

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

In the matter of the amendment of) NOTICE OF AMENDMENT AND
ARM 37.114.701, 37.114.703,) REPEAL
37.114.704, 37.114.705, 37.114.708,)
37.114.715, 37.114.716, and the)
repeal of ARM 37.114.720 and)
37.114.721 pertaining to school)
immunization requirements)

TO: All Concerned Persons

1. On August 6, 2021, the Department of Public Health and Human Services (department) published MAR Notice No. 37-956 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 984 of the 2021 Montana Administrative Register, Issue Number 15.

2. The department has amended ARM 37.114.701, 37.114.703, 37.114.704, 37.114.705, 37.114.708, 37.114.715, and 37.114.716 as proposed.

3. The department has repealed ARM 37.114.720 and 37.114.721 as proposed.

4. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT #1: The primary bill sponsor of House Bill (HB) 334 provided comment stating the proposed rule amendments should include language making clear that student immunization records are federally protected under the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g et seq. (FERPA), and that sharing of these records without parental consent is illegal under FERPA. The commenter also stated the rule amendments should include language to clarify that medical and religious exemptions to student immunization requirements apply to postsecondary schools.

RESPONSE #1: The department believes the rules as proposed appropriately address the application of FERPA to student immunization records. HB 334 provides that student immunization records are considered part of the student's education record and are protected from disclosure under FERPA. The department has implemented this statutory requirement by proposing to repeal existing rules requiring general reporting of the immunization status of all students. The department believes the rules as proposed are sufficiently clear and it is unnecessary to repeat the language of HB 334. Additionally, FERPA provides a limited exception under which student immunization records may be shared without

parental consent in cases of an emergency if knowledge of the information is necessary to protect the health or safety of a student or other individuals. 20 U.S.C. § 1232g(b)(1)(I); 34 C.F.R. §§ 99.31(a)(10) and 99.36.

The department believes the proposed rules already make clear that the medical and religious exemptions to student immunizations under 20-5-405, MCA, apply to postsecondary schools. The proposed rule amendments use the term "school" in reference to application of the exemptions. The term "school" is defined under 20-5-402(8), MCA, and includes postsecondary schools.

COMMENT #2: Two commenters expressed opposition to the repeal of ARM 37.114.720 and 721, relating to the reporting of immunization status for all students and reporting of students who fail to meet the requirements of conditional enrollment. These commenters indicated repeal of the rules would adversely affect public health and that sharing of student immunization records should be permitted.

RESPONSE #2: The department believes repeal of these rules is required under HB 334. Please also see the response to comment #1.

COMMENT #3: A commenter asked how the proposed rules would impact Montana's Immunization Information System (imMTrax).

RESPONSE #3: The proposed rules do not impact Montana's Immunization Information System (imMTrax). The imMTrax system is an opt-in system requiring specific consent for participation.

/s/ Robert Lishman
Robert Lishman
Rule Reviewer

/s/ Adam Meier
Adam Meier, Director
Public Health and Human Services

Certified to the Secretary of State September 28, 2021.