



Jess Dannhauser  
Commissioner

**Memorandum**

**TO: Foster Care and Close to Home Providers**

Ina Mendez  
Interim Deputy  
Commissioner  
Division of Family  
Permanency Services

**From: Ina Mendez, Interim Deputy Commissioner, Family Permanency Services  
Nancy Ginsburg, Deputy Commissioner, Division of Youth and Family  
Justice**

**Dr. Angel Mendoza, Chief Medical Officer**

Nancy Ginsburg  
Deputy Commissioner  
Division of Youth and  
Family Justice

**Date: October 12<sup>th</sup>, 2022**

**Subject: Updated Consent Protocol for COVID-19 Vaccine for Youth in Foster  
Care/Close to Home**

Angel Mendoza, MD  
Chief Medical Officer

**Consent Guidelines for Vaccines/Boosters Authorized for Emergency Use Only  
for Children/Youth Under 18:**

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New York, NY 10038

- Consent must be sought from the child/youth's parent or legal guardian prior to administration of a vaccine or booster dose<sup>1</sup> that is authorized by the FDA for Emergency Use (see table below), unless parental rights have been terminated or surrendered. The case planner must obtain the signature of the child/youth's parent or guardian on the NYS Department of Health consent form. Current links to the consent form are included here; please check the NYS Department of Health website as links are subject to change as consent forms are updated ([www.health.ny.gov](http://www.health.ny.gov)):
  - Ages 6 months-11: <https://coronavirus.health.ny.gov/covid-19-immunization-screening-and-consent-form-children-and-adolescents-ages-6-months-11-years>
  - Ages 12 and older: <https://coronavirus.health.ny.gov/covid-19-immunization-screening-and-consent-form-12-years-age-and-older>
- If a child/youth is remanded or placed on an Article 10 or destitute child petition and the parent or guardian's whereabouts are unknown or the parent or guardian cannot be located, this must be documented in the case file and the Executive Director of the provider agency (or designee) may consent to the vaccination. If a parent or guardian states that they consent but, for logistical or other reasons, the case planner is unable to obtain the actual signature within a day of that statement, the case planner must document the parent or guardian's statement in the case file and proceed to obtain the appropriate agency signature on the consent form.
- If a child/youth is remanded or placed on an Article 10 or destitute child petition and the parent or guardian affirmatively objects to the administration of the vaccine, the child/youth may not be vaccinated without a court order. Provider agencies must reach out to FCLS to determine whether a court order for vaccination is reasonable/feasible.

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<sup>1</sup> Providers should also note that monovalent mRNA COVID-19 vaccines are no longer authorized for use as boosters for people ages 12 years or older. Scheduled appointments to administer monovalent Pfizer-BioNTech or Moderna boosters to people 12 years of age or older must be rescheduled for when locations have the bivalent COVID-19 vaccines available.

- If a child/youth is remanded or placed on a PINS petition, placed in Close to Home, or placed on a Voluntary Placement Agreement and the parent or guardian does not consent to the administration of the vaccine, the child/youth may not be vaccinated without a court order. Provider agencies must reach out to FCLS to determine whether a court order for vaccination is reasonable/feasible.
- If parental rights have been terminated or surrendered, the provider agency, as the child/youth's legal guardian, may consent to the administration of the vaccine.
- NOTE: If there is disagreement between the child/youth and the parent or guardian about whether the child/youth should receive the vaccine, the case planner must elevate the situation to foster care agency leadership and FCLS.

**Consent Guidelines for Vaccines with Full FDA Approval for Children/Youth Under 18 (applies to youth 12-17 years old):**

- Clinicians shall provide all youth with a developmentally appropriate explanation of the vaccine and the opportunity to ask and receive explanations to any questions. These discussions should occur in a safe, trusting, neutral, and confidential environment.
- When a youth has the capacity<sup>2</sup> to make the decision, the youth's written assent (agreement) to the vaccine must be obtained and placed in the youth's case record. The assent of a youth with capacity together with the consent of the Commissioner's designee<sup>3</sup> are needed in order for the youth to be vaccinated.
  - Designees of the Commissioner may consent to the vaccine by signing the DOH vaccine consent form or other consent form from the provider for the following categories of youth in foster care who wish to be vaccinated:
    - Youth remanded or placed on Article 10 (abuse/neglect) petitions
    - Youth remanded or placed on destitute child petitions
    - Youth placed on Voluntary Placement Agreements
    - Youth placed in Close to Home on Article 3 (delinquency petitions)
    - Youth freed for adoption
- In the case of a youth who does not have the capacity to assent:
  - Youth who are not legally free: case planner must elevate the situation to the attention of agency leadership and FCLS
  - Youth who are legally free: the provider agency (as the Commissioner's designee) may consent to the vaccine
- As with all medical treatment and care, parents or guardians should be notified that their youth will be receiving the vaccine and parents or guardians may attend the appointment, unless there are court orders preventing such. Parents or guardians must also be notified as soon as possible after the vaccine is administered. Parental guardian's consent is not required when a vaccine is fully approved by the FDA for the applicable age group, the

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<sup>2</sup> "Capacity" means ability to understand relevant information and make an informed decision.

<sup>3</sup> In cases where ACS has the legal authority to consent, pursuant to ACS's policy, *Medical Consents for Children in Foster Care (2014)*, ACS delegates this authority to consent to the Executive Directors (or their designees) of the authorized foster care agencies responsible for the care and planning of the foster child.

youth is within one of the categories listed above, and the youth wants to receive the vaccine. Even if a parent or guardian cannot be located or affirmatively objects, no override or authorization from ACS is required in these circumstances.

- If a youth under 18 is not in one of the above categories (e.g. delinquency remand or PINS remand or PINS placement), wishes to receive a vaccine that is fully approved by the FDA for their age group, and the parent or guardian has not consented, either because the parent or guardian affirmatively objects or because they cannot be reached or located, the agency may not sign the consent form and must reach out to FCLS about the reasonableness/feasibility of seeking a court order.

**Youth 18+ and Youth of Any Age Who are Pregnant or Parenting**

- Youth in foster care who are 18 and older, and/or who are pregnant or parenting, can consent for themselves to receive the COVID-19 vaccine, unless they have a court appointed guardian with that authority.

**Table: COVID-19 Vaccine/Booster Eligibility by Age and FDA Authorization**

<i>Age</i>	<i>Eligibility</i>	<i>FDA Authorization Type</i>
<b>6 months-4 years</b>	Pfizer Covid-19 Vaccine (Monovalent)-three dose primary series. Currently, a booster dose using any COVID-19 vaccine is not authorized for children in this age group.	Emergency Use Authorization
	Moderna Covid-19 Vaccine (Monovalent)-two dose primary series. Currently, a booster dose using any COVID-19 vaccine is not authorized for children in this age group.	Emergency Use Authorization
<b>5-11 years</b>	Pfizer Covid-19 Vaccine (Monovalent)	Emergency Use Authorization
	Moderna Covid-19 Vaccine (Monovalent)	Emergency Use Authorization
	Pfizer Covid-19 Booster (Bivalent) (Booster is recommended for ages <b>5-11</b> at least two months after a child has completed the initial two-shot series or received a monovalent booster dose)	Emergency Use Authorization
	Moderna COVID-19 Booster (Bivalent) (Booster is recommended for ages <b>6-11</b> at least two months after a child has completed the initial two shot series)	Emergency Use Authorization
<b>12-17 years</b>	Pfizer Covid-19 Vaccine (Monovalent)	Full Approval
	Moderna Covid-19 Vaccine (Monovalent)	Emergency Use Authorization
	Novavax Covid-19 Vaccine	Emergency Use Authorization
	Pfizer Covid-19 Booster (Bivalent) (Booster is recommended at least 2 months after 2 <sup>nd</sup> dose or last booster)	Emergency Use Authorization
	Moderna COVID-19 Booster (Bivalent) (Booster is recommended for ages 12-17 at least after 2 <sup>nd</sup> dose or last booster)	Emergency Use Authorization
<b>18+ years</b>	Pfizer Covid-19 Vaccine (Monovalent)	Full Approval
	Moderna Covid-19 Vaccine (Monovalent)	Full Approval

	Novavax Covid-19 Vaccine	Emergency Use Authorization
	Pfizer COVID-19 Booster (Bivalent) (Booster is recommended least 2 months after 2 <sup>nd</sup> dose or last booster)	Emergency Use Authorization
	Moderna COVID-19 Booster (Bivalent) (Booster is recommended at least 2 months after 2 <sup>nd</sup> dose or last booster)	Emergency Use Authorization