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**PRELIMINARY DRAFT**  
**No. 3651**

**PREPARED BY**  
**LEGISLATIVE SERVICES AGENCY**  
**2022 GENERAL ASSEMBLY**

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DIGEST

**Citations Affected:** IC 12-8-1.5-7.5; IC 12-14-30-7;  
IC 16-18-2-187.8; IC 16-19-4-11; IC 16-39-11; IC 22-5-4.6.

**Synopsis:** Administrative authority; COVID-19 immunizations. Allows the secretary of family and social services (secretary) to issue a waiver of human services statutory provisions and administrative rules if the secretary determines that the waiver is necessary to claim certain enhanced federal matching funds available to the Medicaid program. Allows the secretary to issue an emergency declaration for purposes of participating in specified authorized federal Supplemental Nutrition Assistance Program (SNAP) emergency allotments. Requires the secretary to prepare and submit any waivers or emergency declarations to the budget committee. Allows the state health commissioner of the state department of health or the commissioner's designated public health authority to issue standing orders, prescriptions, or protocols to administer or dispense certain immunizations for individuals who are at least five years old (current law limits the age for the commissioner's issuance of standing orders, prescriptions, and protocols for individuals who are at least 12 years old). Defines "Indiana governmental entity" and specifies that an Indiana governmental entity (current law refers to a state or local unit) may not issue or require an immunization passport. Provides that an employer may not impose a requirement that employees receive an immunization against COVID-19 unless the employer provides

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**Effective:** Upon passage.



## Digest Continued

individual exemptions that allow an employee to opt out of the requirement on the basis of medical reasons, including pregnancy or anticipated pregnancy, or religious reasons. Requires an employer to provide employees with an option to submit to testing for the presence of COVID-19 not more than once a week at no cost to the employee in lieu of receiving an immunization against COVID-19. Provides that an employer may not require an employee who has tested positive for and recovered from COVID-19 to receive an immunization against COVID-19 for the six month period following the employee's date of recovery. Provides that an employer may not take an adverse employment action against an employee because the employee has requested or used an exemption from an employer's COVID-19 immunization requirement.



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A BILL FOR AN ACT to amend the Indiana Code concerning health.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 12-8-1.5-7.5 IS ADDED TO THE INDIANA  
2 CODE AS A NEW SECTION TO READ AS FOLLOWS  
3 [EFFECTIVE UPON PASSAGE]: **Sec. 7.5. (a) Notwithstanding any**  
4 **other law, the secretary, through the offices, may issue a waiver, in**  
5 **writing, of provisions of this title and rules adopted under**  
6 **IC 4-22-2 concerning provisions of this title if the secretary**  
7 **determines that the waiver is necessary to claim any enhanced**  
8 **federal matching funds available from:**

9 (1) the federal Families First Coronavirus Response Act;

10 (2) the federal American Rescue Plan Act of 2021; or

11 (3) any other federal law, regulation, guidance, or policy  
12 pertaining to COVID-19 (as defined in IC 16-39-11-1) relief;  
13 for the Medicaid program or programs funded through Medicaid.

14 (b) Not later than March 1, 2022, and every six (6) months  
15 thereafter, the secretary shall prepare and submit a report to the  
16 budget committee concerning any waiver issued under subsection  
17 (a).

18 (c) Nothing in this section may be construed to obligate the  
19 secretary to issue a waiver under this section.

20 (d) This section expires on the date that the funds described in  
21 subsection (a)(1) through (a)(3) are no longer available to the state.

22 SECTION 2. IC 12-14-30-7 IS ADDED TO THE INDIANA CODE  
23 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE  
24 UPON PASSAGE]: **Sec. 7. (a) The secretary may issue an**  
25 **emergency declaration for the purpose of participating in SNAP**  
26 **emergency allotments authorized under the federal Families First**  
27 **Coronavirus Response Act.**

28 (b) Not later than March 1, 2022, the secretary shall prepare  
29 and submit a report to the budget committee concerning any  
30 emergency declaration issued under this section.

31 (c) This section expires March 31, 2022.



1 SECTION 3. IC 16-18-2-187.8 IS ADDED TO THE INDIANA  
2 CODE AS A NEW SECTION TO READ AS FOLLOWS  
3 [EFFECTIVE UPON PASSAGE]: **Sec. 187.8. "Indiana governmental**  
4 **entity", for purposes of IC 16-39-11, has the meaning set forth in**  
5 **IC 16-39-11-4.5.**

6 SECTION 4. IC 16-19-4-11, AS AMENDED BY P.L.218-2019,  
7 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
8 UPON PASSAGE]: Sec. 11. (a) The state health commissioner or the  
9 commissioner's designated public health authority who is a licensed  
10 prescriber may, as part of the individual's official capacity, issue a  
11 standing order, prescription, or protocol that allows a pharmacist to  
12 administer or dispense any of the following:

13 (1) An immunization that is recommended by the federal Centers  
14 for Disease Control and Prevention Advisory Committee on  
15 Immunization Practices for individuals who are not less than  
16 eleven (11) years of age.

17 (2) A smoking cessation product. However, the pharmacist must  
18 inform the patient that the patient must have a follow-up  
19 consultation with the patient's licensed prescriber.

20 (b) This subsection does not apply to a pharmacist. The state health  
21 commissioner or the commissioner's designated public health authority  
22 who is a licensed prescriber may, as part of the individual's official  
23 capacity, issue a standing order, prescription, or protocol that allows an  
24 individual who is licensed, certified, or registered by a board (as  
25 defined in IC 25-1-9-1), and if within the individual's scope of practice,  
26 to administer or dispense an immunization that is recommended by the  
27 federal Centers for Disease Control and Prevention Advisory  
28 Committee on Immunization Practices for individuals who are not less  
29 than eleven (11) years of age.

30 (c) A standing order described in subsection (a) or (b) must include  
31 the following:

32 (1) The purpose of the order.

33 (2) The eligible recipients.

34 (3) The geographic area covered by the standing order.

35 (4) The procedure for administering or dispensing the  
36 immunization or product.

37 (5) A timeline for renewing or updating the standing order.

38 (d) The state health commissioner or designated public health  
39 authority who issues a standing order, prescription, or protocol under  
40 subsection (a) or (b) is immune from civil liability related to the issuing  
41 of the standing order, prescription, or protocol.

42 (e) **Notwithstanding subsection (a) and subsection (b), the state**  
43 **health commissioner or the commissioner's designated public**  
44 **health authority may issue a standing order, prescription, or**  
45 **protocol to administer or dispense an immunization that is**  
46 **recommended by the federal Centers for Disease Control and**



1 **Prevention Advisory Committee on Immunization Practices for**  
 2 **individuals who are at least five (5) years of age. Nothing in this**  
 3 **subsection authorizes the state health commissioner or the**  
 4 **commissioner's designated public health authority to:**

- 5 (1) **require an individual to receive an immunization for**  
 6 **COVID-19; or**  
 7 (2) **waive or otherwise allow a minor to receive an**  
 8 **immunization without the parent's consent as required under**  
 9 **IC 16-36-1.**

10 **This subsection expires March 31, 2022.**

11 SECTION 5. IC 16-39-11-4.5 IS ADDED TO THE INDIANA  
 12 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 13 [EFFECTIVE UPON PASSAGE]: **Sec. 4.5. (a) As used in this**  
 14 **chapter, "Indiana governmental entity" means:**

- 15 (1) **the state (as defined in IC 5-11-1-16(b));**  
 16 (2) **a state educational institution (as defined in**  
 17 **IC 21-7-13-32);**  
 18 (3) **a political subdivision (as defined in IC 36-1-2-13); or**  
 19 (4) **a public school corporation (as defined in IC 4-4-38.5-6.2).**

20 **(b) The term does not include the following:**

- 21 (1) **A state institution (as defined in IC 12-7-2-184).**  
 22 (2) **A hospital organized or operated under IC 16-22-1**  
 23 **through IC 16-22-5, IC 16-22-8, or IC 16-23-1.**

24 SECTION 6. IC 16-39-11-5, AS ADDED BY P.L.196-2021,  
 25 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 26 UPON PASSAGE]: **Sec. 5. (a) Except as provided in subsection (b),**  
 27 **the state or a local unit an Indiana governmental entity** may not issue  
 28 or require an immunization passport.

29 (b) This section does not prohibit ~~the state or a local unit an~~  
 30 **Indiana governmental entity** from doing any of the following:

- 31 (1) Maintaining, creating, or storing a medical record of an  
 32 individual's immunization status.  
 33 (2) Providing a medical record of an individual's immunization  
 34 status to the individual's medical provider in accordance with the  
 35 federal Health Insurance Portability and Accountability Act  
 36 (HIPAA) (P.L.104-191).  
 37 (3) Providing the individual with a record of an immunization at  
 38 the time the individual receives the immunization or upon request  
 39 by the individual.  
 40 (4) Maintaining an immunization record for the purpose of public  
 41 health administration.

42 SECTION 7. IC 22-5-4.6 IS ADDED TO THE INDIANA CODE  
 43 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 44 UPON PASSAGE]:

45 **Chapter 4.6. Exemptions from COVID-19 Immunization**  
 46 **Requirements**



1           **Sec. 1. As used in this chapter, "COVID-19" has the meaning set**  
2 **forth in IC 34-30-32-3.**

3           **Sec. 2. As used in this chapter, "employee" means an individual**  
4 **who is employed by an employer on a full-time or part-time basis.**  
5 **The term includes an independent contractor.**

6           **Sec. 3. As used in this chapter, "employer" means a sole**  
7 **proprietor, corporation, partnership, limited liability company, or**  
8 **other entity with one (1) or more employees. However, the term**  
9 **does not include:**

10           **(1) an Indiana governmental entity (as defined in**  
11 **IC 16-39-11-4.5); or**

12           **(2) the United States and its agencies and instrumentalities.**

13           **Sec. 4. As used in this chapter, "immunization" means the**  
14 **treatment of an individual with a vaccine to produce immunity.**

15           **Sec. 5. (a) An employer may not impose a requirement that**  
16 **employees receive an immunization against COVID-19 unless the**  
17 **employer provides individual exemptions that allow an employee**  
18 **to opt out of the requirement on the basis of any of the following:**

19           **(1) Medical reasons, including pregnancy or anticipated**  
20 **pregnancy.**

21           **(2) Religious reasons.**

22           **(b) In addition to the exemption requirements under subsection**  
23 **(a), an employer:**

24           **(1) must provide the employee with an option to submit to**  
25 **testing for the presence of COVID-19 not more than once a**  
26 **week at no cost to the employee in lieu of receiving an**  
27 **immunization against COVID-19; and**

28           **(2) may not require an employee who has:**

29           **(A) tested positive for; and**

30           **(B) recovered from;**

31           **COVID-19 to receive an immunization against COVID-19 for**  
32 **the six (6) month period following the employee's date of**  
33 **recovery from COVID-19.**

34           **(c) An employer may require an employee to submit to testing**  
35 **for the presence of COVID-19, not more than once a week at no**  
36 **cost to the employee, if the employee receives an exemption based**  
37 **on:**

38           **(1) medical reasons under subsection (a)(1);**

39           **(2) religious reasons under subsection (a)(2); or**

40           **(3) prior infection and recovery from COVID-19 under**  
41 **subsection (b)(2).**

42           **Sec. 6. (a) Unless an employer waives the documentation**  
43 **requirements under this subsection, to claim an exemption based**  
44 **on medical reasons, including pregnancy or anticipated pregnancy,**  
45 **an employee must present to the employer an exemption statement**  
46 **in writing, dated and signed by:**



1           (1) a licensed physician;  
 2           (2) a licensed physician's assistant; or  
 3           (3) an advanced practice registered nurse;  
 4 who has examined the employee. The statement must provide that,  
 5 in the professional opinion of the licensed physician, licensed  
 6 physician's assistant, or advanced practice registered nurse, the  
 7 immunization against COVID-19 is medically contraindicated (as  
 8 defined in IC 16-18-2-223.7) for the employee.

9           (b) To claim an exemption based on religious reasons, an  
 10 employee must present to the employer an exemption statement in  
 11 writing indicating that the employee declines the immunization  
 12 against COVID-19 because of a sincerely held religious belief.

13           (c) Unless an employer waives the documentation requirements  
 14 under this subsection, to claim an exemption based on prior  
 15 infection and recovery from COVID-19, an employee must present  
 16 to the employer an exemption statement in writing, dated and  
 17 signed by a licensed physician, a licensed physician's assistant, or  
 18 an advanced practice registered nurse indicating that the employee  
 19 has:

- 20           (1) tested positive for COVID-19; and
- 21           (2) recovered from COVID-19.

22 The statement must specify the date that the employee recovered  
 23 from COVID-19.

24 **Sec. 7.** If an employer receives a completed exemption statement  
 25 for an exemption based on:

- 26           (1) medical reasons;
- 27           (2) religious reasons; or
- 28           (3) prior infection and recovery from COVID-19;

29 in accordance with section 6 of this chapter, the employer must  
 30 allow the employee to opt out of the employer's COVID-19  
 31 immunization requirement as provided in section 5 of this chapter  
 32 without further inquiry.

33 **Sec. 8.** (a) Except as provided in subsection (b), an employer  
 34 may not take an adverse employment action against an employee  
 35 because the employee has requested or used an exemption based  
 36 on:

- 37           (1) medical reasons under section 5(a)(1) of this chapter;
- 38           (2) religious reasons under section 5(a)(2) of this chapter;
- 39           (3) an employee's agreement to be subject to testing for the  
 40 presence of COVID-19 as set forth in section 5(b)(1) of this  
 41 chapter; or
- 42           (4) prior infection and recovery from COVID-19 under  
 43 section 5(b)(2) of this chapter.

44 (b) An employer may take an adverse employment action  
 45 against an employee who:

- 46           (1) has agreed to be subject to testing for the presence of



1           **COVID-19 as set forth in section 5(b)(1) of this chapter; and**  
2           **(2) fails to comply with the agreement.**  
3       **Sec. 9. Nothing in this chapter shall be construed to:**  
4           **(1) require an employer to impose a requirement that**  
5           **employees receive an immunization against COVID-19; or**  
6           **(2) preclude an employer from allowing additional exemptions**  
7           **from an employer's COVID-19 immunization requirement.**  
8       **SECTION 8. An emergency is declared for this act.**

