

COMMENTARY

Minor Consent for Vaccination: Ethically Justified, Politically Fraught

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Abstract: Policies allowing some minors to consent to receive recommended vaccines are ethically defensible. However, a policy change at the federal level expanding minor consent for vaccinations nationwide risks triggering a political backlash. Such a move may be perceived as infringing on the rights of parents to make decisions about their children's health care. In the current post-COVID environment of heightened anti-vaccination activism, changes to minor consent laws may be unadvisable, and policy makers should proceed with caution.

In this issue of the *Journal of Law, Medicine and Ethics*, Irwin et al. join a growing chorus of health care experts recommending that minors be legally able to consent to receive recommended vaccines.¹ They call for a policy change at the federal level, which would bring uniformity to practices currently allowed in piecemeal fashion in a handful of states. The authors' proposal is defensible on several ethical grounds, including respect for autonomy, justice, beneficence, and collective well-being. However, pursuing this change would entail non-trivial political risks that must be carefully thought through and weighed against the expected benefits of the policy. A

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sweeping expansion of adolescents' ability to consent for vaccination, enacted at the federal level, carries the possibility of backlash, both because of deep-rooted themes that have animated vaccine-critical activism for more than a century as well as features of our current political moment.

Historically, the issue of parental control over medical decision-making for minor children has been a recurrent flashpoint for controversy, especially around vaccines. In the early 20th century, anti-vaccination activism spiked sharply, driven in part by the expansion of childhood and adolescent preventive health services. Medical screening of young people became commonplace, especially in school settings, as public health reformers sought to prevent and treat chronic and acute conditions such as vision and hearing defects, scoliosis, tooth decay, and infectious diseases. These efforts drew opposition from parents who viewed them as attempts by medical elites to usurp decision-making prerogatives that should belong to families.²

The perceived threat to parental control of children triggered numerous legal and legislative battles in this era. Activists focused especially on opposing coercive policies such as school-based vaccination mandates. However, they also attacked efforts that were educational or voluntary in nature, such as promotional campaigns to encourage diphtheria immunization or expanding access to screening and preventive services through community-based clinics — any measure that would increase the likelihood of a minor receiving medical attention without a parent's consent or knowledge.³

The idea that parents should control the health of their children, free from pressure or coercion by medi-

cal or public health professionals, remains resonant today and figures centrally in current anti-vaccination rhetoric. Vaccine-critical messaging on social media platforms often claims, implicitly or explicitly, that allopathic health care workers have been ethically compromised by their acceptance of pro-vaccine orthodoxy, and therefore cannot be trusted to provide unbiased and non-directive care to young people or guidance on the subject of immunization. Even measures designed to expand the scope of voluntary consent are framed as opening the door to potential coercion. The National Vaccine Information Center, a prominent anti-vaccination organization, warned its

this has been especially true in the COVID era, when views of public health action have become intertwined with anti-government sentiment.

Although it does not appear that public support for routinely recommended pediatric vaccines has declined significantly in the wake of the acrimonious public debates over COVID vaccination,⁷ these controversies brought new visibility and resources to vaccine critics. Their views, though out of step with the majority of public opinion, can exert a powerful influence on policy. Vaccine critics have shown their ability to leverage culturally resonant themes such as medical liberty and parental rights to persuasive effect, and to

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readers to “protect your child with a plan to prevent coercion and bullying” at school-based health centers where vaccination might be available.⁴

The experience of Washington, DC, which enacted a minor consent law in 2020, foreshadows some of the challenges a change in federal policy would likely precipitate and the efforts policy makers would have to be prepared to take to fend off attacks. The law, which allowed minors over age 11 to consent to receive all CDC-recommended vaccines, was challenged in court by parents who argued, among other claims, that it “subverts the right and duty of parents to make informed decisions about whether their children should receive vaccinations.”⁵ One of the lawsuits was brought Robert Kennedy Jr.'s anti-vaccination group Children's Health Defense, which has lobbied against minor consent bills in several states.⁶ After a judge enjoined enforcement of the law, the DC City Council passed a more narrowly-tailored version of the measure designed to address concerns raised by critics and the court.

Pursuing change through a federal policy mechanism, as Irwin et al. proposes, may present greater risks than change at the state level. Federal overreach, like parental rights, is a politically powerful trope, and

gain the ear of sympathetic lawmakers and jurists.

For example, in the wake of efforts by some states to require COVID vaccination for school attendance, legislators in numerous states sought to repeal long-established and widely accepted school requirements for older vaccines such as MMR, DTP, and polio.⁸ These efforts have been part of a broader attack on the nation's public health institutions in courts and legislatures around the country.⁹ The weakening of a successful vaccination law in Mississippi provides a cautionary tale about the vulnerability of seemingly well-established public health policies. For decades Mississippi had been one of only two states that allowed no nonmedical exemptions to school vaccination requirements, and as a result had one of the highest vaccination rates in the country. Even as other states were moving to emulate Mississippi's example, anti-vaccination activists brought a lawsuit that led to a ruling requiring the state to offer religious exemptions.¹⁰ These events illustrate the unsettled nature of the current vaccination policy landscape, especially as courts seem increasingly willing to privilege religious belief over public health protection.¹¹

In this environment, there is a risk not just of failure to succeed, but of rollbacks in progress that has

already been made. It is not difficult to imagine that vaccine critics, having mobilized around the issue of minor consent for vaccination, might not stop with derailing a new federal effort, and might aim to repeal existing laws in the jurisdictions that now allow it.

The current political minefield is not necessarily a reason to avoid pursuing an expansion of minor consent. As the authors note, the possibility of backlash should not drive public health decision-making. But neither should such contingencies be ignored, especially if the magnitude of the benefit resulting from the policy change is likely to be modest. Given that teens and their parents generally agree on vaccination decisions,¹² it is unclear whether this policy will result in a substantial increase in rates of adolescent vaccination, and whether it is worth pursuing over other approaches that might bring a greater return on the investment of political capital that is likely to be necessary. Although there are principled and pragmatic reasons to support an expansion of minor consent for vaccination, we should proceed with caution.

Note

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