

October 1989 Spec. Sess.  
Senate Bill 13

Date of enactment: January 9, 1990  
Date of publication: January 19, 1990

# 1989 Wisconsin Act 120

(Vetoed in Part)

AN ACT to renumber 120.12 (16), to amend 20.435 (1) (cm), 46.16 (2), 48.74 and 119.04 (1), to repeal and recreate 140.05 (16), and to create 46.16 (2m), 48.735, 49.50 (7) (g) 11 and 120.12 (16) (b) and (c) of the statutes, relating to requiring immunization of attendees of schools, nursery schools, day care centers and home-based private educational programs, funding for outbreak control and immunization, making an appropriation, granting rule-making authority and providing a penalty.

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The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 20.435 (1) (cm) of the statutes is amended to read:

20.435 (1) (cm) *Immunization.* The Biennially, the amounts in the schedule for the provision of vaccine to immunize children under s. 140.05 (16) (a).

SECTION 2. 46.16 (2) of the statutes is amended to read:

46.16 (2) CHILD WELFARE AGENCIES; FOSTER HOMES; CHILD CARE CENTERS; DAY NURSERIES; NURSERY SCHOOLS. It may license and revoke licenses of and exercise supervision over all child welfare agencies and the placement of children in foster homes, and grant permits to foster homes, child care centers, day nurseries and nursery schools. In the discharge of this duty it may inspect the records of child welfare agencies, child care centers, day nurseries, nursery schools and visit all institutions conducted by them and all foster homes in which children are placed. The department shall inspect the records of a nursery school if the department is advised or has reason to believe that any person is violating sub. (2m).

SECTION 3. 46.16 (2m) of the statutes is created to read:

46.16 (2m) IMMUNIZATION REQUIREMENTS; DAY CARE CENTERS. (a) No day care center may unconditionally admit a student who is not in compliance with the requirements of s. 140.05 (16).

(b) The department, after notice to a licensee, may suspend, revoke or refuse to renew a license in any case in which the department finds that there has been a substantial failure to comply with the requirements of par. (a) of s. 140.05 (16).

SECTION 4. 48.74 of the statutes is amended to read:

48.74 Authority of department to investigate alleged violations. Whenever the department is advised or has reason to believe that any person is violating any of the provisions of ss. 48.60, 48.62, 48.625 or 48.65 or 48.735, it shall make an investigation to determine the facts. For the purposes of this investigation, it shall have authority to inspect the premises where the violation is alleged to occur. If it finds that the person is

violating any of the specified sections, it may either issue a license if the person is qualified or may institute a prosecution under s. 48.76.

SECTION 5. 48.735 of the statutes is created to read:

48.735 Immunization requirements; day care centers. (1) No day care center may unconditionally admit a student who is not in compliance with the requirements of s. 140.05 (16).

(2) The department, after notice to a licensee, may suspend, revoke or refuse to renew a license in any case in which the department finds that there has been a substantial failure to comply with the requirements of sub. (1) of s. 140.05 (16).

SECTION 6. 49.50 (7) (g) 11 of the statutes is created to read:

49.50 (7) (g) 11. The individual has not been excluded from school under s. 140.05 (16) or suspended from school under s. 120.12 (16).

SECTION 6m. 119.04 (1) of the statutes, as affected by 1989 Wisconsin Act 31, is amended to read:

119.04 (1) Subchapters IV, V and VII of ch. 115, ch. 121 and ss. 66.03 (3) (c), 115.01 (1) and (2), 115.28 (15), 115.33, 115.34, 115.343, 115.345, 115.45, 118.01 to 118.04, 118.06, 118.07, 118.10, 118.12, 118.125 to 118.14, 118.15, 118.153, 118.16, 118.162, 118.163, 118.18, 118.19 (3) (b) and (7), 118.20, 118.24 (2) (c) to (f), 118.255, 118.30 to 118.35, 120.12 (5), (15), (16), (17), (18) and (19), 120.125 and 120.13 (1), (2) (b) to (f), (14), (17) to (19), (26) and (34) are applicable to a 1st class city school district and board.

SECTION 7. 120.12 (16) of the statutes is renumbered 120.12 (16) (a).

SECTION 8. 120.12 (16) (b) and (c) of the statutes are created to read:

120.12 (16) (b). Rescind the conditional admission of and indefinitely suspend any pupil granted conditional admission under s. 140.05 (16), but who fails to fulfill additional immunization requirements established by the department of health and social services. Prior to rescinding conditional admission and indefinitely suspending the pupil, the school board shall provide the pupil and the pupil's parent, guardian or

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legal custodian with notice and a hearing and the opportunity to appeal the rescission and suspension, as provided in s. 120.13 (1) (c). If the pupil resumes the immunization process under s. 140.05 (16), the school board shall reinstate the conditional admission status and terminate the indefinite suspension. If the pupil completes all required immunizations, the school board shall change the conditional admission to full admission.

(c) If a pupil is excluded or suspended from school under par. (b) or s. 140.05 (16), the pupil and his or her parent or guardian are in violation of s. 118.15 and the pupil is truant for the purposes of s. 118.16 during the period of exclusion or suspension.

SECTION 9. 140.05 (16) of the statutes is repealed and recreated to read:

140.05 (16) (a) The department shall carry out a statewide immunization program to eliminate mumps, measles, rubella (German measles), diphtheria, pertussis (whooping cough) and poliomyelitis, and protect against tetanus. Any person who immunizes a student under this subsection shall maintain records identifying the manufacturer and lot number of the vaccine used, the date of immunization and the name and title of the person who immunized the student. These records shall be available to the student or the student's parent, guardian or legal custodian upon request.

(b) 1. No student may be unconditionally admitted to any elementary, middle, junior or senior high school or into any day care center or nursery school without presenting written evidence to the school, day care center or nursery school of having completed the first immunization for each vaccine required for the student's grade and being on schedule for the remainder of the basic and recall (booster) immunization series for the diseases identified in par. (a) or presenting a written waiver under par. (c).

2. A school, day care center or nursery school shall conditionally admit any child who has not completed the requirements of subd. 1. until the first school day of November. The school, day care center or nursery school shall rescind conditional admission on the first school day of November unless the child has completed the basic series. If the child does not complete the recall series within the time specified by rule under par. (g), the school shall rescind conditional admission.

3. A pupil transferring from another school, day care center or nursery school whose immunization records are in the process of being transferred to the pupil's new school, day care center or nursery school may attend the school, day care center or nursery school for no more than 20 school days without presenting evidence of completing the basic series. The school, day care center or nursery school shall rescind conditional admission after 20 school days unless the pupil has completed the basic series by that date, and shall rescind conditional admission if the

pupil does not complete the recall series within the time specified by rule under par. (g).

(b)m) Any student enrolled in a home-based private educational program shall present written evidence to the department of having completed the first immunization for each vaccine required for the student's grade and being on schedule for the remainder of the basic and recall (booster) immunizations series for the diseases identified in par. (a), or present a written waiver under par. (c), within 30 days after being enrolled in the home-based private educational program.

(c) The immunization requirement is waived if the student, if an adult, or the student's parent, guardian or legal custodian submits a written statement to the school, day care center or nursery school or, if a student is enrolled solely in a home-based private educational program, to the department, objecting to the immunization for reasons of health, religion or personal conviction. At the time any school, day care center or nursery school or the department notifies a student, parent, guardian or legal custodian of the immunization requirements, the school, day care center, nursery school or department shall inform the person in writing of the person's right to a waiver under this paragraph.

(cm) The student, if an adult, or the student's parent, guardian or legal custodian shall keep the school, day care center and nursery school informed of the student's compliance with the immunization schedule.

(d) 1. By the 25th school day of each school year after the student is conditionally admitted to school, or, for a transfer pupil, by 25 school days after the pupil is conditionally admitted to school, any school shall notify in writing any adult student or the parent, guardian or legal custodian of any minor student who has not met the immunization or waiver requirements of this subsection. The notification shall cite the terms of those requirements specified in this subsection and shall state that action under s. 120.12 (16) could result due to noncompliance.

2. A first time admittee into any school, day care center or nursery school may be excluded by the school, day care center or nursery school for failing to satisfy the requirements of par. (b).

(e) If an emergency arises, consisting of a substantial outbreak as determined by the department by rule of one of the diseases listed under par. (a) at a school, day care center or nursery school or in the municipality in which the school is located, the department may order the school, day care center or nursery school to exclude or suspend students who are not immunized until the outbreak subsides.

(f) The department shall provide the vaccines without charge, if federal or state funds are available for the vaccines, upon request of the governing body of a county, city, village or town or of a school board. The department shall provide the necessary professional consultant services to carry out an immunization pro-

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gram in the requesting county, municipality or school district. Persons immunized may not be charged for vaccines furnished by the department.

(g) The department shall, by rule, prescribe the mechanisms for implementing and monitoring compliance with this subsection. The department shall prescribe, by rule, the form any person immunizing a student shall provide to the student under par. (a) and the time period by which a child who is conditionally admitted to a school, day care center or nursery school shall complete the recall series.

**SECTION 10. Nonstatutory provisions; health and social services.** (1) **REPORT ON INSURANCE COVERAGE FOR IMMUNIZATIONS.** The office of the commissioner of insurance, shall prepare a report on the current availability of health insurance coverage for immunizations and the impact on the public health system and insurers of requiring that health insurers provide coverage for immunizations required under section 140.05 (16) of the statutes, as affected by this act, and rules promulgated under section 140.05 (16) of the statutes, as affected by this act. The office shall submit the report to the chief clerk of each house of the legislature by December 31, 1990, for distribution to the appropriate standing committees in the manner provided under section 13.172 (3) of the statutes.

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**SECTION 11. Appropriation changes; health and social services.** (1) **IMMUNIZATION.** The dollar amounts in the schedule under section 20.005 (3) of the statutes for the appropriation to the department of health and social services under section 20.435 (1) (cm) of the statutes, as affected by the acts of 1989, are increased by \$2,000,000 for fiscal year 1989-90 and by \$2,000,000 for fiscal year 1990-91 to provide funding to provide control measures for outbreaks of measles and to implement an immunization series of measles, mumps and rubella vaccine for children in Wisconsin, under section 140.05 (16) (a) of the statutes. If the federal department of health and human services allocates funds to this state after June 30, 1990, and before July 1, 1991, for a 2nd-dose immunization series for measles, mumps and rubella vaccine, the department of health and social services may not, after the date of that allocation, expend funds for that purpose from the amounts appropriated under this subsection, other than the remaining amount of unencumbered funds under this subsection, if any, that exceeds the total amount of the federal allocation on the date of the federal allocation.