

BEFORE THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.51.306 pertaining to foster) PROPOSED AMENDMENT
care immunization requirements)

TO: All Concerned Persons

1. On August 26, 2022, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rule. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/84062267694?pwd=MjRjRjZlFGZE1KL2lzeWRrdFNWahIyQT09>, Meeting ID: 840 6226 7694, and Password: 861964; or

(b) Dial by telephone +1 646 558 8656, Meeting ID: 840 6226 7694, and Password: 861964. Find your local number: <https://mt-gov.zoom.us/u/kdT8LONwi>.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on August 15, 2022, to advise us of the nature of the accommodation that you need. Please contact Valerie St. Clair, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-6863; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

37.51.306 YOUTH FOSTER HOMES: IMMUNIZATION REQUIREMENTS

(1) All children residing in the foster home, other than the foster child, shall be immunized against measles, rubella, mumps, poliomyelitis, diphtheria, pertussis, tetanus, varicella, hepatitis B, pneumococcal, and Haemophilus influenza type B according to the following schedule or have a religious or medical exemption:

Total Immunizations Required, By Age

<u>Age</u>	<u>Number Doses - Vaccine Type</u>
under 2 months old	no vaccinations required
by 3 months of age	1 dose of polio vaccine 1 dose of DTP vaccine

	1 dose of Hib vaccine 1 dose of Hep B vaccine 1 dose of PCV vaccine
by 5 months of age	2 doses of polio vaccine 2 doses of DTP vaccine 2 doses of Hib vaccine 2 doses of Hep B vaccine 2 doses of PCV vaccine
by 7 months of age	2 doses of polio vaccine 3 doses of DTP vaccine *2 or 3 doses of Hib vaccine 2 doses of Hep B vaccine 3 doses of PCV vaccine
by 16 months of age	2 doses of polio vaccine 3 doses of DTP vaccine 1 dose of varicella vaccine 1 dose of MMR vaccine *3 or 4 doses of Hib vaccine 2 doses of Hep B vaccine *4 doses of PCV vaccine
by 19 months of age	1 dose of varicella vaccine 3 doses of polio vaccine 4 doses of DTP vaccine 1 dose of MMR vaccine *3 or 4 doses of Hib vaccine 3 doses of Hep B vaccine *4 doses of PCV vaccine
By 6 years of age	3 doses of polio vaccine, one given after the 4th birthday 4 doses of DTP vaccine, one given after the 4th birthday 2 doses of varicella vaccine 2 doses of MMR vaccine 3 doses of Hep B vaccine
By 12 years of age	3 doses of polio vaccine, one given after the 4th birthday 1 dose of Tdap vaccine 2 doses of varicella vaccine 2 doses of MMR vaccine 3 doses of Hep B vaccine

(*) varies depending on vaccine type used or the ACIP catch-up schedule.

(2) and (3) remain the same.

(4) Vaccines immunizing against diphtheria, pertussis, and tetanus must be administered as follows:

(a) remains the same.

(b) DT vaccine administered to a child less than seven years of age is acceptable for purposes of this rule only if accompanied by a medical or religious exemption ~~meeting the requirements of ARM 37.114.715 that exempt the child from pertussis vaccination;~~ and

(c) remains the same.

(5) ~~Immunization history may be recorded on the certificate of immunization form (HES-101) provided by the department or on a physician or clinic provided immunization record, which must include:~~ The following are considered adequate documentation of vaccination for the purposes of this subchapter:

(a) ~~the name of the physician or clinic;~~ a record from any local health department in the United States, signed by a local health officer or nurse;

(b) ~~the name and birth date of the child; and~~ a certificate signed by a local health officer or nurse;

(c) ~~the date and type of immunization.~~ any official immunization record, if information has been recorded and signed by a physician, physician's designee, local health officer, or that officer's designee; or an official report from the statewide immunization information system, or a health care provider's medical record system;

(d) immunization recorded on a form approved by the U.S. government;

(e) any state's official parent-maintained immunization record;

(f) the international certificates of vaccination approved by the World Health Organization; or

(g) in the case of vaccine administered outside of the United States, a record of the vaccination signed by an official of the principal public health agency of the country where the vaccination occurred.

(6) Vaccine administration data may not be filled out by a parent, guardian, or other person unless they are a health care provider, health department official, or person otherwise authorized to do so by this subchapter.

(6) remains the same, but is renumbered (7).

~~(7)(8)~~ A child residing in the foster home, other than the foster child, is not required to have any immunizations which are medically contraindicated or contrary to the religious belief, observance, or practice of the child's custodial parent or legal guardian. A written and signed statement from a physician that an immunization otherwise required by (1) of this rule is medically contraindicated will exempt a child from those immunization requirements as deemed necessary by the physician. It is preferred, but not mandatory, that a physician's medical exemption be recorded on HES-101, and medical exemption documentation must include:

~~(a) which specific immunization is contraindicated;~~

(a) A written and signed statement from a health care provider that an immunization otherwise required by (1) of this rule is medically contraindicated will exempt a child from those immunization requirements as deemed necessary by the physician. It is preferred, but not mandatory, that a health care provider's medical

exemption be recorded on HES-101A, and medical exemption documentation must include:

(i) which specific immunization is contraindicated;
(b) and (c) remain the same, but are renumbered (ii) and (iii)
(d)(iv) when deemed necessary by a physician health care provider, the results of immunity testing. The tests must indicate serological evidence of immunity and must be performed by a CLIA approved lab laboratory.

(b) A notarized affidavit of exemption on religious grounds attesting that receipt of a vaccine or vaccines is contrary to an individual's religious belief, observance, or practice;

(i) the religious exemption affidavit will be prepared on a form provided by the department;

(ii) the form must be provided to the department prior to licensure; and

(iii) the original claim of the religious exemption must be kept by the department in the licensing record.

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

IMP: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, 52-2-735, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.51.306.

The department's current foster care immunization requirements do not violate House Bill 702, codified at 49-2-312, MCA, because the requirements do not apply to individuals seeking licensure; instead, the requirements apply to children residing in the same house as the foster child. However, the department is concerned that its current immunization requirements, if enforced, may in certain circumstances be inconsistent with the Montana Religious Freedom Restoration Act (Montana RFRA), 27-33-105, MCA. Accordingly, the department is proposing amendments to ARM 37.51.306 to ensure the agency is in compliance with Montana RFRA. State action may not substantially burden a person's right to the exercise of religion, even if the burden results from a rule of general applicability, unless it is demonstrated that applying the burden to that person's exercise of religion is essential to further a compelling governmental interest and is the least restrictive means of furthering that compelling state interest.

ARM 37.51.306

Currently, a child residing in the foster home, other than the foster child, is not required to have any immunizations which are medically contraindicated. A written and signed statement from a health care provider that an immunization otherwise required by (1) of this rule is medically contraindicated will exempt a child from those immunization requirements.

The department proposes adding a religious exemption in rule for children residing in the foster home, other than the foster child. The exemption form must be completed prior to licensure.

Fiscal Impact

This proposed rule amendment has no administrative cost in the state fiscal year. In addition, the proposed changes will result in a no cost savings.

The proposed rulemaking is estimated to affect all future prospective foster care applicants and guardianship homes.

5. These amendments will be effective upon the day after the date of publication of the adoption notice.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Valerie St. Clair, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., September 2, 2022.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ HEIDI SANDERS
Heidi Sanders
Rule Reviewer

/s/ CHARLES T. BRERETON
Charles T. Brereton, Director
Department of Public Health and Human
Services

Certified to the Secretary of State July 26, 2022.