

So, You Have to Get Vaccinated?

A Brief Overview of State and Federal Authority to Mandate Vaccinations for Children

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Vaccines are some of the most important inventions of the last several centuries, however, they are also possibly some of the most concerning, especially for new parents. Unfortunately, there has been a noticeable increase in hesitancy or outright hostility to vaccines over the years, which was furthered by the emergence of COVID-19 in 2020. It is understandable, with all the misinformation that has been spread over the last several years, that there are more parents that believe vaccination mandates violate their constitutional rights. However, it is important that parents understand that, while they may dislike it, they are still expected to comply with their state's required vaccine schedule before their children reach school age. This article will touch on who can mandate vaccinations, some prominent legal challenges that determined vaccination mandates are constitutional, and will provide several examples of budgetary and regulatory proposals submitted by the president and Congress that were used to influence vaccination programs at a federal level.

Background

Who has the authority to require vaccinations? This is a tricky question because the answer is technically both the state and federal government have the power to require vaccinations. However, each entity exerts this authority in a different way.

State

Generally, the state is the entity with the authority to mandate vaccinations as they are responsible for providing for the “public health, safety, and morals” of their citizens.¹ While the federal government may recommend a vaccination schedule for states to follow, it is left to the states to determine what they will require. States codify a list of vaccinations that are required by the state's department of health to attend school in their state code and will often provide a vaccination schedule that lists when each is required. Here is an example from the Indiana Code 20-34-4-2, as well as Indiana's vaccine schedule.²

Each state usually receives funding from the federal government, which is generally under the Preventative Health and Health Services Block Grant, that can be used to finance vaccination schedules across the state.³

While many of these mandates have been frequently challenged over the years, two prominent cases, *Jacobson v. Massachusetts* and *Zucht v. King*, establish the state's authority.⁴ Courts consistently use these cases to reject arguments from plaintiffs challenging the state's power to impose vaccination requirements.⁵ Though each of the fifty states and the District of Columbia have enacted laws requiring vaccination to attend school, there are several exemptions that parents often utilize to avoid these requirements, including “medical, religious, and philosophical objections.”⁶ Each state is left to determine which exemptions they will allow and failure to comply can result in a variety of penalties, such as the child being unable to attend school and civil or criminal penalties for the parents.⁷

While these vaccination schedules are mandatory and families can face penalties for not complying, they are often not enforced.⁸ This lack of enforcement often leads to outbreaks of viruses and illnesses that could have been prevented, even in those who have been vaccinated.⁹ For example, in 2016, there was a mumps outbreak across several university campuses in Indiana.¹⁰ At the time, several universities had not verified that they had received proof of vaccination, nor had they implemented policies for “excluding susceptible persons from classes and other group settings.”¹¹ This was not the only outbreak, leading universities to realize that they needed to monitor compliance of vaccinations.

Federal

Though states make most of the decisions regarding vaccination mandates, this does not mean that the federal government is completely without their own authority. They have some power thanks to the Commerce Clause and the Spending Clause

Indiana 2023-2024 Required and Recommended School Immunizations

Grade	Required	Recommended
Pre-K	3 Hepatitis B 4 DTaP (Diphtheria, Tetanus & Pertussis) 3 Polio	1 Varicella (Chickenpox) 1 MMR (Measles, Mumps & Rubella) 2 Hepatitis A
K-5 th grade	3 Hepatitis B 5 DTaP 4 Polio	2 Varicella 2 MMR 2 Hepatitis A
6 th -11 th grade	3 Hepatitis B 5 DTaP 4 Polio 2 Varicella	2 MMR 2 Hepatitis A 1 MCV4 (Meningococcal) 1 Tdap (Tetanus, Diphtheria & Pertussis)
12 th grade	3 Hepatitis B 5 DTaP 4 Polio 2 Varicella	2 MMR 2 Hepatitis A 2 MCV4 1 Tdap

HepB: The minimum age for the 3rd dose of Hepatitis B is 24 weeks of age.

DTaP: 4 doses of DTaP/DTP/DT are acceptable if 4th dose was administered on or after child's 4th birthday.

Polio*: 3 doses of Polio are acceptable for all grade levels if the 3rd dose was given on or after the 4th birthday and at least 6 months after the previous dose.

*For students in grades K-12, the final dose must be administered on or after the 4th birthday and be administered at least 6 months after the previous dose.

Varicella: Physician documentation of disease history, including month and year, is proof of immunity for children entering preschool through 12th grade. Parent report of disease history is not acceptable.

Tdap: There is no minimum interval from the last Td dose.

MCV4: Individuals who receive dose 1 on or after the 16th birthday only need 1 dose of MCV4.

Hepatitis A: The minimum interval between 1st and 2nd dose is 6 calendar months. 2 doses are required for all grades Pre-K through 12.

COVID-19: COVID-19 vaccine is recommended for all students five years of age and older per CDC and FDA's Emergency Use Authorization. Review required after FDA full approval.

Indiana Department of Health
Immunization Division

(800) 701-0704

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Figure 1. Photograph of Indiana Vaccination Schedule for 2023-2024. Source: *Indiana 2023-2024 Required and Recommended School Immunizations*, Indiana Department of Health Immunization Division, last reviewed July, 2022. Photograph. <https://tinyurl.com/ynm2yjbh>.

located within the US Constitution.¹² The federal government can use these powers to regulate vaccinations through powers of interstate commerce, as well as using their spending power to offer federal funds to entities who follow set restrictions.¹³ However, the federal government does have some limitations on how they can use these powers, as they are unable to force states to require vaccinations and can only provide financial incentives to coerce them to comply.¹⁴

Usually, the federal government limits its dealings with vaccinations to a more administrative approach and, with the exception of a handful of populations—such as military personnel—they have not pushed their authority or set vaccination requirements.¹⁵ The majority of their influence comes from establishing various acts that ensure that states will implement vaccination programs to receive funding. In 1935, Congress established Title V of the Social Security Act, which authorized grants for states to extend and improve health programs for mothers and children, “especially in rural areas and in areas suffering from severe economic distress.”¹⁶ While they did not actively require the implementation of immunization programs to receive grant funds, states were required to “provide for the extension and improvement of local maternal and child-health services,” which often included immunization programs.¹⁷ Further, in 1944, Congress established the Public Health Service

Act, later amended in 1962, that further authorized federal grants in state and local vaccination programs.¹⁸

Definitions

It is important to know the terminology to properly understand the laws and regulations as they have been established. However, there isn't always a universal agreement about what a word means, especially between the law and science. This section will help lay out how the two have defined and interpreted various words.

Legal Definitions

Vaccine. There are several different interpretations of the word “vaccine” in the law, depending on where you look. One possible definition is found in 26 U.S.C. § 4132(a)(2), which states that “‘vaccine’ means any substance designed to be administered to a human being for the prevention of 1 or more diseases.”¹⁹ A second definition is found in 42 U.S.C. §1396s, which covers pediatric vaccines as part of a program ensuring that all children can have access to necessary vaccines. It states that pediatric vaccines are “a vaccine included on the list under subsection (e),” which points users in the direction of a list created by the Advisory Committee on Immunization Practices, without saying what is on the list.²⁰

Immunization. 42 U.S.C. §1396s also contains a definition for immunization, which states immunization means “an immunization against a vaccine-preventable disease.”²¹

Mandate. Like “vaccine,” there is more than one definition of mandate found in the law. The difference in these definitions is even trickier than those found in “vaccine” and would require more care in parsing out which is appropriate for the given situation. The term “federal mandate” is found in 2 U.S.C. §1555 and covers provisions that impose “an enforceable duty on State, local or tribal governments including a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.”²² In 2 U.S.C. §658(5), the phrase “federal intergovernmental mandate” seems to cover everything else regarding federal mandates that affect the public, and “federal private sector mandate” which covers those provisions with enforceable duties on the private sector.²³ Finally, there is another definition for “federal mandate” here that states it means “a Federal intergovernmental mandate or a Federal private sector mandate.”²⁴

Scientific Definitions

Vaccine. There are several definitions of “vaccine” from various scientific sites as well, however, they appear to be more straightforward. The Centers for Disease Control and Prevention (CDC) says that vaccines are “a preparation that is used to stimulate the body’s immune response against diseases. Vaccines are usually administered through needle injections, but some can be administered by mouth or sprayed into the nose.”²⁵ There is also a definition in MedlinePlus Health Topics that says vaccines are “injections (shots), liquids, pills, or nasal sprays that you take to teach your body’s immune system to recognize and defend against harmful germs.”²⁶

Immunization. The CDC says immunization is a “process by which a person becomes protected against a disease through vaccination.”²⁷

Vaccination. The CDC says vaccinations are the “act of introducing a vaccine into the body to produce protection from a specific disease.”²⁸

I have found that the scientific definitions of these terms are easier to understand and locate and would thus be much more useful to nonexperts than those found in the law. Should there be any confusion, researchers can also consult a glossary of terms published by the CDC that includes additional information.²⁹ Those found in law would be useful for those who require precise legal language, such as judges, attorneys, or legislators, however, it is not recommended that they be used to

instruct anyone outside of the law. They would also be useful to those looking to challenge vaccine mandates in court, as many have tried to do over the years.

Legal Challenges

There have been several legal challenges regarding vaccine mandates with two cases standing out as the most prominent. The first case is *Jacobson v. Massachusetts*. This is one of the earliest cases covering vaccine mandates, being decided by the Supreme Court in 1905, where Massachusetts required residents to get vaccinated against smallpox.³⁰ Jacobson argued that a vaccine mandate imposed by Massachusetts violated his liberty by threatening him with fines or imprisonment for refusing to get vaccinated, that a compulsory vaccination law was unreasonable, and that it was, therefore, adverse to every person’s right to make decisions for their own body and health, and that enforcing such a law was “nothing short of assault” against those who refuse to be vaccinated.³¹ The court, however, disagreed with him. They held that the state has the authority to require residents to get vaccinated when it was intended to protect its citizens’ public health and safety.³² They also pointed out that, while the mandate included an exception in regards to children that receive a doctor’s note saying that they are medically unfit to receive the vaccine and there wasn’t a similar exception for adults, the mandate is otherwise equally applicable to all in like condition and, therefore, does not violate Jacobson’s rights.³³

The second prominent case is *Zucht v. King*, a case that was brought before the Supreme Court in 1922 on writ of error.³⁴ In this case, an ordinance in Texas required all students to provide proof of vaccination to attend public and private school.³⁵ Zucht did not have this proof and was therefore excluded from school.³⁶ The family then brought a suit, alleging that the ordinances, by making vaccinations mandatory, were depriving Zucht of her liberty without the due process of law and that she was further deprived by the Board of Health’s use of authority to enforce the ordinances within their discretion without sufficient guidance.³⁷ The court determined that it was their duty to decline jurisdiction when the constitutional question upon which the jurisdiction depends was, at the time of granting the writ, not a substantial question, that city ordinances requiring vaccination to attend school did not violate equal protection, and that the question regarding whether the city official have administered a valid ordinance in a way that denied the plaintiff equal protection is not one which may brought by writ of error.³⁸ Therefore, the case was dismissed.³⁹

While both cases involve state vaccine requirements, they are important to know for those parents who may consider challenging similar mandates. They demonstrate that, yes, vaccines

can be mandatory and, yes, the government can require that your children be vaccinated to attend school. While this might be a concern for some parents as they may not be able to afford the necessary vaccines needed to send their kids to school, the federal government has been creating and amending programs over the years to ensure that all kids can receive the required vaccinations. However, there isn't always agreement on where the budget should be spent or whether programs should exist.

Budget and Regulation

Budgets

Funding for various vaccination programs has long been considered and included in many of the budget proposals from recent presidents. This is seen in President Biden's FY 2024 Budget Proposal where he proposes funds to expand the Vaccines for Children program to include all children under the age of 19 that are enrolled in the Children's Health Insurance Program.⁴⁰ Vaccine programs were also promoted in President Clinton's FY 1996 Budget Proposal where he discusses the goal of increasing the percentage of the children population's immunizations and increasing the funding of immunization programs to \$842 million in 1995 with the implementation of Vaccines for Children program.⁴¹

However, just because the president includes these issues in his Budget Proposals, doesn't mean they will be funded, as they must go through Congress to be implemented. You can see this in 2020's Labor, Health and Human Services, Education, Defense, State, Foreign Operations, and Energy and Water Development Appropriations Act.⁴² There, Representative Adam Schiff proposed an amendment in support of vaccines and their medical effectiveness, discussing how important they are and to combat the issues rising from the belief that we minimized the risk of several childhood diseases; therefore, vaccines should no longer be required.⁴³ In 2020 Rep. Schiff introduced House Amendment 290 to decrease the Health and Human Services General Department Management fund by \$5,000,000 and add that \$5,000,000 to the fund to specifically be used for a public health campaign to promote vaccine usage and combat vaccine hesitancy.⁴⁴ While this amendment was debated and agreed to by a majority vote in the House and was later introduced into the Senate, it was never enacted.

Regulation

Compared to budgetary proposals, regulatory proposals have been more frequently contested. Many regulations have been proposed over the years, from various sources, both in support of and against funding vaccine requirements.⁴⁵ Congress has passed acts such as the Vaccines for Children Act and the Vaccine and Immunizations Amendments of 1990.⁴⁶ There has also

been federal regulations that have been put in place by regulatory agencies, such as the Vaccine and Mask Requirements to Mitigate the Spread of COVID-19 in Head Start Programs.⁴⁷ All these programs were proposed and enacted to help further the vaccination requirements to protect the health and safety of the nation's citizens. They have also been enacted to extend existing programs to cover more people, especially children, that may have not been covered.

However, many believe these programs are unnecessary, especially since the emergence of COVID-19, and have proposed legislation to try and end programs. There have been proposals such as the Ending COVID Vaccine Mandates for Colleges and Universities Act and Eliminating the Head Start Vaccine Mandate Act, both having to do with COVID regulations.⁴⁸ There were many, many proposed bills that would end COVID regulations, however, most of them did not make it further than a recommendation to a subcommittee. There was, however, a provision in the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act in 2008 that attempted to prohibit the Secretary of Health and Human Services from using funds for the administration of any influenza vaccine that contained thimerosal, a preservative that was falsely linked to the development of autism, to children under the age of three.⁴⁹ This provision was debated on the floor, and it appears many disagreed with the provision, therefore, the amendment was rejected.⁵⁰

Conclusion

By law, states recognize that it is very important for school children to receive their vaccinations on schedule. Otherwise, unvaccinated children can spread easily preventable infectious diseases. Most of the responsibility is on the state and local governments to ensure that parents follow the required vaccination schedules and that penalties for not doing so are enforced. It appears that they are not always successful in completing this mission. Local and state governments should determine what is necessary to make enforcement more effective, whether it be additional funding or more regulations, and follow through with any requests to the federal government.

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Notes

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