

Legal Brief

Immunization Requirements

This Legal Brief was drafted for general informational purposes only. It is not meant to be a comprehensive guide, nor should it be construed as legal advice. The information in this brief is current as of July 1, 2016; readers should consult the most recent versions of referenced statutes, regulations, and cases to ensure there have been no material changes.

Summary

Prior to admission to daycare, school, or early childhood programs, children must receive the minimum immunizations recommended by the South Dakota Department of Health. The child's parent or guardian must provide documentation of the immunizations. Similar requirements have been established by the State of South Dakota with regard to immunizations of postsecondary students and developmentally disabled individuals either voluntarily or involuntarily admitted into an institution. Additionally, in some circumstances, nursing facilities and assisted living facilities must provide influenza vaccinations and pneumococcal disease immunizations. The immunization requirements have limited exceptions. Immunization records may be shared among a variety of entities unless the patient specifically refuses to release the information. The provider is required to notify the patient or a minor patient's parent or guardian in writing of their right to refuse to permit the sharing of immunization information.

Discussion

Daycare: ARSD 67:42:03:08 and 67:42:10:14

Before a child may be admitted to a daycare of any type, the child's parent or guardian must submit a written statement signed by a licensed physician, physician's assistant, certified nurse practitioner, or community health nurse showing that the child meets the minimum immunization requirements established by the South Dakota Department of Health ("SDDOH"). If a child is more than one (1) month behind in immunizations, the child's records must show current progress toward achieving adequate immunization levels.

The daycare provider must ensure that immunization levels of all children are current. The SDDOH may verify immunization levels during an annual audit.

A child is exempt from meeting the minimum age-specific immunization levels if: (i) the child's parent or guardian has certification from a licensed physician stating that the physical condition of the child is such that a test or immunization would endanger the child's life or health; or (ii) if the child's parent or guardian has signed a written statement that the child is an adherent to a religious doctrine whose teachings are opposed to such tests and immunizations.

The SDDOH recommends immunization requirements for children 0-6 years of age in accordance with the recommendations of the Advisory Committee on Immunization Practices (ACIP); the SDDOH may modify or delete any of the required immunizations.

SDDOH immunization requirements for children zero to six years of age are as follows:

1. At birth: first dose hepatitis B (HepB);
2. Two months: second dose HepB; first dose diphtheria, pertussis, and tetanus (DTaP); first dose haemophilus influenza type B (Hib); and first dose inactivated poliovirus (IPV);
3. Four months: second dose DTaP; second dose Hib; second dose IPV; second dose PCV; and second dose RV;
4. Six months: third dose DTaP; and third doses PCV;
5. Six months to eighteen months: Third dose HepB; and third dose IPV
6. Twelve to fifteen months: third dose Hib; first dose measles, mumps and rubella (MMR); and first dose varicella (Var);
7. Fifteen to eighteen months: fourth dose DTaP;
8. Four to six years: fifth doses DTaP; fourth doses IPV; second dose MMR; and second dose varicella.

SDDOH immunization requirements for children 11 to 12 six years of age (6th grade) are as follows:

1. Eleven years: Six dose DTaP; and first dose MCV4 .

Early Childhood and Grades K-12: SDCL 13-28-7.1; ARSD 44:81:06

Any full time or part time student entering an early childhood program in South Dakota shall present certification that they have received the following immunizations:

1. Four or more doses of DTaP, with at least one dose administered on or after age 4. Children receiving six doses before age 4 do not require any additional doses for school requirements;
2. Four or more doses of poliovirus vaccine, at least one dose on or after age 4;
3. Two doses of MMR vaccine or submit serological evidence of immunity. Minimum age for the first dose is 12 months with the second dose routinely administered between the ages of 4 and 6. The second dose may be administered prior to age 4 provided at least 28 days have elapsed since the first dose;
4. Two doses of varicella vaccine. The minimum age for the first dose of varicella vaccine is 12 months. History of disease is acceptable in lieu of vaccination with parent or guardian signature; and
5. Children under the age of 4 only require three DTaP, three Polio, one MMR, and one varicella vaccine. At age 4 the above rules apply.

Any full time or part time student entering kindergarten in South Dakota shall present certification that they have received the following immunizations:

1. Four or more doses of DTaP vaccine, with at least one dose administered on or after age 4. Children 7 years and older requiring the primary series only need three doses. The first dose of the primary series should be Tdap and the second and third doses should be Td, with at least 6 months between dose two and three. Children receiving six doses before age 4 do not require any additional doses for school requirements;

2. Four or more doses of poliovirus vaccine, at least one dose on or after age 4;
3. Two doses of MMR vaccine or submit serological evidence of immunity. Minimum age for the first dose is 12 months with the second dose routinely administered between the ages of 4 and 6. The second dose may be administered prior to age 4 provided at least 28 days have elapsed since the first dose; and
4. Two doses of varicella vaccine. The minimum age for the first dose of varicella vaccine is 12 months. History of disease is acceptable in lieu of vaccination with parent or guardian signature.

Any full time or part time student age 11 or older entering sixth grade in South Dakota shall present certification that they have received the Tdap and MCV4 vaccine. Students who turn 11 during the sixth grade shall provide certification that they have received these vaccinations within 45 days following the 11th birthday. If the student is medically contraindicated for Tdap, a dose of Td vaccine is required.

As an alternative to the requirement for a physician's certification, the pupil may present:

1. Certification from a licensed physician stating the physical condition of the child would be such that immunization would endanger the child's life or health; or
2. A written statement signed by one parent or guardian that the child is an adherent to a religious doctrine whose teachings are opposed to such immunization.

A school board or school superintendent may, with the concurrence of the county health officer, prohibit a child from attending school who is determined to be a risk or nuisance to the health of other students or school employees due to the presence of infectious disease or communicable parasite. The student may be readmitted when the school board or school superintendent, with the concurrence of the county health officer, determines that the state of communicability or infectiousness no longer exists. SDCL 13-28-7.3.

Postsecondary Education: SDCL 13-53-47

Within forty-five (45) days after the start of classes, any student entering a public or private postsecondary education institution shall present certification from a licensed physician that the student received or is in the process of receiving the required two (2) doses of immunization against measles, rubella, and mumps. As an alternative, the student may present:

1. Certification from a licensed physician stating the physical condition of the student would be such that immunization would endanger the student's life or health;
2. Certification from a licensed physician stating the student has experienced the natural disease against which the immunization protects;
3. Confirmation from a laboratory of the presence of adequate immunity; or
4. A written statement signed by the student that the student is an adherent to a religious doctrine whose teachings are opposed to such immunizations. If the student is under the age of eighteen (18), the written statement shall be signed by one parent or guardian.

Institutions for the Developmentally Disabled: SDCL 27B-3-17

Any person with a developmental disability admitted to the South Dakota Developmental Center in Redfield shall be tested for communicable diseases as deemed necessary by a licensed physician in charge of tests and immunizations at the facility. Tests and immunizations shall be conducted as approved by the SDDOH.

To be excluded from the admission a test or immunization, a person must present:

1. Certification from a licensed physician stating the physical condition of the person with a developmental disability would be such that a test and immunization would endanger the person's life or health;
2. A written statement signed by a parent or guardian of the person with a developmental disability that the person is adherent to a belief whose teachings are opposed to the test and immunization;
3. A written statement signed by a parent or guardian of the person with a developmental disability requesting that the local health department or the facility give the test and immunization because the parent or guardian lacks the means to pay for the test and immunization; or
4. A written statement from a licensed physician requesting that the person with a developmental disability not be immunized.

The Developmental Center shall provide the required tests and the immunizations that are not provided by a parent or guardian. SDCL 27B-3-18.

Nursing Home Facilities: ARSD 44:73:04:09 and 44:73:04:10

Nursing home facilities shall arrange for influenza vaccinations to be completed annually for all residents. Any resident admitted after completion of the vaccination program and before April 1 shall be offered influenza vaccine when admitted. Nursing facilities shall also arrange for immunization for pneumococcal disease. If immunization is lacking and the resident's physician recommends immunization, the nursing facility shall arrange for an immunization for pneumococcal pneumonia within fourteen (14) days of admission.

The influenza vaccination and pneumococcal disease immunization may be waived for a resident because of religious beliefs, medical contraindication, or refusal by the resident. Documentation of the administration or its waiver shall be recorded in the resident's medical or care record.

Assisted Living Facilities: ARSD 44:70:04:07 and 44:70:04:08

Assisted living facilities shall arrange for an influenza vaccination to be completed annually for each resident. Each resident shall be offered influenza vaccine when he or she is admitted. Assisted living facilities shall also arrange for an immunization for pneumococcal disease. If immunization is lacking and the resident's physician recommends immunization, the facility shall encourage a resident to obtain an immunization for pneumococcal pneumonia within fourteen (14) days of admission.

The influenza vaccination and pneumococcal disease immunization may be waived for a resident because of religious beliefs, medical contraindication, or refusal by the resident. Documentation of the administration or its waiver shall be recorded in the resident's medical or care record.

Sharing of Immunization Records: SDCL 34-22-12.5

Unless the patient's signed refusal to release immunization information is part of the patient's medical record, immunization records shall be shared among health care providers, health care facilities, federal or state health agencies, child welfare agencies, schools, or family daycare facilities without the consent of the patient or the person acting on the patient's behalf. If the patient is a minor, the refusal to release immunization information may be signed by the patient's parent or guardian on behalf of the minor patient. A person who receives immunization data and knowingly or intentionally discloses or fails to protect the confidentiality of the information is guilty of a Class 1 misdemeanor.

The provider is required to notify the patient or the patient's parent or guardian in writing, as applicable, of their right to refuse to release immunization information.

To avoid any possible HIPAA mandated privacy rule violations, it is recommended that the practitioner obtain written authorization from the patient to share immunization records with child welfare agencies, schools, or family daycare facilities or any health care provider or facility which is not currently providing care or treatment to the patient.

Conclusion

Absent limited exception, South Dakota law requires certain minimum immunizations for children prior to admission to daycare, school or early childhood programs. The South Dakota Department of Health has also established minimum immunizations for postsecondary students and developmentally disabled individuals entering an institution. Additionally, nursing facilities and assisted living facilities must follow requirements pertaining to influenza vaccinations and pneumococcal disease immunizations. The required immunizations are subject to change. The Department of Health should be consulted with questions concerning the most recent immunization requirements. The South Dakota Department of Health may be reached at 605-773-3361 or the requirements can be accessed at <http://doh.sd.gov/Immunize/default.aspx>.



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