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**HOUSE BILL NO. 1397**

Offered January 11, 2023

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*A BILL to amend and reenact §§ 22.1-271.2, 22.1-271.4, 32.1-46, and 32.1-46.01 of the Code of Virginia, relating to student immunization requirements; parental opt-out.*

Patron—March

Referred to Committee on Education

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 22.1-271.2, 22.1-271.4, 32.1-46, and 32.1-46.01 of the Code of Virginia are amended and reenacted as follows:**

**§ 22.1-271.2. Immunization requirements.**

A. No student shall be admitted by a school unless at the time of admission the student or his parent submits documentary proof of immunization to the admitting official of the school or unless the student is exempted from immunization pursuant to subsection C or is a homeless child or youth as defined in subdivision A 7 of § 22.1-3. If a student does not have documentary proof of immunization, the school shall notify the student or his parent (i) that it has no documentary proof of immunization for the student; (ii) that it may not admit the student without proof unless the student is exempted pursuant to subsection C, including any homeless child or youth as defined in subdivision A 7 of § 22.1-3; (iii) that the student may be immunized and receive certification by a licensed physician, licensed nurse practitioner, registered nurse or an employee of a local health department; and (iv) how to contact the local health department to learn where and when it performs these services. Neither this Commonwealth nor any school or admitting official shall be liable in damages to any person for complying with this section.

Any physician, nurse practitioner, registered nurse or local health department employee performing immunizations shall provide to any person who has been immunized or to his parent, upon request, documentary proof of immunizations conforming with the requirements of this section.

B. Any student whose immunizations are incomplete may be admitted conditionally if that student provides documentary proof at the time of enrollment of having received at least one dose of the required immunizations accompanied by a schedule for completion of the required doses within 90 calendar days. If the student requires more than two doses of hepatitis B vaccine, the conditional enrollment period shall be 180 calendar days.

The immunization record of each student admitted conditionally shall be reviewed periodically until the required immunizations have been received.

Any student admitted conditionally and who fails to comply with his schedule for completion of the required immunizations shall be excluded from school until his immunizations are resumed.

C. No certificate of immunization shall be required for the admission to school of any student if (i) the student or his student's parent submits an affidavit to the admitting official stating that the administration of immunizing agents conflicts with the student's religious tenets or practices; or (ii) the school has written certification from a licensed physician, licensed nurse practitioner, or local health department that one or more of the required immunizations may be detrimental to the student's health, indicating the specific nature and probable duration of the medical condition or circumstance that contraindicates elects for his child not to receive the immunization.

~~However, if D. If~~ a student is a homeless child or youth as defined in subdivision A 7 of § 22.1-3 and ~~(a) (i)~~ does not have documentary proof of necessary immunizations or has incomplete immunizations and ~~(b) (ii)~~ is not exempted from immunization pursuant to ~~clauses (i) or (ii) of this~~ subsection C, the school division shall immediately admit such student and shall immediately refer the student to the local school division liaison, as described in the federal McKinney-Vento Homeless Education Assistance Improvements Act of 2001, as amended (42 U.S.C. § 11431 et seq.) (the Act), who shall assist in obtaining the documentary proof of, or completing, immunization and other services required by such Act.

~~D. E.~~ The admitting official of a school shall exclude from the school any student for whom he does not have documentary proof of immunization or notice of exemption pursuant to subsection C, including notice that such student is a homeless child or youth as defined in subdivision A 7 of § 22.1-3.

~~E. F.~~ Every school shall record each student's immunizations on the school immunization record. The school immunization record shall be a standardized form provided by the State Department of Health, which shall be a part of the mandatory permanent student record. Such record shall be open to

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59 inspection by officials of the State Department of Health and the local health departments.

60 The school immunization record shall be transferred by the school whenever the school transfers any  
61 student's permanent academic or scholastic records.

62 Within 30 calendar days after the beginning of each school year or entrance of a student, each  
63 admitting official shall file a report with the local health department. The report shall be filed on forms  
64 prepared by the State Department of Health and shall state the number of students admitted to school  
65 with documentary proof of immunization, the number of students who have been admitted with a  
66 medical or religious exemption and the number of students who have been conditionally admitted,  
67 including those students who are homeless children or youths as defined in subdivision A 7 of § 22.1-3.

68 F. G. The requirement for Haemophilus Influenzae Type b immunization as provided in § 32.1-46  
69 shall not apply to any child admitted to any grade level, kindergarten through grade 12.

70 G. H. The Board of Health shall promulgate rules and regulations for the implementation of this  
71 section in congruence with rules and regulations of the Board of Health promulgated under § 32.1-46  
72 and in cooperation with the Board of Education.

73 **§ 22.1-271.4. Health requirements for home-instructed, exempted, and excused children.**

74 In addition to compliance with the requirements of subsection B, D, or I of § 22.1-254 or  
75 § 22.1-254.1, any parent, guardian or other person having control or charge of a child being home  
76 instructed, exempted or excused from school attendance shall comply with the immunization  
77 requirements provided in § 32.1-46 in the same manner and to the same extent as if the child has been  
78 enrolled in and is attending school.

79 Upon request by the division superintendent, the parent shall submit to such division superintendent  
80 documentary proof of immunization in compliance with § 32.1-46.

81 No proof of immunization shall be required of any child upon submission of (i) an affidavit to the  
82 division superintendent stating that the administration of immunizing agents conflicts with the parent's or  
83 guardian's religious tenets or practices or (ii) a written certification from a licensed physician, licensed  
84 nurse practitioner, or local health department that one or more of the required immunizations may be  
85 detrimental to the child's health, indicating the specific nature of the medical condition or circumstance  
86 that contraindicates whose parent elects for his child not to receive the immunization pursuant to  
87 subsection D of § 32.1-46.

88 **§ 32.1-46. Immunization of patients against certain diseases.**

89 A. The parent, guardian or person standing in loco parentis of each child within this Commonwealth  
90 shall cause such child to be immunized in accordance with the Immunization Schedule developed and  
91 published by the Centers for Disease Control and Prevention (CDC), Advisory Committee on  
92 Immunization Practices (ACIP), the American Academy of Pediatrics (AAP), and the American  
93 Academy of Family Physicians (AAFP). The required immunizations for attendance at a public or  
94 private elementary, middle or secondary school, child care center, nursery school, family day care home,  
95 or developmental center shall be those set forth in the State Board of Health Regulations for the  
96 Immunization of School Children. The Board's regulations shall at a minimum require:

97 1. A minimum of three properly spaced doses of hepatitis B vaccine (HepB).

98 2. A minimum of three or more properly spaced doses of diphtheria toxoid. One dose shall be  
99 administered on or after the fourth birthday.

100 3. A minimum of three or more properly spaced doses of tetanus toxoid. One dose shall be  
101 administered on or after the fourth birthday.

102 4. A minimum of three or more properly spaced doses of acellular pertussis vaccine. One dose shall  
103 be administered on or after the fourth birthday. A booster dose shall be administered prior to entry into  
104 the seventh grade.

105 5. Two or three primary doses of Haemophilus influenzae type b (Hib) vaccine, depending on the  
106 manufacturer, for children up to 60 months of age.

107 6. Two properly spaced doses of live attenuated measles (rubeola) vaccine. The first dose shall be  
108 administered at age 12 months or older.

109 7. One dose of live attenuated rubella vaccine shall be administered at age 12 months or older.

110 8. One dose of live attenuated mumps vaccine shall be administered at age 12 months or older.

111 9. Two properly spaced doses of varicella vaccine. The first dose shall be administered at age 12  
112 months or older.

113 10. Three or more properly spaced doses of oral polio vaccine (OPV) or inactivated polio vaccine  
114 (IPV). One dose shall be administered on or after the fourth birthday. A fourth dose shall be required if  
115 the three dose primary series consisted of a combination of OPV and IPV.

116 11. One to four doses, dependent on age at first dose, of properly spaced pneumococcal conjugate  
117 (PCV) vaccine for children up to 60 months of age.

118 12. Two doses of properly spaced human papillomavirus (HPV) vaccine. The first dose shall be  
119 administered before the child enters the seventh grade.

120 13. Two or three properly spaced doses of rotavirus vaccine, depending on the manufacturer, for

children up to eight months of age.

14. Two properly spaced doses of hepatitis A vaccine (HAV). The first dose shall be administered at age 12 months or older.

15. Two properly spaced doses of meningococcal conjugate vaccine (MenACWY). The first dose shall be administered prior to entry to seventh grade. The second dose shall be administered prior to entry to twelfth grade.

The parent, guardian or person standing in loco parentis may have such child immunized by a physician, physician assistant, nurse practitioner, registered nurse, or licensed practical nurse, or a pharmacist who administers pursuant to a valid prescription, or may present the child to the appropriate local health department, which shall administer the vaccines required by the State Board of Health Regulations for the Immunization of School Children without charge to the parent or person standing in loco parentis to the child if (i) the child is eligible for the Vaccines for Children Program or (ii) the child is eligible for coverages issued pursuant to Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq. (Medicare), Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq. (Medicaid), Title XXI of the Social Security Act, 42 U.S.C. § 1397aa et seq. (CHIP), or 10 U.S.C. § 1071 et seq. (CHAMPUS). In all cases in which a child is covered by a health carrier, Medicare, Medicaid, CHIP, or CHAMPUS, the Department shall seek reimbursement from the health carrier, Medicare, Medicaid, CHIP, or CHAMPUS for all allowable costs associated with the provision of the vaccine. For the purposes of this section, the Department shall be deemed a participating provider with a managed care health insurance plan as defined in § 32.1-137.1.

B. A physician, physician assistant, nurse practitioner, registered nurse, licensed practical nurse, pharmacist, or local health department administering a vaccine required by this section shall provide to the person who presents the child for immunizations a certificate that shall state the diseases for which the child has been immunized, the numbers of doses given, the dates when administered and any further immunizations indicated.

C. The vaccines required by this section shall meet the standards prescribed in, and be administered in accordance with, the State Board of Health Regulations for the Immunization of School Children. The State Board of Health shall amend the State Board of Health Regulations for the Immunization of School Children as necessary from time to time to maintain conformity with evidence-based, routinely recommended vaccinations for children. The adoption of such regulations shall be exempt from the requirements of Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act (§ 2.2-4000 et seq.). However, the Department shall (i) provide a Notice of Intended Regulatory Action and (ii) provide for a 60-day public comment period prior to the Board's adoption of the regulations.

D. The provisions of this section shall not apply if:

1. The parent or guardian of the child objects thereto on the grounds that the administration of immunizing agents conflicts with his religious tenets or practices, unless an emergency or epidemic of disease has been declared by the Board;

2. The parent or guardian presents a statement from a physician licensed to practice medicine in Virginia, a licensed nurse practitioner, or a local health department that states that the physical condition of the child is such that the administration of one or more of the required immunizing agents would be detrimental to the health of the child; or

3. Because the human papillomavirus is not communicable in a school setting, a *the child's* parent or guardian, at the parent's or guardian's sole discretion, *may elect elects* for the parent's or guardian's *his* child not to receive the human papillomavirus vaccine, after having reviewed materials describing the link between the human papillomavirus and cervical cancer approved for such use by the Board *the* immunization.

E. For the purpose of protecting the public health by ensuring that each child receives age-appropriate immunizations, any physician, physician assistant, nurse practitioner, licensed institutional health care provider, local or district health department, the Virginia Immunization Information System, and the Department of Health may share immunization and patient locator information without parental authorization, including, but not limited to, the month, day, and year of each administered immunization; the patient's name, address, telephone number, birth date, and social security number; and the parents' names. The immunization information; the patient's name, address, telephone number, birth date, and social security number; and the parents' names shall be confidential and shall only be shared for the purposes set out in this subsection.

F. The State Board of Health shall review this section annually and make recommendations for revision by September 1 to the Governor, the General Assembly, and the Joint Commission on Health Care.

#### **§ 32.1-46.01. Virginia Immunization Information System.**

A. The Board of Health shall establish the Virginia Immunization Information System (VIIS), a statewide immunization registry that consolidates patient immunization histories from birth to death into

182 a complete, accurate, and definitive record that may be made available to participating health care  
183 providers throughout Virginia, to the extent funds are appropriated by the General Assembly or  
184 otherwise made available. The purposes of VIIS shall be to (i) protect the public health of all citizens of  
185 the Commonwealth, (ii) prevent under-immunization and over-immunization of children, (iii) ensure  
186 up-to-date recommendations for immunization scheduling to health care providers and the Board, (iv)  
187 generate parental reminder and recall notices and manufacturer recalls, (v) develop immunization  
188 coverage reports, (vi) identify areas of under-immunized population, and (vii) provide, in the event of a  
189 public health emergency, a mechanism for tracking the distribution and administration of immunizations,  
190 immune globulins, or other preventive medications or emergency treatments. Any health care provider,  
191 as defined in § 32.1-127.1:03, in the Commonwealth that administers immunizations shall report such  
192 patient immunization information to VIIS pursuant to this section.

193 B. The Board of Health shall promulgate regulations to implement the VIIS that shall address:

194 1. Registration of participants, including, but not limited to, a list of those health care entities that are  
195 authorized and required to participate and any forms and agreements necessary for compliance with the  
196 regulations concerning patient privacy promulgated by the federal Department of Health and Human  
197 Services;

198 2. Procedures for confirming, continuing, and terminating participation and disciplining any  
199 participant for unauthorized use or disclosure of any VIIS data;

200 3. Procedures, timelines, and formats for reporting of immunizations by participants;

201 4. Procedures to provide for a secure system of data entry that may include encrypted online data  
202 entry or secure delivery of data files;

203 5. Procedures for incorporating the data reported on children's immunizations pursuant to subsection  
204 E of § 32.1-46;

205 6. The patient identifying data to be reported, including, but not limited to, the patient's name, date  
206 of birth, gender, telephone number, home address, birth place, and mother's maiden name;

207 7. The patient immunization information to be reported, including, but not necessarily limited to, the  
208 type of immunization administered (specified by current procedural terminology (CPT) code or Health  
209 Level 7 (HL7) code); date of administration; identity of administering person; lot number; and if present,  
210 any contraindications, or religious or medical exemptions;

211 8. Mechanisms for entering into data-sharing agreements with other state and regional immunization  
212 registries for the exchange, on a periodic nonemergency basis and in the event of a public health  
213 emergency, of patient immunization information, after receiving, in writing, satisfactory assurances for  
214 the preservation of confidentiality, a clear description of the data requested, specific details on the  
215 intended use of the data, and the identities of the persons with whom the data will be shared;

216 9. Procedures for the use of vital statistics data, including, but not necessarily limited to, the linking  
217 of birth certificates and death certificates;

218 10. Procedures for requesting immunization records that are in compliance with the requirements for  
219 disclosing health records set forth in § 32.1-127.1:03; such procedures shall address the approved uses  
220 for the requested data, to whom the data may be disclosed, and information on the provisions for  
221 disclosure of health records pursuant to § 32.1-127.1:03;

222 11. Procedures for releasing aggregate data, from which personal identifying data has been removed  
223 or redacted, to qualified persons for purposes of research, statistical analysis, and reporting; and

224 12. Procedures for the Commissioner of Health to access and release, as necessary, the data  
225 contained in VIIS in the event of an epidemic or an outbreak of any vaccine-preventable disease or the  
226 potential epidemic or epidemic of any disease of public health importance, public health significance, or  
227 public health threat for which a treatment or vaccine exists.

228 The Board's regulations shall also include any necessary definitions for the operation of VIIS;  
229 however, "health care entity," "health care plan," and "health care provider" shall be as defined in  
230 subsection B of § 32.1-127.1:03.

231 C. The establishment and implementation of VIIS is hereby declared to be a necessary public health  
232 activity to ensure the integrity of the health care system in Virginia and to prevent serious harm and  
233 serious threats to the health and safety of individuals and the public. Pursuant to the regulations  
234 concerning patient privacy promulgated by the federal Department of Health and Human Services,  
235 covered entities may disclose protected health information to the secure system established for VIIS  
236 without obtaining consent or authorization for such disclosure. Such protected health information shall  
237 be used exclusively for the purposes established in this section.

238 D. The Board and Commissioner of Health, any employees of the health department, any participant,  
239 and any person authorized to report or disclose immunization data hereunder shall be immune from civil  
240 liability in connection therewith unless such person acted with gross negligence or malicious intent.

241 E. This section shall not diminish the responsibility of any physician or other person to maintain  
242 accurate patient immunization data or the responsibility of any parent, guardian, or person standing in  
243 loco parentis to cause a child to be immunized in accordance with the provisions of § 32.1-46 *unless*

244 *any such parent, guardian, or person standing in loco parentis makes an election pursuant to subsection*  
245 *D of § 32.1-46.* Further, this section shall not be construed to require the immunization of any person  
246 who objects thereto on the grounds that the administration of immunizing agents conflicts with his  
247 religious tenets or practices, or any person for whom administration of immunizing agents would be  
248 detrimental to his health.

249 F. The Commissioner may authorize linkages between VIIS and other secure electronic databases that  
250 contain health records reported to the Department of Health, subject to all state and federal privacy laws  
251 and regulations. These health records may include newborn screening results reported pursuant to  
252 § 32.1-65, newborn hearing screening results reported pursuant to § 32.1-64.1, and blood-lead level  
253 screening results reported pursuant to § 32.1-46.1. Health care providers authorized to use VIIS may  
254 view the health records of individuals to whom the providers are providing health care services.