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## FISCAL IMPACT REPORT

**SPONSOR** Armstrong **ORIGINAL DATE**  
**LAST UPDATED** 03/04/15 **HB** 522

**SHORT TITLE** Remove Religion Immunization Exemption **SB** \_\_\_\_\_

**ANALYST** Dunbar

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		
	NA		

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to Appropriation in the General Appropriation Act.

### SOURCES OF INFORMATION

Responses Received From  
 Department of Health (DOH)  
 University of New Mexico (UNM)  
 Attorney General (AG)

### SUMMARY

#### Synopsis of Bill

House Bill 522 amends the Public Health Act to remove the immunization exemption allowed for nondenominational religious beliefs held either individually or jointly with others that do not permit immunization. The bill requires a written statement from the parents or legal guardians.

Two types of exemption continue to be provided under this bill – one for medical reasons, which requires a doctor’s certificate, and one for religious reasons, requiring a written statement from a religious official verifying that the parent or guardian of the child belong to a recognized religious denomination whose religious teaching requires reliance upon prayer or spiritual means alone for healing.

### FISCAL IMPLICATIONS

None Identified.

## SIGNIFICANT ISSUES

According to the National Conference of State Legislators ([www.ncsl.org](http://www.ncsl.org)), all 50 states have legislation requiring certain vaccines for students. While every state grants exemptions for medical reasons, states vary in the provision of exemptions for other reasons. For example, all but two states (Mississippi and West Virginia) grant exemptions for people who have religious beliefs against immunizations, and twenty states allow philosophical exemptions. New Mexico, which falls in the category of states that grant exemptions for religious beliefs, has seen a steady increase in requests for exemptions from the immunization requirements for children. Between 1999 and 2011, vaccine exemptions granted by the New Mexico Department of Health (DOH) increased 194 percent. During 2013 and 2014, DOH approved between 3,200 and 3,300 exemptions from immunizations requirements for children each year. The majority of exemptions (96 percent) approved in 2014 were “self-declared” religious exemptions.

A 2012 DOH survey of 729 New Mexicans with DOH-certified exemptions for their children revealed that the top reason for seeking an exemption was for philosophical or personal reasons (54.9 percent), followed by religious (21.7 percent) and medical reasons (15.9 percent). Evidence suggests that a simple process for obtaining a religious or philosophical exemption is related to higher rates of immunizations exemptions. A 2001 study found that the more difficult the process for obtaining an exemption, the fewer exemptions were granted. In the 19 states with the highest level of complexity in gaining exemptions, less than 1 percent of students were granted exemptions. In contrast, five of the 15 states with the least complex procedures had statewide immunization exemption rates of more than 1 percent (Rota JS, et al., Process for obtaining nonmedical exemptions to state immunization laws, *Am. J. Public Health* 2001; 91: 645-8).

A study conducted in New Mexico in 2010 indicated that children living in an area with higher exemption rates were about 15 times more likely to be in a cluster of pertussis cases (Clippard, J. Clustering of pertussis cases around immunization exemption clusters in New Mexico. Thesis for Master of Public Health degree, Emory University School of Public Health, 2010).

The inference from these studies is that increased rates of vaccine exemption in communities contribute to decreased community immunity and increased risk of disease transmission.

PED includes information by the Center for Disease Control and Prevention (CDC, 2014) that immunizations protect children from very dangerous childhood diseases. It is also acknowledged that immunizations can help prevent outbreaks of preventable diseases. The National Institute of Allergy and Infectious Diseases (2010) states “When a critical portion of a community is immunized against a contagious disease, most members of the community are protected against that disease because there is little opportunity for an outbreak.” This is defined as community immunity or “herd immunity.” PED states that this information may support the idea that it may be beneficial for all communities, including schools, to have increased immunization rates and less non-medical related immunization exemptions.

Vaccine preventable illness is also costly. DOH reports that in 2012, 414 children in Colorado, most of them under age four years, were hospitalized with vaccine-preventable diseases. These illnesses resulted in estimated hospital charges of \$26.6 million and other related costs such as missed work days for parents and missed educational days for children. (<http://www.ncsl.org/bookstore/state-legislatures-magazine/trends-february-2015.aspx>).

## PERFORMANCE IMPLICATIONS

HB 522 relates to the DOH FY16 Strategic Plan, Result 1: Improved health outcomes for the people of New Mexico; and, DOH Performance Measure “Percent of preschoolers (19-35 months) fully immunized, and to the DOH Performance Measure “Ratio of infant pertussis cases to total pertussis cases of all ages.”

## ADMINISTRATIVE IMPLICATIONS

DOH admits that administering immunization exemptions is time intensive. Approved or denied exemptions must be mailed to schools and parents, and tracked and analyzed. Should the statute change, regulations would need to change also, which would have a moderate administrative impact.

## OTHER SUBSTANTIVE ISSUES

DOH acknowledges that it is within the state's police power to provide for compulsory vaccination to protect the public health and safety. Several legal cases challenging the constitutionality of religious exemptions to vaccination have been tried; rulings have, in general, upheld the right of states to mandate vaccination. At the same time, courts have often found that requiring that parents belong to certain religious groups in order to qualify for religious exemptions violates the Free Exercise and Establishment Clauses of the First Amendment, and the Equal Protection Clause of the Fourteenth Amendment. The constitutional argument is that all people who claim a religious objection to vaccination should be protected, not only those who belong to a certain religion with recognized objections.

DOH mentions that In *Zucht v. King*, the Supreme Court upheld a city ordinance that provided for compulsory vaccination for any child or person attending a public school. Although that ordinance was not challenged on religious grounds, the case did support the argument that the lack of current epidemic or threatened epidemic does not negate the validity of such a requirement for those attending public schools.

The AGO highlights a recent federal appellate court decision ruled that the City of New York was well within its “police power” to mandate vaccinations for school children, even in circumstances where parents or children had religious objections. See *Phillips v. City of New York*, 775 F.3d 538 (2<sup>nd</sup> Cir. Ct. App. 2015). The 2<sup>nd</sup> Circuit cited to Supreme Court rulings in *Prince v. Massachusetts*, 64 S. Ct. 438 (1944), and *Jacobsen v. Massachusetts*, 197 U.S. 11 (1905), which support the government’s right to require vaccination of children over parental objections.

HB 522, as pointed out by DOH, could be challenged on the basis that statutory immunization exceptions based on religion cannot be limited to members of recognized or organized religions. See, for example, *Boone v. Boozman*, 217 F. Supp. 2d 938, 169 Ed. Law Rep. 247 (E.D. Ark. 2002), where a provision setting forth a religious exemption from state compulsory school immunization was found to violate the Establishment Clause and Free Exercise Clause because the exemption benefitted only those who were members or adherents of a church or religious denomination recognized by the state. In a similar case, *Sherr v. Northport-East Northport Union Free School Dist.*, 672 F. Supp. 81, 42 Ed. Law Rep. 1103 (E.D. N.Y. 1987), a religious exemption provision that limited its application to “bona fide members of a recognized religious

organization” was found to violate the Free Exercise and Establishment Clauses, and the court thus interpreted the exemption to include any person who opposes immunization on religious grounds.

The current law as written includes the language about “religious beliefs, held either individually or jointly with others...” Also recognizing the above challenge, UNM provides information that this language was included originally to not discriminate against those who may hold beliefs but not belong to a specific church, or who may live in a location where their religion does not have an official church/synagogue/mosque. The removal of only that third subsection may be challenged as discriminatory, since people are allowed to worship without being members of an official religious institution.

The provision in current New Mexico law that permits a parent or guardian to submit an affidavit or written confirmation that their religious beliefs do not permit immunization is an alternative to having to belong to a recognized religious denomination in order to obtain an exemption. Removal of this provision would make the statute more restrictive, and potentially raise legal challenges similar to those described above over the constitutionality of giving preference to the beliefs of adherents of established religions over religious beliefs of others.

## **ALTERNATIVES**

Many states are considering legislation to improve childhood vaccination coverage rates to reduce rates of vaccine preventable disease. Among the options being considered as identified by DOH are:

- Require that public schools that maintain a website, including charter schools, post their immunization coverage rate (Arizona);
- Require that school boards notify parents or guardians at the beginning of the school term about immunization rates for the school (California);
- Require parents who request an exemption on the basis of a self-attested religious or personal belief obtain a statement from a physician that they have discussed risks and benefits of such a decision (Minnesota);
- Require that public schools notify parents in non-immunized children attend their child’s school (Missouri);
- Require parents who request an exemption of the basis of a self-attested religious belief to attest that immunization conflicts with a genuine and sincere religious belief and that the belief is in fact religious, and not based on philosophical, scientific, moral, personal, or medical opposition to immunizations (Iowa);
- Require that school districts provide an annual report on the immunization status of students for the district as a whole and for each school campus in the district; make the report available to the public in electronic form (Texas); and
- Remove all religious and philosophical exemptions (Vermont).