SENATE, No. 902

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JANUARY 14, 2020

Sponsored by:
Senator  STEPHEN M. SWEENEY
District 3 (Cumberland, Gloucester and Salem)
Senator  JOSEPH F. VITALE
District 19 (Middlesex)

SYNOPSIS
Clarifies statutory exemptions from mandatory immunization requirements for child care center and school attendance.

CURRENT VERSION OF TEXT
As introduced.
AN ACT concerning exemptions from mandatory immunization requirements and amending various parts of the statutory law.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 6 of P.L.1974, c.150 (C.26:1A-9.1) is amended to read as follows:

6. a. Provisions in the State Sanitary Code in implementation of [this act] P.L.1947, c.177 (C.26:1A-1 et seq.), or provisions otherwise set forth in statute or regulation, which require the immunization of children in a public or private licensed child care center, or students in a public or private preschool program, elementary or secondary school, or institution of higher education, shall provide for an exemption [for pupils] from such mandatory immunization [if the parent or guardian of the pupil objects thereto in a written statement signed by the parent or guardian upon the ground that the proposed immunization interferes with the free exercise of the pupil's religious rights. This exemption may be suspended by the State Commissioner of Health during the existence of an emergency as determined by the State Commissioner of Health] based upon:

   (1) a statement submitted, using a standard form as shall be prescribed by the Commissioner of Health, to the public or private child care center, preschool program, elementary or secondary school, or institution of higher education, as applicable, by a licensed physician, doctor of osteopathy, or advanced practice nurse that includes: (a) the professional’s full name and address, and the national provider identifier of the professional or the professional’s collaborating physician; and (b) a statement that the vaccine is medically contraindicated for a specific period of time and the reasons for the medical contraindication, which shall be valid medical reasons that are consistent with guidelines issued by the Advisory Committee on Immunization Practices in the federal Centers for Disease Prevention. A medical exemption submitted pursuant to this paragraph may be reviewed and subject to approval by the physician employed by or consulting for the local or county board of health. A medical exemption approved pursuant to this paragraph shall exempt the child or student, as applicable, from the vaccination for the stated period of time. Subject to the provisions of subsection i. of section 4 of P.L.2004, c.138 (C.26:4-134), the professional issuing the statement shall additionally enter the statement into the child’s or student’s record in the New Jersey Immunization Information System established pursuant to the P.L.2004, c.138 (C.26:4-131 et seq.); or

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.
(2) documentation establishing that the Department of Health has approved an exemption for the child or student on the grounds that a sibling of the child or student experienced a vaccine injury. A request for approval of a sibling vaccine injury exemption pursuant to this paragraph shall be submitted to the Department of Health by the child or student, or by the child’s or student’s parent or guardian if the child or student is a minor, on forms and in manner as shall be prescribed by the Commissioner of Health by regulation, and shall include documentation of a final determination of vaccine injury issued through the Vaccine Injury Compensation Program administered by the Health Resources and Services Administration in the United States Department of Health and Human Services or a final judgment issued by a court of competent jurisdiction that includes a finding of vaccine injury. Documentation of the department’s approval of a sibling vaccine injury exemption pursuant to this paragraph shall be submitted to the public or private childcare center, elementary or secondary school, or institution of higher education, as applicable, by the child or student, or by the child’s or student’s parent or guardian if the child or student is a minor.

b. County and local boards of health shall have the authority to audit exemptions approved pursuant to subsection a. of this section.

c. Except as provided in subsection d. of this section, a public or private child care center, preschool program, elementary or secondary school, or institution of higher education shall not exempt a child or student, as applicable, from a mandatory immunization unless the child or student, or the child’s or student’s parent or guardian if the child or student is a minor, complies with all of the applicable requirements set forth in subsection a. of this section.

d. A nonpublic child care center, preschool program, elementary or secondary school, or institution of higher education may adopt a policy authorizing the admission of children or students, as applicable, who are not in full compliance with mandatory immunization requirements and who do not meet the requirements set forth in subsection a. of this section for an exemption from such requirements, provided that:

(1) the child care center, preschool program, school, or institution of higher education requires each child or student, or the child’s or student’s parent or guardian, if the child or student is a minor, who is enrolled in the child care center, preschool program, school, or institution of higher education to sign an acknowledgement form, at the time the child or student is enrolled.
in the child care center, preschool program, school, or institution of higher education, which acknowledgement form shall:

(a) set forth the child care center’s, preschool program’s, school’s, or institution of higher education’s policy with regard to admitting children or students, as applicable, who are not in full compliance with mandatory immunization requirements; and

(b) indicate the immunization rates for the child care center, preschool program, school, or institution of higher education for the prior academic year;

(2) the child or student, or the child’s or student’s parent or guardian if the child or student is a minor, who is not in full compliance with mandatory immunization requirements and who does not meet the requirements for an exemption under subsection a. of this section provides written notice to the child care center, preschool program, school, or institution of higher education identifying which immunization requirements the child or student is not in compliance with, and additionally signs a form that states the child or student, or the child’s or student’s parent or guardian, as applicable, understands the risks and benefits of vaccination to the child or student and the public health, and acknowledges that the child or student may be excluded from attendance in the event of the occurrence of a communicable disease or condition or threat of a communicable disease or condition, which in the opinion of the Commissioner of Health requires such exclusion from attendance of unvaccinated children or students;

(3) the child care center, preschool program, school, or institution of higher education prominently posts its policy with regard to admitting children or students, as applicable, who are not in full compliance with mandatory immunization requirements, and the immunization rates for the child care center, preschool program, school, or institution of higher education for the prior academic year, at each entrance to the child care center, preschool, school, or institution of higher education; and

(4) the child care center, preschool program, school, or institution of higher education shall retain the authority to exclude a child or student from attendance in the event of the occurrence of a communicable disease or condition or threat of a communicable disease or condition which, in the opinion of the Commissioner of Health, requires such exclusion from attendance of unvaccinated children or students;

e. The Commissioner of Health, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations to effectuate the purposes of this section, including requirements concerning the format of acknowledgement forms used for the purposes of complying with subsection d. of this section; except that, notwithstanding any provision of P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the commissioner may adopt, immediately
upon filing with the Office of Administrative Law, such regulations as the commissioner deems necessary to implement the provisions of this section, which shall be effective for a period not to exceed six months and may thereafter be amended, adopted, or re-adopted by the commissioner in accordance with the requirements of P.L.1968, c.410 (C.52:14B-1 et seq.).

(cf: P.L.1974, c.150, s.6)

2. Section 4 of P.L.2002, c.58 (C.18A:61D-10) is amended to read as follows:

4. A student shall not be required to receive a vaccination pursuant to section 2 or 3 of [this act based upon one of the following:

a. a written statement submitted to the secondary school or institution of higher education, as applicable, by a licensed physician indicating that the vaccine is medically contraindicated for a specific period of time and the reasons for the medical contraindication, based upon valid medical reasons as determined by regulation of the Commissioner of Health and Senior Services, which shall exempt the student from the vaccination for the stated period of time; or

b. a written statement submitted to the secondary school or institution of higher education, as applicable, by the student, or the student's parent or guardian if the student is a minor, explaining how the administration of the vaccine conflicts with the bona fide religious tenets or practices of the student, or the parent or guardian, as appropriate; except that a general philosophical or moral objection to the vaccination shall not be sufficient for an exemption on religious grounds] P.L.2002, c.58 (C.18A:61D-9 or C.18A:40-21.1) if the student qualifies for an exemption as provided in section 6 of P.L.1974, c.150 (C.26:1A-9.1).

(cf: P.L.2002, c.58, s.4)

3. Section 3 of P.L.2003, c.284 (C.18A:62-15.2) is amended to read as follows:

3. A student shall not be required to receive a vaccination pursuant to subsection a. of section 2 of [this act based upon one of the following:

(1) a written statement submitted to the institution of higher education by a licensed physician indicating that the vaccine is medically contraindicated for a specific period of time and the reasons for the medical contraindication, based upon valid medical reasons as determined by regulation of the Commissioner of Health and Senior Services, which shall exempt the student from the vaccination for the stated period of time; or

(2) a written statement submitted to the institution of higher education by the student, or the student's parent or guardian if the student is a minor, explaining how the administration of the vaccine
conflicts with the bona fide religious tenets or practices of the
student, or the parent or guardian, as appropriate; except that a
general philosophical or moral objection to the vaccination shall not
be sufficient for an exemption on religious grounds.] P.L.2003,
c.284 (C.18A:62-15.1) if the student qualifies for an exemption as
provided in section 6 of P.L.1974, c.170 (C.26:1A-9.1).

b. In the event of an actual or threatened outbreak of meningitis
at a public or private institution of higher education in this State,
the institution may exclude from attendance a student who has been
exempted from the vaccination requirement of this act pursuant to
subsection a. of this section, as determined by the Commissioner of
Health [and Senior Services].
(cf: P.L.2003, c.284, s.3)

4. Section 4 of P.L.2004, c.138 (C.26:4-134) is amended to
read as follows:

4. a. There is established a Statewide automated and electronic
immunization registry, to be designated as the New Jersey
Immunization Information System, in the Department of Health.
The registry shall be designed to serve as a single repository of
immunization records to aid, coordinate, and help promote effective
and cost-efficient disease screening, prevention, and control efforts
in the State.

b. A newborn infant in New Jersey, who is born on or after
January 1, 1998, shall be enrolled in the registry immediately
following birth unless the parent or legal guardian of the infant
provides a written request to not participate in the registry.

A child born prior to January 1, 1998 may be enrolled in the
registry at the parent's or legal guardian's written request.

c. Access to the information in the registry shall be limited to:
health care providers, schools, colleges, licensed child care centers,
and public agencies, and private organizations as determined by
regulation of the commissioner. A registrant, or the registrant's
parent or legal guardian if the registrant is a minor, shall have
access to the registrant's immunization and other preventive health
screening information in the registry.

d. The information contained in the registry shall be used for
[the following] purposes including, but not limited to:

(1) to help ensure that registrants receive all recommended
immunizations in a timely manner by providing access to the
registrants' immunization records;

(2) to help improve immunization rates by providing notice to
registrants of overdue or upcoming immunizations; and

(3) to help control communicable diseases by assisting in the
identification of persons who require immediate immunization in
the event of a vaccine-preventable disease outbreak.

e. The authentic immunization and other preventive health
screening record of a child, which shall consist of a paper or
electronic copy of the registry entry that is a true and accurate
representation of the information contained therein, obtained from
the registry shall be accepted as a valid immunization and
preventive health screening record of the registrant for the purpose
of meeting immunization and preventive health screening
documentation requirements for admission to a school, college, or
licensed child care center.

f. A health care provider shall not discriminate in any way
against a person solely because the person elects not to participate
in the registry.

g. An authorized user granted access as provided in subsection
c. of this section shall only access information in the registry on a
specific patient or client who is presently receiving services, is
under the user's care or is within the applicable governmental health
authority's jurisdiction.

h. [An agency, organization, or other entity authorized to
access information in the registry shall not use any report made by a
health care provider pursuant to this act in any punitive manner
against the provider.] (deleted by amendment, P.L. , c. )
(pending before the Legislature as this bill)

i. A record of an exemption from a mandatory immunization
on the grounds of medical contraindication or sibling vaccine injury
shall be included in the registry along with supporting
documentation. Within one year after the effective date of P.L. ,
c. (C. ) (pending before the Legislature as this bill), the
registry shall be updated with the capability to allow for the
inclusion in the registry of relevant forms provided by the
Department of Health, including:

(1) the form or equivalent information included in the form
prescribed by the Commissioner of Health upon which a health care
professional provides the reasons for the issuance of a medical
exemption to a mandatory immunization, including the name,
adress, and national provider identifier of the health care
professional responsible for completing the prescribed form; and

(2) the documentation of sibling vaccine injury required for
issuance of a sibling vaccine injury exemption to mandatory
immunization.

Within one year after the effective date of P.L. , c. (C. )
(pending before the Legislature as this bill), the registry shall be
updated with the capability to allow for the generation of a printable
report of the information placed in the registry as required pursuant
to this subsection.

[i:] The commissioner, in consultation with the Public Health
Council, shall adopt rules and regulations, pursuant to the
et seq.), to effectuate the purposes of this act, including, but not
limited to:

(1) the establishment and maintenance of the registry;
(2) the methods for submitting, and the content of, reports of immunizations to the registry, for which purpose the commissioner shall provide, to the maximum extent practicable, for reporting options to facilitate compliance with the requirements of subsection b. of this section;

(3) procedures for the birth hospital of a newborn infant or health care provider, as applicable, to inform the parent or legal guardian of a newborn infant or minor of the purpose of the registry and its potential uses by parties having authorized access to registry information, and the content of that information;

(4) procedures for a registrant, or the registrant's parent or legal guardian if the registrant is a minor, to review and correct information contained in the registry;

(5) procedures for the parent or legal guardian of a newborn infant or minor, or a person over 18 years of age, to request to not participate in the registry at any time and to remove or inactivate information from the registry;

(6) limits on, and methods of, access to the registry by those authorized pursuant to subsection c. of this section;

(7) procedures for health insurers to obtain immunization information from the registry concerning only their covered persons, as well as summary statistics, which information or statistics shall not be used or disclosed for any other purpose than to:

(a) improve patient care;

(b) provide quality assurance to employers purchasing group coverage and to health care providers;

(c) improve outreach and education efforts with respect to their covered persons and health care providers; and

(d) monitor and improve quality of care standards as developed by professional organizations, accreditation agencies and government agencies in collaboration with the department; and

(8) procedures for the department to disseminate statistical information and supporting commentary.

(cf: P.L.2012, c.17, s.340)

5. Section 5 of P.L.1983, c.492 (C.30:5B-5) is amended to read as follows:

5. a. The department shall have responsibility and authority to license and inspect child care centers. The commissioner shall promulgate rules and regulations for the operation and maintenance of child care centers which shall prescribe standards governing the safety and adequacy of the physical plant or facilities; the education, health, safety, general well-being and physical and intellectual development of the children; the quality and quantity of food served; the number of staff and the qualifications of each staff member; the implementation of a developmentally appropriate program; the maintenance and confidentiality of records and
furnishing of required information; the transportation of children; and the administration of the center. The commissioner shall also promulgate rules and regulations for license application, issuance, renewal, expiration, denial, suspension and revocation. In developing, revising or amending such rules and regulations, the commissioner shall consult with the Child Care Advisory Council created pursuant to section 14 of P.L.1983, c.492 (C.30:5B-14), and with other appropriate administrative officers and agencies, including the Departments of Health [and Senior Services], Education, Labor, Community Affairs and the [Division of Motor Vehicles] Motor Vehicle Commission giving due weight to their recommendations. The rules and regulations promulgated pursuant to this act shall be adopted and amended in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

b. The department shall conduct an on site facility inspection and shall evaluate the program of the child care center to determine whether the center complies with the provisions of this act.

c. Any rule or regulation involving physical examination [ , immunization] or medical treatment other than immunization shall include an appropriate exemption for any child whose parent or parents object thereto on the ground that it conflicts with the tenets and practice of a recognized church or religious denomination of which the parent or child is an adherent or member.

d. The department shall have the authority to inspect and examine the physical plant or facilities of a child care center and to inspect all documents, records, files or other data maintained pursuant to this act during normal operating hours and without prior notice.

e. The department shall request the appropriate State and local fire, health and building officials to conduct examinations and inspections to determine compliance with State and local ordinances, codes and regulations by a child care center. The inspections shall be conducted and the results reported to the department within 60 days after the request.

f. Nothing in this act shall be interpreted to permit the adoption of any code or standard which exceeds the standards established pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.).

g. Any rules and regulations adopted by the department pursuant to this act prescribing standards governing the safety and adequacy of the physical plant or facilities of child care centers shall not apply to a child care center operated by a nonprofit organization in a public school building used as a public school.

(cf: P.L.2000, c.122, s.2)
6. This act shall take effect 180 days after the date of enactment.

STATEMENT

This bill revises the requirements concerning exemptions from mandatory student immunization requirements.

Under the bill, provisions in the State Sanitary Code, or provisions otherwise set forth in statute or regulation, which require the immunization of children in public or private licensed child care centers and students at public or private elementary or secondary schools and institutions of higher education, are to provide for an exemption from the mandatory immunization requirements based upon a statement submitted to the child care center, elementary or secondary school, or institution of higher education, as applicable, using a standard form designated by the Department of Health by a licensed physician, doctor of osteopathy, or advanced practice nurse indicating: (1) that the vaccine is medically contraindicated for a specific period of time; (2) the professional’s full name, address, and national provider identifier (or the national provider identifier of the professional’s collaborating physician); and (3) the reasons for the medical contraindication, which are to be valid medical reasons consistent with guidelines issued by the Advisory Committee on Immunization Practices (ACIP) in the federal Centers for Disease Control and Prevention. The child or student will be exempt from receiving the indicated vaccination for the stated period of time.

In addition, the bill authorizes an exemption from mandatory immunization requirements for a child or student who has a sibling who experienced a vaccine injury. To qualify for the exemption, the child or student will be required to submit to the Department of Health documentation of a final determination of vaccine injury issued through the Vaccine Injury Compensation Program administered by the Health Resources and Services Administration in the United States Department of Health and Human Services or a final judgment issued by a court of competent jurisdiction that includes a finding of vaccine injury. Documentation of the department’s approval of a sibling vaccine injury exemption will be submitted to the school or child care center by the child or student, or by the child or student’s parent or guardian, if the child or student is a minor.

Medical and sibling vaccine injury exemptions may be subject to review and approval by a physician employed by or consulting for the county or local board of health, and may be audited by county and local boards of health. Approved medical and sibling vaccine injury exemptions will be forwarded for inclusion in the New Jersey Immunization Information System (NJIS). The bill requires the
NJII to be updated no later than one year after the effective date of
the bill to allow for the inclusion of medical exemption information,
and to allow for a printable report of information included in the
registry.

The bill prohibits a public child care center, elementary or
secondary school, or institution of higher education from exempting
a child or student from a mandatory immunization unless the child
or student, or the child’s or student's parent or guardian if the child
or student is a minor, complies with all of the applicable
requirements set forth in the bill.

The bill allows nonpublic child care centers, preschool programs,
elementary and secondary schools, and institutions of higher
education to adopt a policy authorizing the admission of children
and students who are not in full compliance with mandatory
immunization requirements and who do not meet the requirements
for a medical or sibling vaccine injury exemption, provided that the
facility requires each child or student enrolled in the child care
center, preschool program, school, or institution of higher
education, or the child’s or student’s parent or guardian if the child
or student is a minor, to sign an acknowledgement form, at the time
of enrollment, that sets forth the facility’s policy with regard to
admitting children or students who are not in full compliance with
mandatory immunization requirements, and that indicates the
immunization rates for the facility for the prior academic year. The
child care center, preschool program, school, or institution of higher
education will additionally be required to prominently post its
policy concerning the admission of children or students who are not
fully immunized, and the facility’s immunization rates for the prior
academic year, at each entrance to the facility. The Commissioner
of Health will be required to adopt rules and regulations concerning
the format of acknowledgement forms used by nonpublic schools
for this purpose.

A child or student who is not in compliance with mandatory
immunization requirements who seeks to attend the nonpublic child
care center, preschool program, school, or institution of higher
education will be required to provide the facility with written notice
of which specific immunization requirements the child or student is
not in compliance with and sign a form that states that the child or
student, or the child or student’s parent or guardian, as applicable,
understands the risks and benefits of vaccination and acknowledges
that the child or student may be excluded from attendance in the
event of the occurrence of a communicable disease or condition or
threat of a communicable disease or condition.

The bill provides that the current statutory list of uses for the
NJII is nonexclusive. The bill additionally removes a provision of
current law that provides that an agency, organization, or other
entity authorized to access information in the NJII may not use
any report made by a health care provider in any punitive manner against the provider.

The bill provides the Commissioner of Health with expedited rulemaking authority in order to provide guidance to child care centers, schools, and public health authorities, as they will need to implement its provisions on a timely basis, including creating acknowledgement forms that may be used by nonpublic institutions that admit children and students who are not fully compliant with mandatory immunization requirements.

The provisions of the bill will take effect 180 days after the date of enactment.