

California's vaccination law a national model for children's health, scholars say

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Two Stanford legal scholars conclude that California's new vaccination law could serve as a model for other states wanting to improve public health protections.

California's tough new vaccination law is legally sound and will serve as a model for how to keep children healthy, Stanford professors say.

On June 25, California Gov. Jerry Brown approved a new state law (SB277) that substantially narrows exceptions to school-entry vaccination mandates. In doing so, California becomes the third state (Mississippi and West Virginia are the others) to disallow exemptions based on both religious and philosophical beliefs. Only medical exemptions remain.

"The move represents a stunning victory for public health that affects not only California schoolchildren, but the prospects for strengthening vaccination requirements nationwide," wrote Michelle Mello and David Studdert, professors in both Stanford's law and medical schools, in a July 22 *New England Journal of Medicine* article. Their co-author was Wendy Parmet, a Northeastern University law school professor.

Starting July 1, 2016, all children enrolled in public or private schools or in [day care](#) facilities must be vaccinated against whooping cough, measles and other diseases.

"There is persuasive evidence that stringent vaccination mandates reduce the risk of [vaccine](#)-preventable illness," they wrote. "Less clear is the effect California's move will have on the politics of vaccination."

California's new policy may embolden other states to eliminate philosophical and religious exemptions or increase the barriers to obtaining those exemptions, Mello, Studdert and Parmet wrote.

Eighteen states allow both types of exemptions, they said, and legislation has been introduced in many to toughen the requirements.

"Although California politics may be distinctive, its experience with SB277 teaches us that even strong opposition can be overcome with the right combination of astute public education, political strategy and legislative fortitude," they wrote. "Fewer vaccination exemptions and

vaccine-preventable illnesses would be accomplishments that other states would find difficult to ignore."

Vaccination politics

Though California's new law faced vocal opposition, the researchers noted that four factors worked in favor of its approval:

- Supporters in the California Legislature did not bow to considerable pressure to abandon the measure.
- The state health department publicized data showing that rates of personal-belief exemptions in California have doubled since 2007, and analysts noted that vaccination coverage is low enough to jeopardize "herd immunity" in about 25 percent of California's schools. Such immunity occurs when enough people have been vaccinated that their collective immunity provides a measure of protection for those who are not immune.
- Research showed that a lack of vaccination compliance was most likely to blame for the 2015 measles outbreak in Disneyland. That incident created a political opportunity to advance the vaccination cause, the professors wrote.
- Finally, the bill's proponents "focused on the specific threat to schoolchildren who are too medically fragile to receive vaccinations, effectively framing vaccine refusal as a decision that endangers others rather than a purely personal one."

Solid legal ground

Still, the controversy continues; efforts are already under way to collect signatures for a referendum to repeal the new law, they noted.

"Constitutional challenges have also been threatened – but are unlikely to

succeed," wrote Mello, Studdert and Parmet.

They expect that opponents may argue that the lack of a religious exemption violates their First Amendment right to free exercise of religion.

But the U.S. Supreme Court wrote back in 1944, in the context of other parental-rights claims, that religious freedom "does not include liberty to expose the community or the child to communicable disease." Plus, more recently, two appellate courts concluded that the First Amendment does not require religious exemptions from vaccination mandates.

"Analogizing from decisions that have allowed parents to refuse treatment for their children on the basis of religious objections is problematic; these cases do not consider the kinds of risks to the wider community that vaccination exemptions do," they wrote.

Challengers to the law may also argue that the vaccination law violates a child's right to education – under the new law, children who do not receive the vaccinations are not allowed to attend school.

While the U.S. Supreme Court has never recognized a federal constitutional right to education, 16 state constitutions (including California's) elevate education to the status of a fundamental right, they said. However, most legal rulings on this front have dealt with what the state must provide in terms of resources for public schools, not what it may require of parents.

The most relevant case involved vaccination requirements in New York, where that state's high court held that the right to attend public schools may be subordinated to "restrictions and limitations in the interest of the public health," they wrote.

Enforcement issues

The lack of enforcement may emerge as the greater risk to the vaccination law, Mello, Studdert and Parmet wrote. Schools and day care centers are responsible for verifying vaccinations, and some may let children begin school without being in compliance. They face no penalties to ensure that vaccinations are actually obtained – and many commitments are not kept, they added.

Instead, enforcement powers should be given to health departments. "Schools and day care centers would notify the health department of any students permitted to commence with incomplete vaccinations, and the health department would conduct the necessary follow-up," they wrote.

Another obstacle may be so-called "willing providers" who assist the anti-vaccination community by giving them [medical exemptions](#), they wrote. Finally, how many parents will opt for home-schooling or private nannies over day care, or move out of state altogether to avoid the immunizations?

A home-schooling trend, according to Mello, Studdert and Parmet, would not thwart one goal of the law – it would still result in keeping schools and day care centers safe for children too young or medically fragile to be fully vaccinated.

"Such choices might, however, undercut the broader goal of safeguarding herd immunity in the general population," they wrote.

More information: "Shifting Vaccination Politics—The End of Personal-Belief Exemptions in California." [DOI: 10.1056/NEJMp1508701](https://doi.org/10.1056/NEJMp1508701)

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