

**TITLE 20 EDUCATION
CHAPTER 5 PUPILS
PART 4 HEALTH**

Mont. Code Anno., § 20-5-402 (2007)

20-5-402. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Governing authority" means the board of trustees of a school district or the administrator of a private school, preschool, or postsecondary school.

(3) "Immunization" means induction of a state of resistance to a disease through administration of an immunizing agent.

(4) "Local health department" means a city, city-county, county, or district health department.

(5) "Local health officer" means a city, city-county, county, or district health officer.

(6) "Postsecondary school" means a community college, a unit of the Montana university system, or a private university or college.

(7) "Preschool" means a place or facility that provides, on a regular basis and as its primary purpose, educational instruction designed for children 5 years of age or younger and that:

(a) serves no child under 5 years of age for more than 3 hours a day;
and

(b) serves no child 5 years of age for more than 6 hours a day. (8) "School" means a place or institution for the teaching of individuals, the curriculum of which is composed of the work of:

- (a) any combination of kindergarten through grade 12;
- (b) a postsecondary school; or
- (c) a preschool.

Mont. Code Anno., § 20-5-403 (2007)

20-5-403 Immunization required -- release and acceptance of immunization records.

(1) The governing authority of any school other than a postsecondary school may not allow a person to attend as a pupil unless the person:

- (a) has been immunized against diphtheria, pertussis, tetanus, poliomyelitis, rubella, mumps, and measles (rubeola) in the manner and with immunizing agents approved by the department, except that pertussis vaccination is not required for a person 7 years of age or older;
- (b) has been immunized against Haemophilus influenza type "b" before enrolling in a preschool if under 5 years of age;
- (c) qualifies for conditional attendance; or
- (d) files for an exemption.

(2)

(a) The governing authority of a postsecondary school may not allow a person to attend as a pupil unless the person:

- (i) has been immunized against rubella and measles (rubeola) in the manner and with immunizing agents approved by the department; or
- (ii) files for an exemption.

(b) The governing authority of a postsecondary school may impose immunization requirements as a condition of attendance that are more stringent than those required by this part.

(3) A pupil who transfers from one school district to another may photocopy immunization records in the possession of the school of origin. The school district to which a pupil transfers shall accept the photocopy as evidence of immunization. Within 30 days after a transferring pupil ceases attendance at the school of origin, the school shall retain a certified copy for the permanent record and send the original immunization records for the pupil to the school district to which the pupil transfers.

Mont. Code Anno., § 20-5-404 (2007)

20-5-404. Conditional attendance.

The governing authority of a school other than a postsecondary school may allow the commencement of attendance in school by a person who has not been immunized against each disease listed in 20-5-403 if that person has received one or more doses of polio, measles (rubeola), mumps, rubella, diphtheria, pertussis, Haemophilus influenza type "b", and tetanus vaccine, except that pertussis vaccine is not required for a person 7 years of age or older and Haemophilus influenza type "b" vaccine is required only for children under 5 years of age.

Mont. Code Anno., § 20-5-405 (2007)

20-5-405 Medical or religious exemption.

(1) When a parent, guardian, or adult who has the responsibility for the care and custody of a minor seeking to attend school or the person seeking to attend school, if an adult, signs and files with the governing authority, prior to the commencement of attendance each school year, a notarized affidavit on a form prescribed by the department stating that immunization is contrary to the religious tenets and practices of the signer, immunization of the person seeking to attend the school may not be required prior to attendance at the school. The statement must be maintained as part of the person's immunization records. A person who falsely claims a religious exemption is subject to the penalty for false swearing provided in 45-7-202.

(2) When a parent, guardian, or adult who has the responsibility for the care and custody of a minor seeking to attend school, or the person seeking to attend school, if an adult, files with the governing authority a written statement signed by a physician licensed to practice medicine in any jurisdiction of the United States or Canada stating that the physical condition of the person seeking to attend school or medical circumstances relating to him indicate that some or all of the required immunizations are not considered safe and indicating the specific nature and probable duration of the medical condition or circumstances which contraindicate immunization, he is exempt from the requirements of this part to the extent indicated by the physician's statement. The statement must be maintained as part of the person's immunization records.

(3) Whenever there is good cause to believe that a person for whom an exemption has been filed under this section has a disease or has been exposed to a disease listed in 20-5-403 or will as the result of school attendance be exposed to such disease, the person may be excluded from the school by the local health officer or the department until the excluding authority is satisfied that the person no longer risks contracting or transmitting that disease.

Administrative Rules (found below)

ARM ARM 37.114.715 Medical exemption.

ARM ARM 37.114.716 Religious exemption.

Attorney General's Opinions

Challenges to Mandatory Immunization on Religious Grounds -- Restraint Advisable: Although a school district has an undeniable compelling interest in protecting students from communicable diseases, it does not have unlimited discretion to determine the legitimacy or sincerity of the religious tenets and practices of one seeking an exemption pursuant to this section. Absent established uniform standards or procedures, a school district should refrain from challenging an affidavit claiming a religious exemption from mandatory immunization. 44 A.G. Op. 7 (1991).

Religious Exemption to Mandatory Immunization Not Limited to Established or Recognized Religion: The religious exemption to mandatory immunization of students in this section is not limited to beliefs or tenets of an established or recognized traditional

religion but also encompasses sincerely held personal religious beliefs. 44 A.G. Op. 7 (1991).

ADMINISTRATIVE RULES (OLD 16.28.707-708)
TITLE 37: DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
CHAPTER 114: COMMUNICABLE DISEASE CONTROL
SUB-CHAPTER 7: IMMUNIZATION OF SCHOOL CHILDREN

MONT. ADMIN. R. 37.114.709 (2007)

37.114.709 REQUIREMENTS FOR UNCONDITIONAL ATTENDANCE AT A POSTSECONDARY SCHOOL

(1) Before a prospective pupil may enter a Montana postsecondary school, the prospective pupil must provide the school with the proof of measles (rubeola) and rubella immunity as specified in (2) or (3), whichever is applicable.

(2) If a prospective pupil was born in 1957 or later, the school must receive either:

(a) adequate documentation that:

(i) the prospective pupil was administered two doses of live MMR or MR vaccine, or any equivalent combination of measles and rubella vaccines, subject to the restrictions in ARM 37.114.712(2); and

(ii) dose one was administered at or after 12 months of age, and dose two was administered at least 28 days after dose one; or

(b) a CLIA approved laboratory report that meets the requirements of ARM 37.114.712(2) and indicates the prospective pupil is immune to measles and rubella.

(3) If a prospective pupil was born prior to 1957, the school must receive either:

(a) one of the forms of proof of measles and rubella immunity cited in (2); or

(b) the evidence of date of birth before January 1, 1957, required by ARM 37.114.712(2).

(4) In the event of an outbreak of either measles or rubella, a pupil must provide the documentation required by either (2)(a) or (b) or be excluded from classes and other school sponsored activities until the local health officer indicates to the school that the outbreak is over. If the laboratory documentation required by (2)(b) is provided, the laboratory report need only show immunity to whichever of the two diseases is the cause of the outbreak.

(5) The school must maintain a list of pupils who were born prior to 1957 and who provide the school only with the documentation specified in (3)(b). In the event of an outbreak of measles or rubella, the school must exclude those pupils as required by (4).

(6) A pupil who enters a postsecondary school may be conditionally enrolled as allowed by ARM 37.114.711 if that pupil has received only one dose of MMR or MR, but must have received the second dose before being eligible to attend during the next school term.

MONT. ADMIN. R. 37.95.712 (2007)

37.114.712 DOCUMENTATION OF IMMUNIZATION STATUS OF PERSONS COMMENCING ATTENDANCE IN A POSTSECONDARY SCHOOL

(1) Postsecondary schools must keep immunization data for each pupil either on HES 101 or on another document that includes, at a minimum:

- (a) the pupil's name and birth date;
- (b) the vaccination dose type administered to the pupil; and
- (c) the month, day, and year each dose was administered, unless only the month and year of administration are known, in which case the administration date will be considered to be the first day of that month.

(2) Documentation of the proof of measles and rubella immunity required by ARM 37.114.709 must meet the following standards:

- (a) there must be adequate documentation of the doses required by ARM 37.114.709, subject to the following restrictions:
 - (i) no measles vaccination given before 1967 is valid; and
 - (ii) no rubella vaccination given before 1969 is valid;
- (b) if the pupil was born prior to January 1, 1957, proof of age must be made through a driver's license, school transcript, birth certificate, or passport, as long as the date of birth is indicated on the document;
- (c) if a laboratory report is submitted to prove immunity, it must come from a CLIA approved laboratory report and:
 - (i) indicate that the person is immune to either measles and rubella;
 - (ii) specify the type of test performed and the test date; and
 - (iii) include a determination from the clinician interpreting the laboratory results.

(3) The documentation of immunization status must be kept on file with the immunization records required by (1). (History: 20-5-407, MCA; IMP, 20-5-406, MCA; NEW, 2005 MAR p. 1074, Eff. 7/1/05.)

MONT. ADMIN. R. 37.114.715 (2007)

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 will exempt a prospective pupil from those immunizations as deemed necessary by the physician. The required vaccines are listed in 20-5-403, MCA.

(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 HES101, beginning with school enterers in the school year 2005-2006.

(3) It is preferred, but not mandatory, that a physician's medical exemption be recorded on HES 101.

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

MONT. ADMIN. R. 37.114.716 (2007)

37.114.716 RELIGIOUS EXEMPTION

(1) A prospective pupil seeking to attend school is exempt from all or part of the immunization requirements if the parent or guardian of that prospective pupil, an adult responsible for that prospective pupil, or the prospective pupil himself 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.

(2) In any school other than a secondary 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 by the parent or guardian or adult responsible for the pupil. If the pupil is 18 years of age or older or emancipated, in which case 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) The original copy of the claim of religious exemption must be kept by the school as part of the pupil's school record.

**MONTANA ADMINISTRATIVE RULES
TITLE 37. PUBLIC HEALTH AND HUMAN SERVICES
CHAPTER 95. LICENSURE OF DAY CARE FACILITIES**

MONT. ADMIN. R. 37.95.140 (2007)

37.95.140 IMMUNIZATION

(1) Before a child under the age of five may attend a Montana day care facility, that facility must be provided with the documentation required by (4) that the child has been immunized as required for the child's age group against measles, rubella, mumps, poliomyelitis, diphtheria, pertussis (whooping cough) , tetanus, and Haemophilus influenza type B, unless the child qualifies for conditional attendance in accordance with (9) :

Age at Entry Number of Doses-Vaccine Type:

-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

-by 5 months of age 2 doses of polio vaccine

2 doses of DTP vaccine

2 doses of Hib vaccine

-by 7 months of age 2 doses of polio vaccine

3 doses of DTP vaccine

*2 or 3 doses of Hib vaccine

-by 16 months of age 2 doses of polio vaccine

3 doses of DTP vaccine

1 dose of MMR vaccine administered no earlier than 12 months of age

*1 dose of Hib vaccine given after 12 or 15 months of age

-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 administered no earlier than 12 months of age

*1 dose of Hib vaccine given after 12 or 15 months of age

(*) varies depending on vaccine type used.

(2) If the child is at least 12 months old but not less than 60 months of age and has not received any Hib vaccine, the child must receive a dose prior to entry.

(3) 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 exemption meeting the requirements of ARM 37.114.715 that exempts the child from pertussis vaccination.

(4) Before a child between the ages of five and 12 may attend a day care facility providing care to school aged children, that facility must be provided with documentation required by (5) that the child has been immunized as required for the child's age group against measles, rubella, mumps, poliomyelitis, diphtheria, pertussis (whooping cough), tetanus, and Haemophiles influenza type B, unless the child qualifies for conditional attendance in accordance with (9) .

Vaccine Dosages Required by Age:

Polio- Each child must receive at least three doses of polio vaccine, one of which is administered after age four.

DTP or DTaP- Each child must receive at least four doses of DTP or DTaP (diphtheria, tetanus and pertussis) vaccines by age four and one dose of DTaP after age four but before age seven, unless a licensed health care provider has issued a medical exemption for the pertussis portion of the DTP or DTaP vaccine. If a medical exemption has been issued for pertussis, the child must receive at least four doses of DT vaccine or a combination of four doses of DT, DTP, and DTaP vaccines before age four and one dose of the DT vaccine after age four but before age seven. Because neither DTP nor DTaP vaccines are recommended or required for a child older than age seven, a child in the day care age seven or older who has not received the four doses of DTaP or DTP vaccinations described above must receive a Td vaccine (tetanus and diphtheria vaccine intended for persons seven years of age or older) as soon as possible and must then receive sufficient additional Td doses to reach a minimum of three doses of any combination of DTP, DTaP, DT, or Td.

Td- Each child in the day care must receive a Td tetanus diphtheria vaccine intended for children younger than seven years of age booster shot unless the child has had a DTP, DTaP, DT, or Td shot within the previous five years or the child received a Td shot at seven years of age or older.

(5) Documentation of immunization status for purposes of this rule consists of a completed Montana certificate of immunization form (HPS-101) , including the date of birth, the name of each vaccine provided, and the month, day and year of each vaccination.

(6) In order to continue to attend a day care facility, a child must continue to be immunized on the schedule described in (1) and must be immediately excluded from attendance in the day care facility if the child is not vaccinated on that schedule with all of the required vaccines, or does not have on file at the day care facility a record of medical exemption or a conditional enrollment form which indicates that no vaccine dose is past due.

(7) Hib vaccine is not required or recommended for children five years of age and older.

(8) Doses of MMR vaccine, to be acceptable under this rule, must be given no earlier than 12 months of age and a child who received a dose prior to 12 months of age must be revaccinated before attending a day care facility.

(9) A child may initially conditionally attend a day care facility if:

(a) the child has received at least one dose of each of the vaccines required for the child's age;

(b) a form prescribed by the department documenting the child's conditional immunization status is on file at the day care facility and is attached to the department's Montana certificate of immunization (HPS-101) ; and

(c) the child is not past due for the next required dose (as noted on the conditional enrollment form) of the vaccine in question.

(10) If a child in attendance at the day care facility, a resident of the day care facility, or a staff member, or volunteer contracts any of the diseases for which this rule requires immunization, all individuals infected and all persons attending the day care facility who are not completely immunized against the disease in question or who are exempted from immunization must be excluded from the day care facility until the local health authority indicates to the day care facility that the outbreak is over.

(11) The day care facility must maintain a written record of immunization status of each enrolled child and each child of a staff member who resides at the day care facility. The facility must make those records available during normal working hours to representatives of the department or the local health authority.

(12) A child seeking to attend a day care facility 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 will exempt a person from the applicable immunization requirements of this rule.

(13) A child under five years of age seeking to attend a day care facility is not required to be immunized against Haemophilus influenza type B if the parent or guardian of the child 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.

(14) The department adopts and incorporates by reference ARM 37.114.715 which sets the requirements for a medical exemption from vaccination. A copy of ARM 37.114.715 may be obtained from the Department of Public Health and Human Services, Public Health and Safety Division, P.O. Box 202951, Helena, MT 59620-2951.