

**Testimony**  
**Administrative Rules Committee**  
**Thursday, December 12, 2013**  
**North Dakota Department of Health**

**Chapter 33-06-05**

1. These rule changes did not result from statutory changes made by the Legislative Assembly.
2. These rule changes did result from a federal statute change. On January 25, 2013, rules relating to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) under the Health Information Technology for Economic and Clinical Health (HITECH) Act were published in the Federal Register. These rules require there to be a state mandate for health-care providers or the North Dakota Department of Health to disclose immunization records to schools. Without a state mandate, parents will have to verbally authorize their health-care provider or the Department of Health to release immunization records to schools. Unfortunately, the new HIPAA/HITECH rules were released too late during the legislative session to be corrected in North Dakota law.

Since the administrative rules had to be changed due to HIPAA-HITECH changes, the Department of Health decided to make an additional change to better clarify at which grade immunizations are required for middle school entry.

3. A hearing notice was published in 52 daily or weekly newspapers in the state in April of 2013. A public hearing was held May 13, 2013. Oral and written comments were received through May 24, 2013. The State Health Council adopted the proposed changes on August 13, 2013.
4. The Department of Health did not receive any comments from the public regarding the rule changes.
5. Approximate costs for public notice:

Newspaper publication of hearing notice: \$1,349.68

6. The intent of the proposed rule change is to allow health-care providers to continue to share required immunization records with schools. Secondly, the

change simplifies middle school immunization requirements, so all schools in the state require immunizations at seventh grade, not sixth or seventh grade, as currently required.

North Dakota law (23-07-17.1) requires that “A child may not be admitted to any public, private, or parochial school, or day care center, child care facility, head start program, or nursery school operating in this state or be supervised through home-based instruction unless the child's parent or guardian presents to the institution authorities a certification from a licensed physician or authorized representative of the state department of health that the child has received age appropriate immunization...”

North Dakota law (23-01-05.3) allows “a health-care provider, elementary or secondary school, early childhood facility, public or private postsecondary educational institution, city or county board of health, district health unit, and the state health officer to exchange immunization data in any manner with one another.” In order to be in compliance with the new HIPAA rules, the sharing of immunization data must be mandated, not just permitted, as it is currently in North Dakota law.

Currently, North Dakota schools have direct access to the North Dakota Immunization Information System (NDIIS) to review students’ immunization records. All childhood immunizations are mandated by state law (23-01-05.3) to be entered into the NDIIS within four weeks of administration. If the administrative rules (33-06-05) are not changed to mandate the disclosure of immunization records to schools, schools will no longer be able to have access to the NDIIS and health-care providers will have to obtain parental consent before releasing immunization records to schools. Requiring parental consent would put a burden on parents who are requesting immunization records be sent to schools, on schools who have to request parents find their immunization record, and on health-care providers who have to obtain parental consent and mail or fax immunization records to schools.

The Department of Health is also requesting to change the same administrative rules to specify middle school entry as seventh grade for immunization requirements. It is currently defined as sixth or seventh grade, which has led to confusion for schools and health-care providers. It has also made it difficult for the Department of Health to determine the number of children in compliance with the middle school requirements.

7. A regulatory analysis was not issued or required.
8. A regulatory analysis and economic impact statement of impact on small businesses was prepared and is attached.
9. These rules have no fiscal effect on state revenues and expenditures.
10. A constitutional takings assessment was not prepared.
11. These rules were not adopted as emergency rules.