

**Children Presented for Immunization by Adults Other than Parents:
Some Questions and Answers for N.C. Local Health Departments**

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1. Who can sign for a child's immunizations?

Answer: North Carolina law permits a local health department to immunize a child in either of two circumstances:

- (1) When the child's parent, guardian, or person standing in loco parentis (PILP) presents the child for the immunization and gives consent for the immunization,
or
- (2) When another adult presents the child for immunization and signs a statement that he or she is authorized by a parent, guardian, or person standing in loco parentis to obtain the immunization.

G.S. § 130A-153(d).

2. Should an adult who falls under (2) above be considered a person standing in loco parentis (PILP)?

Answer: No. G.S. 130A-153(d) simply authorizes the health department to accept the adult's assertion that he or she is acting *on behalf of* the parent, guardian, or PILP in obtaining the immunization—it does not transform him or her into a parent, guardian, or PILP.

3. If the person who signs for the child's immunizations is not the child's parent, guardian, or PILP, should the health department give him or her the Notice of Privacy Practices (NOPP)? Can he or she sign the form acknowledging receipt of the NOPP?

Answer: If it is the first delivery of service to the child since April 14, 2003, the health department must provide the NOPP to the child's parent, guardian, or PILP. The health department must also make a good faith effort to obtain acknowledgment of receipt of the NOPP from the parent, guardian, or PILP. There are a couple of ways the health department could go about this:

- The health department could give the NOPP and the form acknowledging receipt of the NOPP to the adult who presents the child for immunization. The department should instruct the adult to deliver both items to the child's parent, guardian, or PILP with the request that the parent, guardian, or PILP sign it and return it to the health department.

- The health department could mail the NOPP and the form acknowledging receipt of the NOPP to the child's parent, guardian, or PILP. The department should ask the parent, guardian, or PILP to sign the acknowledgment and return it to the health department.

In either case, the health department must document its good faith effort to obtain the acknowledgment. If the health department has a written protocol for obtaining acknowledgment in this situation, the documentation could simply state that acknowledgment protocols were followed.

Discussion: Under HIPAA, the health department is required to give the NOPP to each individual with whom it has a direct treatment relationship (essentially, any clinical patient) upon the first delivery of service that occurs on or after April 14, 2003. It must also make a good faith effort to obtain the individual's acknowledgment of receipt of the NOPP.¹ When the individual is an unemancipated minor child in the immunization clinic, the acknowledgment should be obtained from the child's personal representative. However, an adult other than a parent, guardian, or PILP who presents a child for immunization is not a personal representative of the child for purposes of the HIPAA privacy rule,² and therefore cannot acknowledge receipt of the NOPP on the child's behalf. Thus, the health department must have a method for providing the NOPP and the acknowledgment form to the child's parent, guardian, or PILP.

If the health department is unable to obtain the acknowledgment, it is required by HIPAA to document its good faith efforts to obtain the acknowledgment and the reason acknowledgment was not obtained. A health department may prefer to simplify the documentation requirement in this situation by having a standard protocol that specifies:

- How the NOPP and acknowledgment form will be provided to the parent, guardian, or PILP (e.g., by being mailed, or by being sent with the adult who presents the child for immunization).
- That if the acknowledgment is not obtained, it will be presumed that the reason it was not obtained was that the parent, guardian, or PILP failed to return the form. A notation that "protocols were followed" will suffice to document this presumptive reason. However, if there was another reason the acknowledgment was not obtained (such as, the parent notified the health department that he or she objected to signing the form), the reason must be documented separately.

¹ 45 C.F.R. 164.520(c)(2).

² The HIPAA privacy rule states: "If under applicable law a parent, guardian, or other person acting *in loco parentis* has authority to act on behalf of an individual who is an unemancipated minor in making decisions related to health care, a covered entity must treat such person as a personal representative ..." 45 C.F.R. § 164.502(g)(3). There are exceptions to this general rule for several circumstances, such as when a minor consents to his or her own care under state law that authorizes the minor to give consent, but no exception appears to allow the health department to treat an adult who signs for immunizations but who is not a parent, guardian, or PILP as a personal representative.

4. If the adult who signs for the child’s immunizations is not the child’s parent, legal guardian, or PILP, can he or she sign the form giving permission to use and disclose health information for treatment, payment, and health care operations (TPO)?

Answer: The laws that apply to this situation are ambiguous. However, we believe it is reasonable to ask the adult to sign a form giving consent to use or disclose information, when the form is *strictly limited* to provide:

- The only information that may be disclosed is information related to the immunization the adult signed for, *and*
- The only purposes for which the information may be used or disclosed are treatment, payment, and health care operations.

The adult *must not* sign a form giving consent to use or disclose any other of the child’s health information for any purpose.

Discussion: Under the HIPAA privacy rule, the health department is not required to obtain permission to use and disclose health information for TPO. However, most major health care providers in North Carolina interpret *state* law to require consent to disclose information for these purposes, and the Institute of Government has advised health departments that the safest course is to follow their lead and obtain this consent.³ A form provided by the Division of Public Health (Form 3096) is often used for this purpose. Local health departments usually try to obtain a signature on this form the first time a client is served, and then they rely on it to use and disclose information related not only to that first delivery of service, but to subsequent services as well.

This practice needs to be modified in this circumstance, because an adult who is not a parent, guardian, or PILP does not have the authority to consent to uses and disclosures of the child’s health information. State law does not incorporate HIPAA’s personal representatives rule or otherwise clearly address who can consent to disclosure of a child’s health information. However, it is widely assumed that, under state law, the person who consents to the child’s care can also consent to disclosure of the information. In most circumstances, only a parent, legal guardian, or PILP can consent to a child’s care.⁴ Therefore, only the parent, legal guardian, or PILP can consent to use or disclosure of information related to the child’s care.

We sometimes say that an adult who presents a child for immunization on behalf of the parent, guardian, or PILP has “consented” to the immunization—but strictly speaking, that isn’t correct. The parent, guardian, or PILP has consented to the immunization, but has authorized the other adult to obtain it for the child. The adult

³ For more information on this recommendation, see <http://www.medicalprivacy.unc.edu/faqs/faqs07.htm>.

⁴ There are exceptions for emergencies or other urgent situations. See G.S. 90-21.1. Also, older minors can consent to their own care for certain conditions (including family planning, prenatal care, and STD care). See G.S. 90-21.5. A parent may authorize another person to consent to the child’s care in the parent’s absence. See G.S. 32A-28 et seq. If a child is in the custody of the county department of social services, the director of social services may consent to needed routine or emergency medical care (unless the court has ordered otherwise). G.S. 7B-903(a)(2)c.

is simply acting on behalf of the parent, guardian, or PILP—he or she has not acquired the rights of the parent, guardian, or PILP. Since he or she does not have legal authority to consent to the child’s care, he or she does not have the authority to consent to use or disclosure of the child’s health information.

But since, in this limited circumstance, N.C. law permits an adult to act on the parent’s behalf in obtaining the immunization, couldn’t we also conclude that the adult may act on the parent’s behalf and consent to use and disclosure of information related to the immunization? N.C. law doesn’t address this specifically, but we think it is reasonable position to take. We therefore think it would be a reasonable practice to accept the adult’s consent to use or disclose *only that information that is related to the immunization the adult signed for, and only for TPO purposes*. However, the health department *must not* rely on the adult’s consent to use or disclose any other information it has about the child. The health department may need to modify its current practices or forms to ensure that no person in the health department relies on the adult’s signature to disclose any of the child’s information other than that related to the immunization.