

States reconsider religious exemptions for vaccinations in child care

November 7 2023, by Matt Volz, KFF Health News



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More than half the children who attend Munchkin Land Daycare near Billings, Montana, have special needs or compromised immune systems. The kids, who range in age from four months to nine years, have

conditions that include fetal alcohol syndrome, cystic fibrosis, and Down syndrome, according to owner Sheryl Hutzenbiler.

"These families came to me knowing we could offer them a safe and healthy environment," Hutzenbiler said. Part of ensuring that healthy environment is having a strong vaccination policy, she said, especially for those who are immunocompromised or too young to receive the full slate of childhood vaccines.

So, when officials at Montana's [health](#) department revived a proposal that would allow people to claim religious exemptions from immunization requirements at child care facilities, Hutzenbiler was both dismayed and relieved.

Dismayed, because allowing more children to claim exemptions could compromise the community immunity levels necessary to defend against highly infectious diseases like measles and pertussis. Relieved, because as she scoured the proposed regulations, she found that her facility, which is licensed to care for up to 15 children, would be in a category of smaller providers that could choose whether to enroll unvaccinated kids.

"If it came down to where I had to, I had no choice, I would stop enrolling children today," Hutzenbiler said. "In five years, I would be closed."

Montana, like 44 other states, allows religious exemptions from immunization requirements for [school-age children](#). If the state is successful in expanding its policy to child care facilities, it would become the second this year to add a religious exemption to its immunization requirements for younger kids.

Mississippi began allowing such exemptions for schools and child care centers in July following a court ruling that the state's lack of a religious

exemption violated the U.S. Constitution's free exercise clause.

Until recently, the trend had been going the other way, with four states—California, New York, Connecticut, and Maine—removing religious exemption policies over the past decade. West Virginia has never had a religious exemption.

But religious exemptions, fueled by conservative backlash to COVID-19 vaccinations, have become caught up in partisan politics, said Mary Ziegler, a University of California-Davis law professor who specializes in the law, history, and politics of reproduction, [health care](#), and conservatism.

"It tends to be breaking down much more along red state-blue state lines, where progressive states are moving in the direction of mandating vaccines in more situations and conservative [states](#) are moving more in the direction of broadening exemptions," Ziegler said. "So, as much as religious exemptions for vaccines are not a new issue, they've become polarized in a new way."

The proposal in Montana is similar to one the state Department of Public Health and Human Services floated last year, which a legislative committee temporarily blocked after public health advocates and child care providers objected. Afterward, in October 2022, health department officials said they would not enforce a religious exemption ban in child care centers.

"We are committed to ensuring that these families have viable child care options in accordance with state and federal law," department spokesperson Jon Ebelt told the Montana Free Press at the time.

However, in the state's latest proposal, 45 pages into a 97-page draft rewrite of child care licensure rules, the health department seeks to

extend that exemption to child care facilities, where a family now can claim a vaccine exemption only for medical reasons. (There is an existing religious exemption for the vaccine against *Haemophilus influenzae* Type B.)

KFF Health News sent the health department a list of questions about its decision to include a religious exemption in the rules proposal. Ebelt emailed a statement that did not address the exemption at all.

"The rules package cuts red tape to increase access to child care for hardworking Montana families, and ensures that related regulations align with statutory changes directed by the Legislature in 2021 and 2023," his statement said.

The Montana Religious Freedom Restoration Act prohibits the state from infringing on a person's right to the exercise of religion. Another act bans discrimination based on vaccination status.

A religious exemption under Montana's proposed rules would require a child's parent or guardian to submit a form attesting that vaccination is contrary to their religious belief, observance, or practice. With no mechanism to check the validity of such claims, health professionals worry exemptions would spike, reducing community immunity levels.

"Exemptions lead to less people being vaccinated, which can lead to more outbreaks and more sick kids," said Marian Kummer, a retired pediatrician who practiced in Billings for 36 years.

The risk of disease outbreaks would increase not only in those child care centers but in communities as well, said Sophia Newcomer, an associate professor at the University of Montana School of Public and Community Health Sciences.

A community is protected by herd immunity from measles, for example, if 95% of the population is vaccinated against it, according to the World Health Organization. Montana's vaccine exemption rate among kindergartners was 3.5% in the 2020-21 school year, according to the most recent data available, putting it within that range of protection.

The health department's proposed changes also would eliminate a requirement that child care facilities keep out infected and unvaccinated children and staffers when someone becomes sick with a vaccine-preventable disease, said Kiely Lammers, director of the nonprofit advocacy group Montana Families for Vaccines.

Some have questioned the legitimacy of religious exemptions. Most religions, including a majority of Christian denominations, have no theological objection to vaccination, according to a scientific review published in 2013 in the journal *Vaccine*. And the U.S. Supreme Court has ruled limits do exist on religious and parental rights: "The right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death," says the 1944 ruling in *Prince v. Massachusetts*.

The American Academy of Pediatrics has called for the elimination of all non-medical exemptions, including both religious exemptions and personal-belief exemptions, "as inappropriate for individual, public health, and ethical reasons," according to a 2016 policy statement.

In Connecticut, plaintiffs who challenged the state's decision to remove religious exemptions said they objected to the use of fetal or animal cell lines in the research and development of vaccines. But a three-judge panel for the 2nd U.S. Circuit Court of Appeals wrote in August that [religious exemptions](#) do not serve "to protect the health and safety of Connecticut students and the broader public" when it upheld Connecticut's decision.

Yet even in California, which eliminated non-medical exemptions in 2016, efforts are underway to overturn the law. In a lawsuit filed Oct. 31, several parents backed by a conservative law firm are challenging the law's constitutionality. One plaintiff, Sarah Clark, said she believes vaccines run counter to her interpretation of the Bible "because they are a foreign substance and are harmful to the body." Attorney General Rob Bonta's office said Nov. 1 it hadn't been served with the case yet but will review the complaint and respond as appropriate.

Montana's proposed rule is scheduled for a public hearing Nov. 13. Some child care providers, like Hutzenbiler, expect it ultimately to take effect. She said she is already drafting language to submit to the state as required under the proposed rules, saying Munchkin Land Daycare will not accept unvaccinated children.

Lammers said state officials should be open to changes and give [child care centers](#) with 16 or more kids the same choice as smaller facilities not to enroll unvaccinated [children](#).

"I'm hoping at the very least we can make it equal in all settings," she said of the rule proposal.

Kummer, the retired pediatrician, said she hopes the proposal prompts enough opposition that the state removes the plans for the religious [exemption](#). But she doubts that will happen, given the anti-vaccination sentiment of Montana policymakers.

"It's going to take a tragedy in our state or somewhere else where people wake up to the fact that we need vaccinations," Kummer said.

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Citation: States reconsider religious exemptions for vaccinations in child care (2023, November

7) retrieved 29 April 2024 from

<https://medicalxpress.com/news/2023-11-states-reconsider-religious-exemptions-vaccinations.html>

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