



# Department of Public Health and Human Services

Early Childhood & Family Support Division ♦ 1625 11<sup>th</sup> Ave ♦ Helena, MT 59601 ♦ (406) 444-0957

Greg Gianforte, Governor

Charles T. Brereton, Director

**DATE:** October 31, 2022

**AGENCY:** Department of Public Health and Human Services  
Early Childhood & Family Support Division  
Childcare Licensing Program

**SUBJECT:** Enforcement discretion regarding immunization requirements for licensed and registered childcare providers  
Administrative Rules of Montana (ARM) 37.95.141  
Montana Religious Freedom Restoration Act, §§ 27-33-101 through 105, MCA

**ACTION:** Notice of Enforcement Discretion

## **SUMMARY:**

This notification is to inform the public that the Department of Public Health and Human Services (the Department) is exercising its discretion in how it enforces the immunization requirements for licensed and registered childcare programs. As a matter of enforcement discretion, the Early Childhood & Family Support Division (ECFSD), through its Childcare Licensing Program, will not pursue negative licensing actions against licensed and registered childcare facilities for noncompliance with the administrative rules only recognizing a religious exemption to immunization against Haemophilus influenza type B, and will not deny licensure or registration to an applicant which will not enforce immunization requirements against individuals/families who attest to objection to such requirements on the basis of religious belief.

## **DATES:**

This Notification of Enforcement Discretion is effective immediately and will remain in effect until further notice.

## **FOR FURTHER INFORMATION CONTACT:**

Tracy Moseman, ECFSD Administrator  
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(406) 444-6676

## **SUPPLEMENTARY INFORMATION:**

### **Background**

The Department through its Childcare Licensing Program is responsible for enforcing the Administrative Rules of Montana (ARM) with regards to certain immunizations for children in licensed and registered childcare settings. (See ARM 37.95.140, 141.). During the 2021 Montana Legislative Session, Senate Bill 215 (SB 215), establishing the Montana Religious Freedom Restoration Act (RFRA), was passed and signed into law, protecting the free exercise of religion. To comply with RFRA in childcare settings, the Department proposed amendments to ARM 37.95.140 under rules notice 37-

994 to recognize religious exemption from immunization requirements in certain childcare settings. On August 29, 2022, the Children, Families, Health, and Human Services Interim Committee, having oversight of administrative rules proposed by the Department, informally objected to the rules necessary for compliance with RFRA, temporarily preventing the Department from adopting the proposed rules.

Because the Department has not yet been able to amend its childcare regulations to recognize religious exemptions to the vaccination requirements due in part to the requirements set forth by House Bill 447 (HB 447), to ensure compliance with RFRA, the Department issues this Notice of Enforcement Discretion to allow childcare providers the option of accepting documented exemptions from required immunizations based on the sincerely held religious beliefs of the parents. The Department Affidavit of Exemption on Religious Grounds (form HES-113) can be used by parents to document the religious exemption.

Should providers choose to accept such exemptions, they should notify all parents of children attending the childcare facility. Providers should also notify the Department of acceptance. The Department will exercise its discretion and will not take enforcement action against any childcare provider that enrolls children who have not received one or more of the vaccines listed in ARM 37.95.140 because of sincerely held religious belief(s). This exercise of enforcement discretion will continue until further notice.

**Who/What is Covered**

This Notice applies to all licensed and registered childcare providers in the State of Montana when such entities are, in good faith, accepting exemptions from immunizations due to sincerely held religious beliefs by parents seeking childcare for their children.

/s/Charles T. Brereton

Charles T. Brereton  
Director