement

The Occupational Safety and Health Administration (OSHA) in the U.S. Department of Labor requires the employer of a health care worker who may reasonably expect to be exposed to blood or other potentially infectious material to make the hepatitis B vaccination available to the worker at no cost within ten days of employment and at any other time the employee requests it. An employee who refuses the vaccination must sign a statement verifying that it was declined.¹³ (29 Code of Federal Regulations 1910.1030(f).)

Ohio law

In Ohio, hospitals must either be certified under the Medicare Program or accredited by the Joint Commission or the American Osteopathic Association (R.C. 3727.02).¹⁴ Most are accredited by the Joint Commission. Nothing in Ohio law specifically requires that health care workers be immunized against any disease, and the Joint Commission requires only that a hospital verify “compliance with applicable health screening requirements if required by law and regulation or established by the hospital.”¹⁵



Ohio Health in Central Ohio is an example of a hospital network that requires that workers be immunized. But the requirement applies only to measles and chicken pox. According to Virginia Roberts, all of the hospitals that are part of Ohio Health require new employees and volunteers to undergo a health assessment to determine, among other things, whether the employee has received the measles and chicken pox vaccinations. Blood titers to ensure immunity are used on any employee or volunteer who claims to have had the natural disease. Those who have not had one or both diseases,

or whose blood titers do not prove immunity, are not permitted to have contact with patients unless they are immunized.¹⁶ At Good Samaritan Hospital in Cincinnati, a rubella titer is required for all new employees, but the hospital does not require one for chicken pox or any other disease.¹⁷

Nursing homes and residential care facilities in Ohio must be licensed. However, neither the Revised Code nor the Ohio Department of Health, which is responsible for licensing, requires those who work in those settings to be immunized or disclose immunization records.¹⁸



There are no legal immunization requirements for health care workers in Ohio, but some facilities require certain immunizations as a condition of employment.

Endnotes

¹ As part of the most recent biennial budget bill, Am. Sub. H.B. 119 of the 127th General Assembly, the Department of Health was appropriated approximately \$9.4 million for each of the 2008 and 2009 fiscal years for all immunizations (General Revenue Fund appropriation item 440-418). However, the fiscal year 2009 appropriation appears to have been reduced by about \$564,000 through executive budget reductions. An earmark of \$200,000 of the appropriation item 440-437, Healthy Ohio, intended to be used in FY 2009 for the purchase of pneumococcal vaccinations for children, was vetoed. The Governor's veto message stated that the earmark was "an amount inadequate for the stated purpose."

² Steve Calandrillo, *Article: Vanishing Vaccinations: Why are So Many Americans Opting Out of Vaccinating Their Children?*, 37 U. Mich. J.L. Reform 353 (2004).

³ *Jacobson v. Massachusetts*, 197 U.S. 11 (1905).

⁴ *Zucht v. King*, 260 U.S. 174 (1922).

⁵ See *Jacobson*, 197 U.S. at 25-27; see also *Zucht*, 260 U.S. at 176 (equal protection); *Prince v. Massachusetts* (1944), 321 U.S. 158, 169-170 (holding that the right to free exercise of religion does not include a right to place children in harm's way); *McSween v. Bd. of Sch. Trustees* (1910), 60 Tex. Civ. App. 270, 273 (illegal search and seizure); *Seubold v. Fort Smith Special Sch. Dist.* (Ark. 1951), 237 S.W.2d 884, 887 (liberty and due process interests).

⁶ Also, in *State ex rel. Mack*, an Ohio appellate court held that a school board may refuse to admit a child who has not been immunized because of the objections of the child's parents. The court found that although R.C. 3313.671 prohibits an unimmunized child from being admitted to school unless the child complies with a permissible exception, compliance with an exception does not require that the board admit the child to school ((1961) 1 Ohio App.2d 143).

⁷ The Director of Health should be aware of the number of unimmunized pupils attending school, because the board of education of each public school district is required to give the Director a summary, categorized by school, of the immunization records of all initial-entry pupils in the district by October 15 of each year (R.C. 3313.67(C)).

⁸ This includes students enrolled in state institutions of higher learning, nonprofit institutions of higher education, and career colleges or schools.

⁹ The rule does not expressly require that a child have all the immunizations recommended by the Department of Health.

¹⁰ When the next booster shot for tetanus and diphtheria is due, the employee or staff member must be immunized against pertussis.

¹¹ Under Ohio law, a nursing home is a long-term care facility that receives and cares for at least three unrelated individuals who require skilled-nursing care because of illness or physical or mental impairment. A residential care facility is a long-term care facility that provides accommodations for 17 or more unrelated individuals and supervision and personal-care services for three or more of those individuals who are dependent on the services of others by reason of age or physical or mental impairment. A facility is also a residential care facility if it provides accommodations for three or more unrelated individuals who require certain specialized services. (R.C. 3721.01 and 3721.011.)

¹² The Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services requires long-term care facilities to offer vaccinations against influenza and pneumococcal disease. To participate in the Medicare or Medicaid programs, facilities are required to ensure that each resident receives an annual immunization against influenza and receives the pneumococcal immunization once, unless medically contraindicated or the resident or the resident's legal representative refuses immunization. (42 C.F.R. § 483.25.)

¹³ "Hepatitis B Vaccination - Protection for You," U.S. Department of Labor Occupational Safety and Health Administration, available at www.osha.gov/OshDoc/data_BloodborneFacts/bbfacts05.pdf.

¹⁴ Formerly known as the Joint Commission on Accreditation of Hospitals (later the Joint Commission on Accreditation of Health Care Organizations), the Joint Commission inspects and accredits hospitals and other organizations that provide health care.

¹⁵ Telephone conversation with Merlin Wessels, Associate Director of Joint Commission Standards Interpretation Group, September 16, 2008.

¹⁶ Telephone conversation with Virginia Roberts, LPN, Ohio Health Division of Associate Health and Wellness, September 15, 2008.

¹⁷ Telephone conversation with a staff member in the Employee Health Department, Good Samaritan Hospital, September 15, 2008.

¹⁸ Telephone conversation with Ginger Schuerger-Davidson, RN and Licensed Nursing Home Administrator, Ohio Health Care Association, September 11, 2008.

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9th Floor
Vern Riffe Center
Columbus, Ohio
614/466-3615

Director
Mark C. Flanders

Contributing Author
Michelle Paluga,
LSC Intern

Reviewer
Shelagh Baker,
LSC Division Chief

Layout & Design
Jeanette Cupp