

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 37.114.701, 37.114.703,) PROPOSED AMENDMENT AND
37.114.704, 37.114.705, 37.114.708,) REPEAL
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 26, 2021, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment and repeal of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/864446634666> meeting ID: 864 4663 4666; or

(b) Dial by telephone +1 646 558 8656, meeting ID: 864 4663 4666. Find your local number: <https://mt-gov.zoom.us/j/864446634666>.

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 20, 2021, to advise us of the nature of the accommodation that you need. Please contact Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.114.701 DEFINITIONS The following definitions, together with the definitions contained in 20-5-402, MCA, apply throughout this subchapter:

(1) through (7) remain the same.

(8) "Healthcare provider" is a person who is licensed, certified, or otherwise authorized by any U.S. state or Canada to provide health care and who meets the additional qualifying criteria specified in 20-5-405, MCA.

~~(8)~~ (9) "Hib vaccine" means a vaccine immunizing against infection by Haemophilus influenzae type B disease.

(9) and (10) remain the same but are renumbered (10) and (11).

~~(11)~~ (12) "Montana Certificate of Immunization Form (HES 101)" means the form ~~prescribed by the department as required by 20-5-406, MCA~~ provided by the

department to consolidate immunization history. Copies of the form may be requested from the Department of Public Health and Human Services, Public Health and Safety Division, Communicable Disease Control and Prevention Bureau, Immunization Section, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951, telephone: (406) 444-5580. are electronically accessible at <https://dphhs.mt.gov/publichealth/immunization/>.

(12) through (17) remain the same but are renumbered (13) through (18).

~~(18) "School enterer" means a pupil who is commencing attendance for the first time.~~

(19) through (23) remain the same.

AUTH: 20-5-407, MCA

IMP: 20-5-402, 52-2-703, MCA

37.114.703 REQUIREMENTS FOR ADEQUATE DOCUMENTATION OF IMMUNIZATION STATUS (1) and (2) remain the same.

(3) The following are considered adequate documentation in lieu of receiving required vaccines:

(a) remains the same.

~~(b) documentation of a medical exemption signed by a physician~~ a medical exemption statement prepared in accordance with the requirements of 20-5-405, MCA;

(c) a religious exemption prepared in accordance with the requirements of 20-5-405, MCA; or

~~(e) (d)~~ documentation of immunity from varicella, measles, mumps, or rubella by laboratory evidence or diagnosis/verification of disease by physician, nurse practitioner, or physician's assistant; or. The tests must indicate serological evidence of immunity and must be performed by a CLIA-approved lab. A copy of the test results must be attached to the pupil's official immunization record.

~~(d) documentation of a religious exemption signed and notarized at the start of each school year; or in a postsecondary setting, each year beginning with the date the pupil commences attendance.~~

AUTH: 20-5-407, MCA

IMP: 20-5-402, MCA

37.114.704 REQUIREMENTS FOR ATTENDANCE AT A PRESCHOOL

(1) and (2) remain the same.

(3) A preschool must keep immunization data for each enrolled pupil ~~on HES 404~~, including the date, month, and year of administration of all required vaccines. The HES 101 may be used for this purpose, but is not mandatory.

(4) remains the same.

AUTH: 20-5-407, MCA

IMP: 20-5-403, 20-5-406, MCA

37.114.705 REQUIREMENTS FOR UNCONDITIONAL ATTENDANCE AT A SCHOOL OFFERING ANY PORTION OF GRADES KINDERGARTEN THROUGH 12 (1) remains the same.

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

(a) and (b) remain the same.

(c) Prior to entering the seventh grade, a pupil must receive a dose of Tdap vaccine if the following criteria are met:

(i) remains the same.

(ii) a dose of Tdap vaccine was not given to the pupil at ~~seven~~ ten years of age or older;

(d) If a pupil enters the seventh grade before reaching 11 years of age, a booster shot of Tdap vaccine must be administered to the pupil as soon as possible after the pupil attains that age, unless the pupil already was administered a dose of Tdap vaccine at ~~seven~~ ten years of age or older.

(3) through (5) remain the same.

AUTH: 20-5-407, MCA

IMP: 20-5-403, 20-5-405, 20-5-406, MCA

37.114.708 DOCUMENTATION OF IMMUNIZATION STATUS OF PERSONS COMMENCING ATTENDANCE IN PRESCHOOL OR KINDERGARTEN THROUGH GRADE 12 (1) ~~After receiving the documentation set forth in ARM 37.114.703, A~~ a school must obtain and keep the following immunization data for each pupil ~~on HES 101 after receiving adequate documentation of:~~

(a) through (2) remain the same.

(3) If the information required by (1) has not been provided to the school on HES 101:

(a) immunization data ~~must~~ may be transferred onto HES 101 from adequate documentation; ~~and~~

~~(b) sections I and II of HES 101 must be signed and dated by a school official or the official's designee; and~~

~~(c) (b) a copy of the adequate documentation must be attached to HES 101 the official immunization record.~~

AUTH: 20-5-407, MCA

IMP: 20-5-406, MCA

37.114.715 MEDICAL EXEMPTION (1) A prospective pupil seeking to attend school is not required to have any immunizations which are medically contraindicated. ~~A written and signed statement from a physician that an immunization is medically contraindicated~~ medical exemption statement prepared and signed in accordance with the requirements of 20-5-405, MCA, will exempt a prospective pupil from those immunization requirements as deemed necessary by the physician. The required vaccines are listed in 20-5-403, MCA specified in the exemption.

~~(2) The statement must include:~~

(a) ~~which specific immunization is contraindicated;~~
(b) ~~the period of time during which the immunization is contraindicated;~~
(c) ~~the reasons for the medical contraindication; and~~
(d) ~~when deemed necessary by a physician, the results of immunity testing performed on a pupil entering kindergarten through grade 12. The tests must indicate serological evidence of immunity and must be performed by a CLIA approved lab. A copy of the test result must be attached to HES 101, beginning with school enterers in school year 2005-2006.~~

(3) (2) It is preferred, but not mandatory, that a physician's the medical exemption be recorded on the HES 101A "Medical Exemption Statement" form provided by the department.

(4) (3) The ~~physician's written~~ medical exemption statement must be maintained by the school as part of the immunization record of the pupil qualifying for the exemption. In preschool and kindergarten through grade 12 settings, the ~~written statement~~ medical exemption statement must be attached to the HES 101 beginning with the ~~2005-2006 school year~~ official immunization record.

AUTH: 20-5-407, MCA
IMP: 20-5-405, 20-5-406, MCA

37.114.716 RELIGIOUS EXEMPTION (1) A prospective pupil seeking to attend school is exempt from all or part of the those immunization requirements if the parent or guardian of that prospective pupil, an adult responsible for that prospective pupil, or the prospective pupil if an adult or an emancipated minor, objects thereto in a signed, written statement indicating that the proposed immunization interferes with the free exercise of the religious beliefs of the person signing the statement. specified in a religious exemption that is prepared and signed in accordance with the requirements of 20-5-405, MCA. The religious exemption must be prepared using form HES 113 "Affidavit of Exemption on Religious Grounds from Montana School Immunization Law and Rules" provided by the department.

(2) ~~In any school other than a postsecondary school, a claim of exemption from immunization requirements on religious grounds must be notarized annually and maintained on a form HES 113, Affidavit of Exemption on Religious Grounds, provided by the department. The form must be provided to the school prior to each school year attendance by the parent, guardian or adult responsible for the pupil. If the pupil is 18 years of age or older or emancipated, the pupil may claim the exemption.~~

(3) ~~In a postsecondary setting, a religious exemption must be maintained on form HES 113 and signed, notarized and submitted each year of attendance, beginning with the date of initial attendance at the school. The form must be completed and resubmitted each year thereafter.~~

(4) remains the same but is renumbered (3).

AUTH: 20-5-407, MCA
IMP: 20-5-405, 20-5-406, MCA

4. The department proposes to repeal the following rules:

37.114.720 REPORT OF IMMUNIZATION STATUS

AUTH: 20-5-407, MCA
IMP: 20-5-408, MCA

37.114.721 REPORT OF NONCOMPLIANCE FOR KINDERGARTEN THROUGH GRADE 12

AUTH: 20-5-407, MCA
IMP: 20-5-408, MCA

5. STATEMENT OF REASONABLE NECESSITY

ARM 37.114.701, 37.114.703, 37.114.704, 37.114.708, 37.114.715, and 37.114.716

The Department of Public Health and Human Services (department) is proposing to amend these rules to meet the requirements of House Bill (HB) 334 passed during Montana's 67th Legislative Session. HB 334 revises laws related to medical and religious exemptions to student immunization requirements, revises requirements for immunization forms, and establishes limitations on examination and use of immunization records. HB 334 allows healthcare providers who meet certain requirements set forth under the bill to sign student medical exemptions. The law formerly allowed only for physicians to sign student medical exemptions. HB 334 also removes the requirement for schools to maintain a department specific form for capturing medical exemptions and for consolidating immunization records into one form. Additionally, HB 334 removes the requirement for religious exemptions to be updated annually.

The proposed rule amendments implement the statutory changes to student immunization requirements resulting from passage of HB 334. The proposed amendments remove language allowing only for physicians to sign student medical exemptions. The proposed amendments also remove language mandating the use of department forms for capturing medical exemptions and for consolidating immunization records. The proposed amendments are necessary to implement the requirements of HB 334 and to align the department's rules with the new law.

ARM 37.114.705

The department is proposing to amend ARM 37.114.705 to update school immunization age requirements for the Tdap (tetanus, diphtheria, pertussis) vaccine to more closely align with Advisory Committee on Immunization Practice (ACIP) recommendations. These recommendations are considered the standard of care for children and have been in place since 2018. The proposal to amend this rule is necessary to reduce confusion relating to the age requirements for these immunizations and to ensure the rule conforms with current standards of medical care.

ARM 37.114.720 and 37.114.721

The department is proposing to repeal ARM 37.114.720 and 37.114.721 to remove the requirement for schools to report student immunization status to the department and local health authorities. HB 334 removes the requirement for schools to provide a report to the department and local health authorities of the immunization status of the pupils under its jurisdiction. Repeal of these rules is necessary to conform with requirements of HB 334 and to align the department's rules with the new law.

Fiscal Impact

There is no anticipated fiscal impact associated with the proposed rulemaking.

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: Heidi Clark, 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 3, 2021.

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, apply and have been fulfilled. The primary bill sponsor of HB 334 was notified by email on July 20, 2021.

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

/s/ Robert Lishman
Robert Lishman
Rule Reviewer

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

Certified to the Secretary of State July 27, 2021