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STATE OF MICHIGAN

MIKE COX, ATTORNEY GENERAL

COUNTIES: Local health department's authority concerning immunization requirements

PUBLIC HEALTH CODE:

LOCAL HEALTH DEPARTMENTS:

A local health department has authority to adopt regulations to require a parent to use a specific immunization exemption form in order to claim an exemption from vaccination requirements under section 9215(2) of the Public Health Code, MCL 333.9215(2).

The broad authority conferred on local health departments to prevent disease and promote the public health includes the power to require a parent to provide a statement explaining the nature of the "other objection" to immunization claimed by the parent under section 9215(2) of the Public Health Code, MCL 333.9215(2).

A local health department may promulgate a regulation requiring its approval to confirm that an immunization exemption has been properly claimed under section 9215(2) of the Public Health Code, MCL 333.9215(2).

Opinion No. 7205

September 14, 2007

Honorable Kim Meltzer
State Representative
The Capitol
Lansing, MI

You have asked several questions regarding the authority of a local health department to require parental compliance with its immunization regulations in order for a child to qualify as exempt from the immunization requirements under state law.

You first ask whether a local health department may require a parent, guardian, or person *in loco parentis* of a child to use a specific form in order to exempt that child from the immunization requirements provided for in the Public Health Code, 1978 PA 368, MCL 333.1101 *et seq.*¹

Over a century ago, the United States Supreme Court, in *Jacobson v Massachusetts*, 197 US 11; 25 S Ct 358; 49 L Ed 643 (1905), settled that the police powers of a state extend to providing for compulsory vaccination. The requirement for vaccinations has been recognized as universally important in the area of public health. The Centers for Disease Control and Prevention, for example, describe the drastic reduction over the past half century in morbidity and mortality due to vaccine-preventable illness as one of the most momentous achievements of public health.²

In line with this history, the Legislature has established comprehensive immunization requirements to protect the public health in Michigan.³ These requirements are set forth in Part 92 of the Public Health Code, MCL 333.9201 *et seq.* The Michigan Department of Community Health (MDCH) is empowered to promulgate rules to implement Part 92, including rules governing age periods for immunizations, the minimum ages at which immunization may be commenced, the minimum doses required during a specified time period, and the minimum levels of immunization for children in school. MCL 333.9227(1)(a)-(d). In addition, section 5111 of the Public Health Code authorizes the MDCH to promulgate rules to establish procedures for the control of diseases and infections, including immunization and environmental controls. MCL 333.5111(1)(d). By promulgated rule, MDCH requires childhood vaccinations for diphtheria, pertussis, tetanus, measles, mumps, rubella, polio, Haemophilus influenzae type b (Hib), Hepatitis B, and varicella (chicken pox). 2006 MR 10, R 325.176. This rule, among other things, also specifies the ages when the various vaccines must be administered.

Section 9205 of the Public Health Code, MCL 333.9205, requires a parent to provide for the child's immunization against diseases at the ages prescribed by the MDCH. Further, when a child is first registered in school or in a preschool-aged program of group residence, care, or camping, the parent must present to school officials a certificate of immunization or statement of exemption. MCL 333.9208 and 333.9211(1). The exemption may be claimed for medical reasons or "because of religious convictions or other objection to immunization." MCL 333.9215(1)-(2). The parent's failure to provide the certificate of immunization or statement of exemption means that the child cannot be permitted to enter or attend the school or preschool. MCL 333.9208(2).

A school is required to report twice a year to the state and local health departments a list of students with their immunization status. The reports are to be on a form provided or approved by the MDCH. MCL 333.9209. The local health department is required to take appropriate action in light of the information collected in the reports, including providing immunization clinics to raise the immunization level of children entering school to the level established by MDCH. MCL 333.9209. Local health departments are required to periodically offer free immunization clinics for children. MCL 333.9203. Additionally, the state or local health departments may require the operators of programs for preschool-aged children to report the immunization status of each child accepted in the program. MCL 333.9211.

In addition to these responsibilities, the Public Health Code assigns numerous other powers and duties to local health departments.⁴ Local health departments are primarily responsible for the organization, coordination, and delivery of health services and programs within their jurisdictions. MCL 333.2235(2). The chief duties of local health departments are to "prevent disease, prolong life, and promote the public health." MCL 333.2433(1). To those ends, local health departments "shall . . . [i]mplement and enforce laws for which responsibility is vested in the local health department." MCL 333.2433(2)(a). They also "[h]ave powers necessary or appropriate to perform the duties and exercise the powers given by law to the local health officer" that are not otherwise prohibited by law. MCL 333.2433(2)(f).⁵

Local health departments may also adopt regulations to properly safeguard the public health and to prevent the spread of diseases, MCL 333.2435(d), and are specifically empowered to "adopt regulations necessary or appropriate to implement or carry out the duties or functions vested by law in the local health department." MCL 333.2441(1). These regulations must be "at least as stringent as the standard established by state law applicable to the same or similar subject matter." MCL 333.2441(1).⁶ It has long been held in Michigan that this broad discretionary authority to protect the public health empowers a local health department to implement regulations concerning vaccinations of children and to work out the details necessary to prevent the spread of disease, including establishing requirements for local school districts. *People ex rel Hill v Lansing Bd of Ed*, 224 Mich 388; 195 NW 95 (1923).

In addition to the requirements under the Public Health Code, the Michigan Revised School Code, 1995 PA 289, MCL 380.1 *et seq*, requires that a child enrolling in a public or nonpublic school for the first time (or enrolling in grade 6 for the first time) submit a certificate of immunization or a statement signed by a parent or guardian to the effect that the child has not been immunized because of religious conviction or other objection to immunization. MCL 380.1177. The Revised School Code requires the school to provide the Director of the MDCH with the immunization status of each of these pupils in kindergarten through grade 12, to be transmitted through the local health department on forms provided by MDCH or in a manner approved by MDCH. MCL 380.1177(3). The State School Aid Act of 1979 imposes similar reporting requirements. MCL 388.1767(2) and (3).⁷ The forms provided by MDCH for reporting immunizations, IP-100 and IP-101,⁸ establish a requirement that a copy of all waivers (parental immunization statements) be sent to the local health departments. In addition, MDCH provides a form for waivers, but it has not promulgated a rule requiring the use of a specific form for the waiver.

Your inquiry concerns a regulation promulgated by the Macomb County Health Department requiring parents to use a Macomb County form to claim an exemption from immunization. The regulation in question⁹ states in relevant part:

SECTION 6 – EXEMPTIONS

* * *

RELIGION AND OTHER: A student or a guardian of a minor child with a religious or other objection to immunizations shall submit to the enforcing authorities a statement or objection in a form approved by the Macomb County Health Department.

This regulation appears to track section 9215(2) of the Public Health Code, MCL 333.9215(2), which sets forth the Code's immunization exemption provision:

A child is exempt from this part if a parent, guardian, or person in loco parentis of the child presents a written statement to the administrator of the child's school or operator of the group program to the effect that the requirements of this part cannot be met because of religious convictions or other objection to immunization.

In construing this provision, section 1111 of the Public Health Code mandates that, like all provisions of the Code, it "shall be liberally construed for the protection of the health, safety, and welfare of the people of this state." MCL 333.1111(2). As long ago recognized in *McKillop v Cheboygan*

County Bd of Supervisors, 116 Mich 614, 617; 74 NW 1050 (1898), statutes designed to protect the community from infections are of utmost importance. In addition, the foremost general rule to follow in interpreting a statutory provision is to discern and give effect to the intent of the Legislature as expressed in the statutory language. *Gladych v New Family Homes, Inc*, 468 Mich 594, 597; 664 NW2d 705 (2003). Also relevant to your question is the rule that exceptions provided for in a statute are to be given a limited rather than an expansive construction. *People v Jahmer*, 433 Mich 490, 500, n 3; 446 NW2d 151 (1989); *Rzepka v Farm Estates, Inc*, 83 Mich App 702, 706-707; 269 NW2d 270 (1978). The burden of proving entitlement to a specific exemption from the requirements of a statute generally rests on the one who claims its benefits. See *Michigan Tool Co v Employment Security Comm*, 346 Mich 673, 680; 78 NW2d 571 (1956).

As shown by the above discussion, the Public Health Code and the Revised School Code require reports of immunization and waivers as prescribed by MDCH. Local health departments have specific statutory duties and functions involving the reporting of vaccinations as well as any exceptions where individuals have not been vaccinated. Schools must report their students' immunization status to their local health departments; and they are, in turn, required to take appropriate action based on those reports. MCL 333.9209. Local health departments are expressly required to implement and enforce the laws for which responsibility has been assigned to them. MCL 333.2433(2)(a). The plain language of the Public Health Code authorizes local health departments to adopt regulations "necessary or appropriate" to carry out their assigned duties and functions. MCL 333.2441(1). Moreover, the broad discretionary authority to protect the public health empowers a local health department to implement regulations concerning vaccinations of children and to work out the details necessary to prevent the spread of disease, including establishing requirements for local school districts. *People ex rel Hill*, 224 Mich at 395, 399.

These clear statements of legislative intent and case law support the conclusion that local health departments may adopt a regulation requiring the use of a specific form to claim an exemption from immunization requirements. Developing a uniform format for claiming an exemption and establishing procedures for assuring compliance with statutory requirements represent a "necessary or appropriate" means for assuring that a health department is positioned to fulfill its educational and monitoring responsibilities.

It is my opinion, therefore, in answer to your first question, that a local health department has authority to adopt regulations to require a parent to use a specific immunization exemption form in order to claim an exemption from vaccination requirements under section 9215(2) of the Public Health Code, MCL 333.9215(2).

You next ask whether a local health department may require a parent to provide an explanation of the nature of the "other objection" to immunization under section 9215(2) of the Public Health Code, MCL 333.9215(2).

The information required for exemption under MCL 333.9215(2) and Rule 325.176(1)(d) includes the name and birth date of the child, and a certification that immunization conflicts with religious conviction or other objection of the statement's signer. The Macomb County Health Department's immunization waiver form requests that a reason be stated for an objection other than religion, thereby raising the issue of whether the local health department is requiring more information than permitted under MCL 333.9215(2).

The Macomb County Health Department's regulation requires that the written objections be stated "in a form approved by the Macomb County Health Department." The Michigan Department of Community Health also has a form for parents to use for filing an exemption. The MDCH form is similar to the Macomb County form in that it requires a reason to be stated for any "other objection."

Prior to the codification of the Public Health Code in 1978 PA 368, the only statutorily permissible exemption from the then applicable immunization requirement was for religious reasons. The Legislature added the "other objection" language in 1978 but did not define this term. MDCH Rule R 325.176(d) defines religious or other exemption to mean:

[A] written statement which is signed by the parent, guardian, or person in loco parentis of a child, which certifies that immunization is in conflict with religious or other convictions of the signer, and which includes the name and date of birth of the child.

When determining the plain and ordinary meaning of undefined terms in statutes or rules, dictionary definitions may be consulted. *Title Office Inc v VanBuren County Treasurer*, 469 Mich 516, 522; 676 NW2d 207 (2004). *The American Heritage Dictionary, New College Edition* (1976), defines the word "objection," in part, as a "ground, reason, or cause for expressing opposition or disagreement." Requiring a parent to state the basis for a non-religious objection to immunization ensures that the parent is in fact objecting to immunization by stating a ground, reason, or cause for the objection, rather than claiming an exemption for some other reason. For example, a parent who refuses to immunize a child due to time or financial constraints is not stating an objection to or conviction against immunization required by MCL 333.9215(2) and Rule 325.176(1)(d). Confirming that a parent truly has an actual objection to immunization by requiring disclosure of the reason for the objection is not requiring more information than prescribed under this section, but rather it is verifying that the objection exists in conformity with the statute.

Requiring the parent to state a reason for objecting to immunization is also consistent with a local health department's duty to prevent disease and promote the public health by raising immunization levels. A parent's objection may be based on misinformation or misunderstanding; the simple act of requiring an explanation of the nature of the "other" objection will enhance compliance with vaccination requirements. For example, if an objection is based on incomplete scientific information or vague apprehension, local health departments can provide information to parents, thereby allowing them to make a more informed decision regarding immunization. If the issue is financial, the parent can be notified of free immunization clinics that a health department is required to conduct periodically. MCL 333.9203(2).

Additionally, requiring a parent to state a reason for the "other objection" is within the broad authority of a local health department's statutory duty to prevent disease through immunization. It is reasonable for the Macomb County Health Department to adopt a regulation to require a parent to state the nature of an objection as a "necessary or appropriate" measure to enable it to perform its responsibilities.

It is my opinion, therefore, in answer to your second question, that the broad authority conferred on local health departments to prevent disease and promote the public health includes the power to require a parent to provide a statement explaining the nature of the "other objection" to immunization claimed by the parent under section 9215(2) of the Public Health Code, MCL 333.9215(2).

You next ask whether a local health department may require an immunization waiver to be submitted to the local health department for its approval or denial.

The Legislature has generally provided for three types of exemptions from immunization requirements.¹⁰ MCL 333.9215 provides:

(1) A child is exempt from the requirements of this part as to a specific immunization for any period of time as to which a physician certifies that a specific immunization is or may be detrimental to the child's health or is not appropriate.

(2) A child is exempt from this part if a parent, guardian, or person in loco parentis of the child presents a written statement to the administrator of the child's school or operator of the group program to the effect that the requirements of this part cannot be met because of *religious convictions or other objection to immunization*. [MCL 333.9215; emphasis added.]

The MDCH, under its rulemaking authority, has defined "religious or other exemption" as a certified written statement that immunization conflicts with religious or other convictions of the signer:

"Religious or other exemption" means a written statement which is signed by the parent, guardian, or person in loco parentis of a child, which certifies that immunization is in conflict with religious or other convictions of the signer, and which includes the name and date of birth of the child. [R 325.176(1)(d).]

Section 9208(1) of the Public Health Code, MCL 333.9208(1), provides that a parent who is registering a child for the first time in a Michigan school, or has a child entering the 6th grade, must present to school officials a certificate of immunization or statement of exemption. As discussed above, a copy of the exemption must be provided to the local health department.

A local health department may adopt regulations that are "necessary or appropriate" to carry out their duties and functions.¹¹ School districts are required to submit, and local health departments are entitled to inspect, immunization status lists and records. MCL 333.9209(1); 2006 MR 10, R 325.176(14). This collected information is used, in part, by local health departments to determine the appropriate action necessary to raise child immunization levels, such as through providing immunization clinics, thereby potentially reducing the number of exemptions. MCL 333.9209(3). Review of exemption information also falls under the authority of local health departments to coordinate health services and programs, in this instance with school officials, and to prevent the spread of disease and safeguard the public health. See MCL 333.2235(2), 333.2433, and 333.2435.

A local health department is vested with the discretion to determine how best to discharge its duties and perform its functions. An exemption for an "other objection" to immunization may only be claimed under MCL 333.9215(2) and the MDCH's implementing regulation where the otherwise applicable immunization requirements "cannot be met" because of that objection. As an exception to the general rule mandating immunization, the term "other objection" must be narrowly construed. The provision must also be "liberally construed for the protection of the health, safety, and welfare of the people of this state." MCL 333.1111(2) and MCL 333.2401 (stating that the principles of construction contained in article 1 of the Public Health Code apply to all articles in the Code); *McNeil* ___ Mich App at ___, *supra*.

Given these guiding principles, a local health department may reasonably determine that it can best discharge its duties concerning immunization by reviewing a parent's claim of exemption to verify that it qualifies under MCL 333.9215(2) and Rule 325.176(1)(d). Where, for example, an objection is based on financial considerations or matters concerning mere convenience or fails to demonstrate that the immunization requirements *cannot be met* as a result of the "other objection," the exemption is appropriately rejected. The local health department may then follow through with educational efforts regarding the possibility of financial assistance or the availability of clinics that may ameliorate scheduling difficulties and the like. On the other hand, where an objection is based on a personal belief that is incompatible with the immunization of the child in that particular instance, the statute will be satisfied and the local health department's approval may not be withheld.

Where the form and related review process do not impose conditions inconsistent with the statute, they serve a ministerial or administrative purpose, an area within which agencies are typically given latitude to perform their assigned duties.¹² The "approval" contemplated in the county regulation does not call upon the county to exercise a subjective judgment about the adequacy of the exemption statement; rather, it contemplates a ministerial review that is "necessary or appropriate" to confirm that the claimed exemption meets the requirements of MCL 333.9215(2).

It is my opinion, therefore, in answer to your third question, that a local health department may promulgate a regulation requiring its approval to confirm that an immunization exemption has been properly claimed under section 9215(2) of the Public Health Code, MCL 333.9215(2).

Having found that the above provisions of the Macomb County Health Department's immunization requirements are consistent with the state law, your question whether they are preempted by state law is moot.

MIKE COX
Attorney General

¹For brevity, "parent" will be used in this opinion to include guardian or person *in loco parentis* of the child.

²See Centers for Disease Control & Prevention, Morbidity & Mortality Weekly Report, Vol 48, No 29, Achievements in Public Health, 1900-1999, p 621 (July 30, 1999); Centers for Disease Control & Prevention, Morbidity & Mortality Weekly Report, Vol 48, No 12, Ten Great Public Health Achievements – United States, 1900-1999, p 241 (April 2, 1999); and Achievements in Public Health, 1900-1999, Impact of Vaccines Universally Recommended for Children – United States, 1990-1998, *Id.*, at p 243.

³The State of Michigan's historic dedication to eradicating disease has extended to itself manufacturing vaccines for delivery to its citizens. Under 1927 PA 105, the Legislature made it the duty of the then State Commissioner of Health to manufacture vaccines to control communicable diseases. See OAG, 1941-1942, No 21898, p 444, (December 15, 1941). The authority to manufacture vaccines continued until 1998 when the State sold its vaccine production facilities. See MCL 333.9211 and Executive Reorganization Order 1995-20, MCL 333.26323.

⁴The Public Health Code defines "local health department" to include: 1) a county health department of a single county provided pursuant to section 2413, MCL 333.2413, and its board of health, if any; 2) a district health department created pursuant to section 2415, MCL 333.2415, and its board of health; 3) a city health department created pursuant to section 2421, MCL 333.2421, and its board of health, if any; and 4) any other local agency approved by the department under Part 24, MCL 333.2401 *et seq.* MCL 333.9201(2) and MCL 333.1105(2).

⁵"Local health officer" means the individual in charge of the local health department or his or her authorized representative. MCL 333.1105(3).

⁶*McNeil v Charlevoix County*, 275 Mich App 686; 741 NW2d 27 (2007).

⁷If a school district or intermediate school district fails to comply with this section, the Michigan Department of Education "shall withhold 5% of the total funds due to the district or intermediate district under this act." MCL 388.1767(4).

⁸A form is not required to be promulgated as a rule. MCL 24.207(h).

⁹Macomb County Immunization Regulations, Part A, Section 6.

¹⁰Under section 9212 of the Public Health Code, MCL 333.9212, if the immunization level in any grade in any public or nonpublic school falls below the level necessary to guard against the spread of disease, the school district board or governing body may designate immunization requirements as a condition of admission to a particular grade.

¹¹The use of the disjunctive word "or" is generally construed as referring to an alternative or choice between two or more things. *Hofmann v Auto Club Ins Ass'n*, 211 Mich App 55, 69; 535 NW2d 529 (1995).

¹²See *Public Health Dep't v Rivergate Manor*, 452 Mich 495, 503; 550 NW2d 515 (1996); *Pharmaceutical Research & Manufacturers of America v Dep't of Community Health*, 254 Mich App 397, 403-404; 657 NW2d 162 (2002) (administrative agencies may exercise powers that are granted by necessary or fair implication to fully effectuate their expressly granted powers).

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